

The London School of Economics and Political Science

Children and Young People in Police Custody

An exploration of the experience of children and young people detained in police custody following arrest, from the perspective of the young suspect.

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ABSTRACT

In the year to March 2018 there were 65,833 arrests of children and young people (YJB/MOJ 2019). The majority of these young people will have been detained as suspects in police custody; yet there is very limited empirical evidence as to how young people experience detention in the police station, and how the custody process functions for them from arrival to release.

This qualitative study makes an original contribution to police custody literature by exploring, from the perspective of the young suspect, the experiences of children and young people detained in the police station. The study draws on 41 semi-structured interviews with children and young people with experience of detention in police custody, supplemented by observations conducted in six police custody suites across three force areas, and by interviews and discussions with adults who engage with children in that setting: officers, healthcare practitioners, legal representatives, appropriate adults and Independent Custody Visitors.

The picture which emerges of young suspects' experiences in police custody is deeply troubling. Many young research participants struggled to cope with a detention experience which is punitive, unnecessarily lengthy and very minimally adjusted to account for their youth. Their accounts are dominated by feelings of uncertainty, helplessness and desperation to "get out" of the cell. The protections which should be in place to support them through the process are often not implemented, or function ineffectively. In addition, their accounts raise real concerns about their abilities, in that setting, to make the significant decisions required of them in custody and to participate effectively in police interview. The findings call into question the fairness of the custody process for young suspects and the reliability of the evidence produced.

LIST OF ACRONYMS

AA	Appropriate adult
ABE	Achieving Best Evidence
ADHD	Attention deficit hyperactive disorder
AO	Arresting officer
APP	Authorised Professional Practice (Detention and Custody), produced by the College of Policing
APP(CYP)	Authorised Professional Practice (Detention and Custody) (Children and Young Persons)
APPGC	All Party Parliamentary Group for Children
ASC	Autism spectrum condition
CA	Custody assistant
CAMHS	Child and Adolescent Mental Health Services
CDA	Crime and Disorder Act 1988
CJA	Criminal Justice Act 2003
CJJI	Criminal Justice Joint Inspection
CJPOA	Criminal Justice and Public Order Act 1994
CO	Custody Officer
CPN	Community psychiatric nurse
CYPA	Children and Young Persons Act 1933
ECHR	European Convention on Human Rights
FAA	Familial appropriate adult
FFI	Fitness for interview
FME	Forensic medical practitioner (Doctor, generally a general Practitioner)
FNP	Forensic nurse practitioner (Nurse, generally a Registered Nurse or a Registered Mental Health Nurse)
HCP	Healthcare practitioner
HMIC	Her Majesty's Inspectorate of Constabulary
HMICFRS	Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services

HO	Home Office
IO	Investigating officer
ICV	Independent custody visitor
JDR	Juvenile detention room
LD	Learning disability
MOJ	Ministry of Justice
NAAN	National Appropriate Adults Network
NFAA	Non-familial appropriate adult
NFG	Notes for Guidance (within PACE Code C)
NGO	Non-governmental organization
NPCC	National Police Chief's Council
PAA	Paid, trained appropriate adult
PACE	Police and Criminal Evidence Act 1984
PFI	Private finance initiative
PNC	Police National Computer
PRU	Pupil Referral Unit
RA	Risk assessment
RCCP	Royal Commission on Criminal Procedure
RHAA	Residential home appropriate adult
UNCRC	United Nations Convention on the Rights of the Child
VAA	Volunteer, trained appropriate adult
YJB	Youth Justice Board
YJCEA	Youth Justice and Criminal Evidence Act 1999
YJS	Youth Justice System
YOI	Young Offenders' Institution
YOT	Youth Offending Team, also known as Youth Justice Teams or Youth Justice Services or similar

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Chapter 1

Introduction

In November 1975, the Court of Appeal quashed the convictions of three young men for their part in the murder of Maxwell Confait and the subsequent fire at 27 Doggett Road on 21st to 22nd April 1972 (Fisher 1977). Ahmet Salih and Ronald Leighton were children at the time of the incident, aged 14 and 15 years respectively; Colin Lattimore, was 18 years old, but had been identified in the police station as having “the mental age of a boy of 14 years” (Fisher 1977, 11). The subsequent inquiry into the investigation, led by Sir Ronald Fisher, had called into question the reliability of confessions made by the boys in their police interviews, on which the prosecutions had exclusively relied. In particular the inquiry identified that each had been interviewed in the absence of a parent or independent adult, and that there had been other breaches of the Judges’ Rules and Administrative Directions that then governed the detention and questioning of suspects, including failures to inform the boys of their rights, and the oppressive and unfair questioning of Colin Lattimore in particular (Fisher 1977). The “disquiet” caused by the *Confait* case, particularly the “serious questions” concerning the treatment of young suspects raised by the Fisher Inquiry, was a significant factor in the setting up of the Royal Commission on Criminal Procedure (‘RCCP’) in 1977, the Phillips Commission, (RCCP 1981, 3), which in turn led to the passing of the Police and Criminal Evidence Act 1984 (‘PACE’), the legislation that still governs the treatment and questioning of suspects in the police station today.

Given this history, it has almost become an expectation, when writing about the treatment of young suspects,¹ to refer to the *Confait* case. And with good reason. It illustrates starkly the serious injustice that can occur when reliance is placed on evidence elicited from children and young people² in the police station, when the protections they should enjoy have not been afforded to them. However, the *Confait*

¹ I use the phrase ‘young suspect’ for 10-17 year olds detained by the police following arrest on suspicion of a criminal offence, in preference to the term ‘juvenile’ used in PACE.

² I use the phrase ‘children and young people’ and the terms ‘child’ and ‘young person’ interchangeably throughout to refer to 10-17 year olds. I discuss the use of terminology in more detail in Chapter 2.

case seems to me to do something more than illustrate these dangers; it raises a clear question: are we satisfied that this sort of injustice is not being repeated today? The surprising answer is that we cannot say. Over 40 years have passed since Fisher's careful examination of the *Confait* case, and it is almost 35 years since PACE codified and enhanced the protections for young suspects, in particular introducing, in Code C,³ the requirement for an appropriate adult ('AA') to be present for parts of the process. However, despite tens of thousands of children being arrested every year,⁴ we have very limited insight into how those provisions are implemented today, and whether, taken together, they provide effective protection for young suspects. Perhaps, most surprisingly of all, PACE has been repeatedly amended and Code C updated, but this has occurred with almost no information from children and young people with experience of police custody about how the process functions for them, and how they experience the challenges of detention and interview. Concerningly, what little evidence we do have suggests that the problems identified by Fisher continue to be repeated, in particular oppressive and unfair questioning (Evans 1993; Kemp and Hodgson 2016) and the overlooking of legal protections (Skinns 2011a).

This thesis details a research study which aims to respond to this question raised by the *Confait* case. In this chapter I seek to provide some context, introducing background material which informs the question and underlines the importance of seeking an answer. I touch on three areas in particular. First of all I situate the legal framework for young suspects within the wider youth justice system. Secondly I examine what we know of the children and young people who find themselves detained in police custody, and consider how their likely characteristics bear on the question posed. Thirdly, I provide an overview of the existing literature on the functioning of the police custody process for young suspects, and analyse where there are gaps in our understanding. I close the chapter with a refinement of the question to be addressed by the research and an outline of the scheme of this thesis.

³ *Code C: Revised Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers*. References to 'Code C' are to the revised version in force at the time of the fieldwork, published May 2014. Any relevant variance with the version in force at time of writing, published July 2018, will be noted as it arises.

⁴ In the year to March 2018 there were 65,833 arrests of children and young people (YJB/MOJ 2019), down from 74,784 in 2016/17 (relevant to the majority of the fieldwork for this study) (YJB/MOJ 2018).

A Differentiated Youth Justice System

The approach taken by the criminal justice system to young people in conflict with the law has changed substantially since the 1970s. In England and Wales the youth justice system ('YJS') now has clearly prescribed aims and procedures distinct from those of the adult criminal justice system, recognising the need for children and young people to be treated differently from adults. Section 37 of the Crime and Disorder Act 1998 ('CDA') sets out that the primary aim of the YJS is to "prevent offending by children and young persons". The police and the courts, as other authorities, also have a duty under the Children Act 2004 s11 to "safeguard and promote the welfare of children and young people" (see also CDA s38(4)(a)), and children are required to be kept wholly separate from adults who have been charged (section 31 of the Children and Young Persons Act 1933 ('CYPA')).

This domestic differentiation between adults and children in conflict with the law is reflected in, and reinforced by, a raft of international legal obligations. The United Kingdom is a signatory to the United Nations Convention on the Rights of the Child ('UNCRC')⁵, the principal source of human rights protection for children.⁶ Article 3(1) requires that the "best interests of the child" be "a primary consideration" in all actions concerning children. Of particular relevance is Article 37, which stipulates that arrest and detention shall "be used only as a measure of last resort and for the shortest appropriate period of time" (37(b)), and that every detained child shall be "treated with humanity and respect" and in a manner which "takes into account the needs of persons of his or her age" (37(c)). Whilst Article 40, incorporates the fair trial protections provided by Article 6 of the European Convention on Human Rights ('ECHR'), and guarantees children accused of a criminal offence the right to be "treated in a manner consistent with the promotion of the child's sense of dignity and worth" and which "takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society" (Article 40(1)). The Council of Europe has also issued a range of recommendations drawing on these principles, including the 2010 Guidelines on Child-Friendly Justice.

⁵ Ratified by the UK, and entered into force September 1990.

⁶ The UNCRC is supplemented by several soft law instruments adopted by the UN such as the 1985 UN Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules'), the 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty (the 'Havana Rules'), and the 1990 UN Guidelines for the Prevention of Juvenile Delinquency of 1990 (the 'Riyadh Guidelines').

Differentiation post-charge

Post-charge, this differentiation and child-friendly adjustment is clearly discernible. Save for ‘grave’ crimes and other limited circumstances, children are tried in the youth court, which has special adaptations designed to meet their needs: there is no public access to the court (s47 CYPA), modified language is used, children are called by their first name, and judges and magistrates are required to have special training (s45 CYPA). Children and young people waiting for their hearings are accommodated separately from adult defendants (s31 CYPA), and the Court will generally require the attendance of a parent or guardian (s34A CYPA). There are different timescales for youth court proceedings, and sentencing hearings are attended by a representative of the Youth Offending Team (‘YOT’).⁷ There is also a separate approach to sentencing, with different disposals, focusing on two principal aims: the welfare of the child and the prevention of offending (or reoffending) of children (section 142A of the Criminal Justice Act 2003 (‘CJA’)).⁸ As Steyn LJ observed in *R v G*,⁹ “Ignoring the special position of children in the criminal justice system is not acceptable in the modern civil society” (at [53]).

Following the high-profile Crown Court trial of two 11 year olds for the murder of Jamie Bulger, the European Court has developed the concept of ‘effective participation’ as an essential component of the right to a fair trial under article 6 of the European Convention on Human Rights. In *T v United Kingdom* and *V v United Kingdom*¹⁰ the court observed that a “crucial ingredient” of the right to a fair trial was that the process should provide for the accused’s “effective participation”, characterized as “adequate and proper opportunity to exercise defence rights...rights which are not theoretical or illusory, but rights which are practical and effective” [at 102]. In considering what this required for a young defendant the Court stated that “it is essential that his age, level of maturity and intellectual and emotional capacities be taken into account in the procedures followed” [at 103] and that those procedures must be “conducive to an active participation, as opposed to passive presence” [at 105]. Five

⁷ Multi-agency teams which work with, and support, young offenders and young people in contact with the criminal justice system. I refer to them as YOTs, but they are in some areas called youth justice teams, youth justice services, or similar.

⁸ See for example the Sentencing Council’s Definitive Guidance on Sentencing Children and Young People (2017).

⁹ [2003] UKHL 50.

¹⁰ *T v United Kingdom* (app no 24724/94) and *V v United Kingdom* (app no 24888/94), reported as a joint decision in (2000) EHRR 121.

years later, the prosecution of another 11 year old led the European Court, in *SC v United Kingdom*¹¹, to provide its fullest description yet of “effective participation”. This stressed the importance of the accused having a “broad understanding” of the trial process and of “what is at stake for him or her”, an ability to “understand the general thrust of what is said in court” and to follow the evidence. If represented the young person should also be able to point out to representatives what evidence they wished to challenge and what facts they wanted put forward in their defence [at 29].

In the domestic courts this caselaw is reflected in Criminal Practice Directions and Criminal Procedure Rules adapted to facilitate the effective participation of young and vulnerable defendants. Caselaw also continues to break new ground, particularly in the questioning of witnesses, including child defendants. The courts now require advocates to adapt their questioning to the child witness, rather than the child having to contend with adult phrasing (*R v Lubemba*)¹², and specific training to equip advocates for that task is now expected (*R v Grant Murray*).¹³

Progress has undeniably been made, although much remains to be done. There is, for example, a stubborn inequity between the treatment of young witnesses and young defendants in this context (see Cooper and Wurtzel 2013). Likewise, this distinct system, which aims to meld punishment with welfare, is fraught with tensions as successive governments have sought to prioritise different aspects, as criminologists (see for example Goldson 2002; McAra 2010; Morgan and Newburn 2012) and practitioners (see for example Youth Justice Board 2009) have amply documented.

Differentiation pre-charge?

The position, however, is very different, procedurally, pre-charge. By contrast to the differentiation at court, a child detained by the police after arrest experiences essentially the same process in the same environment as an adult suspect. They are not dealt with by specialist staff, in fully separate facilities or subject to different timescales in terms of their detention. Under PACE, Code C and the College of Policing’s Authorised Professional Practice (Detention and Custody) (‘APP’)¹⁴ a 10-17 year old suspect is classified as a ‘juvenile’ and a range of protections is required to be provided.

¹¹ *SC v United Kingdom* (app no 60958/00) (2005) 40 EHRR 10.

¹² [2014] EWCA Crim 2014, [45].

¹³ [2017] EWCA Crim 1228, [226] (Lord Thomas CJ).

¹⁴ The most relevant sections of the APP are entitled ‘Children and Young Persons’ (referred to as ‘APP(CYP)’). Versions referred to in this thesis are those modified in March 2016 and current at the time

The most substantial of these protections is that an AA, primarily a parent or guardian,¹⁵ is required to attend the police station (Code C 3.15) and must be present with the young suspect for significant events in their detention, such as strip search (Code C Annex A) and interview (Code C 11.15ff), and available to consult with them “at any time” (Code C 3.18). Their role is to provide advice and assistance, facilitate communication and to safeguard the young suspect’s interests in custody, particularly in interview (Code C 11.17)¹⁶. If the young suspect is a girl she must also be “under the care of” a female officer during her detention (s31 CYPA).

Other adjustments for young suspects include: that the parent or other person responsible for the child’s welfare must be informed “as soon as is practicable” (PACE s57, Code C 3.13), that the child shall not be kept with a detained adult in a cell, and not in an adult cell at all unless no other “secure” or “more comfortable” accommodation is available (Code C8.8), and that they should be visited “more frequently” whilst detained (Code C NFG 9B). Finally, if remanded after charge, subject to very limited exceptions, a young suspect must be transferred to local authority accommodation until their appearance in court (s38(6) PACE). In all other regards, the APP and Code C simply counsel that special care should be taken, for example when questioning a child (Code C NFG 11C), and efforts made to ensure that procedures are strictly followed and detention times are kept to a minimum, avoiding in particular detention overnight (see for example APP(CYP) 2).

What of child rights under the UNCRC and fair trial guarantees, are they applied in the police station? The need to have regard to the principles of the UNCRC is now explicitly referenced in the National Police Chiefs’ Council (‘NPCC’) National Strategy for the Policing of Children and Young People¹⁷ and the APP(CYP),¹⁸ but does not feature in Code C. Indeed, it is perhaps a measure of how far custody procedures have lagged behind in operationalising these rights that it is only in the last five years that 17 year olds have been accorded ‘juvenile’ status in the police station. Prior to the October

of fieldwork. Where there is variance with the most up to date version at the time of writing (revisions 01/08/18) this is noted.

¹⁵ Other responsible adults who attend where a parent or guardian is unavailable are discussed in detail in Chapter 5.

¹⁶ See also CDA s38(4)(a). Revised Code C (May 2014) provided little guidance itself as to the role of the AA. A more detailed definition is now available in Revised Code C July 2018 para 1.7A and Annex E 2A. See Ch5.

¹⁷ National Strategy for the Policing of Children and Young People, Key principles (2016) and (2017).

¹⁸ APP(CYP) 1.

2013 revision of Code C¹⁹ 17 year olds were treated as adults, despite the protections required to be afforded to them by the UNCRC. The change was only made following the case of *R(C) v Secretary of State for the Home Department and Another*,²⁰ in which Moses LJ concluded that those aged 17 and under “must be treated differently from adults and sheltered by special protection designed to meet their best interests” (at [43]), recognising, as the Guidelines on Child-Friendly Justice did, “the need to correct the imbalance between the child and the criminal justice system” (at [50]).

European caselaw (*Salduz v Turkey*)²¹ and domestic jurisprudence (*Cadder v HM Advocate*)²² confirm that Article 6 fair trial guarantees are engaged pre-charge. This line of caselaw relates to the right to legal assistance, but there has also been some consideration of how effective participation might apply in the police station. In *Panovits v Cyprus*,²³ the applicant was 17 years old at the time of his arrest and detention by the police. The Court observed, drawing on the principles laid down in *T v UK* and *V v UK*, and *SC v UK*:

The right of an accused minor to effective participation in his or her criminal trial requires that he be dealt with with due regard to his vulnerability and capacities from the first stages of his involvement in a criminal investigation and, in particular, during any questioning by the police. The authorities must take steps to reduce as far as possible his feelings of intimidation and inhibition...and ensure that the accused minor has a broad understanding of the nature of the investigation, of what is at stake for him or her, including the significance of any penalty which may be imposed as well as of his rights of defence and, in particular, of his right to remain silent ... It means that he or she, if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, should be able to understand the general thrust of what is said by the arresting officer and during his questioning by the police. [at 67]

One might have anticipated that the young suspect would be granted greater protection than the young defendant, given that he or she is detained simply on the basis of ‘suspicion’ of involvement in an offence. As Ashworth (1994, 31) suggests “the pre-trial system should impose the minimum burdens on the individuals subject to it” (see also Goldstein 1960). However, what this review of the differentiation in pre- and post-charge settings reveals is that the specialisation of the custody experience to

¹⁹ The upper age limit of an ‘arrested juvenile’ in PACE s. 37(15) was not raised from 17 to 18 years until 26 October 2015 when Criminal Justice and Courts Act 2015 s. 42 was entered into force. This change has now been fully incorporated into Code C.

²⁰ [2013] EWHC 982 (Admin)).

²¹ (2008) EHRR 421

²² [2010] UKSC 43.

²³ (2008) 27 BHRC 464, [67].

accommodate the young suspect is of a different order entirely to the specialisation of the youth court. Adjustments in police custody are additions to the process, or (more limited) restrictions of it, requiring specific application by the police officers involved, rather than a separate scheme designed specifically to accommodate the child or young person.

This should be a particular cause for concern given the adversarial nature of the pre-charge process. The youth court is also adversarial, despite suggestions that there be a move towards problem-solving approaches (see for example Carlile 2014). However, the magistrate(s) or judge is present in court proceedings to ensure fairness between the parties, or that at least is the intention. The position is very different in the custody suite²⁴ where there is no such oversight, and where the power differential between the CO, and investigating officers, and the young suspect, however supported, is inevitably extreme. We will see, as the empirical analysis unfolds, how problematic the adversarial nature of the custody process is for the securing of appropriate protections generally, and for achieving fairness in interview in particular.

A Perfect Storm – Young Suspect Vulnerabilities

The critical importance of a process fully adapted to accommodate young suspects is underlined by a consideration of the likely characteristics of children who find themselves in police custody. I assess in this review three particular aspects of vulnerability which, present singly or in combination, raise significant challenges in terms of safeguarding young suspects and enabling them to participate in the process. In adopting the word ‘vulnerability’ I appreciate that I engage with a concept which is contested, subjective and highly malleable (see for discussion Brown 2015; Dehaghani 2017b; 2019; Skinns 2019). Indeed, this study illustrates the problems which arise when conceptions of vulnerability linked with “weakness and frailty” and “deservingness” (Brown 2015, 32; Goodin 1985), come up against non-compliant, transgressive behaviours, and the effect of the nexus between conceptions of vulnerability and risk within the custody suite (see also Brown 2015, 183). I am also conscious that, although not a concept discussed with my participants in terms, many would, as Brown’s participants (2015), reject the concept as applying to them.

²⁴ The phrases ‘custody suite’, ‘custody block’ and ‘custody’ are commonly used to describe police detention facilities.

However, the term has meaning within criminal justice policy as an indicator of a status justifying additional protection, particularly within Part II of the Youth Justice and Criminal Evidence Act 1999 ('YJCEA') where a witness (and to a lesser degree a defendant) may be "vulnerable" for a range of reasons arising from their age, their capacity or their circumstances. It is in this sense that I use it here – not least because I suggest that young suspects, and indeed defendants, should enjoy similar protections and support to those afforded to young witnesses.²⁵

The first aspect of vulnerability, one applicable to all young suspects, is their natural developmental immaturity. The last 20 years has seen real progress in our understanding of developmental immaturity, and our knowledge of the maturation of the teenage brain in particular (Bonnie and Scott 2013). Whilst the cognitive competence of an individual will generally be well-developed by 16, the social and emotional capacities required in decision-making continue to develop into the early 20s (Mills et al. 2014; Casey, Getz, and Galvan 2008; Cauffman and Steinberg 2012). Adolescents can exert adult-like control over their behaviour, but their ability to perform optimally is less consistent than adults (Luna et al. 2013). A large-scale study in 11 different countries identified that across young people of different nationalities sensation-seeking behaviours, including risk-taking, increased during teenage years, peaking at 19, whilst self-regulation, including the capacity to plan and being able to regulate actions and decisions, improved gradually during teenage years, stabilizing in mid 20s (Steinberg et al. 2018). Risk-taking, reduced future-orientation and impulsivity, along with reckless and experimenting behaviours, are now understood to be normal, adaptive features of adolescent behaviour, and more likely to be engaged in, and influenced by, the presence of peers (Blakemore 2018; Cauffman and Steinberg 2012).

These features of natural developmental immaturity have particular ramifications for young suspects. Research, particularly in North America, has explored the effects of developmental immaturity on children's ability to engage in legal processes. Increasingly findings confirm that children aged under 16 demonstrate inadequate functional and decision-making abilities that are capable of compromising their capacity for participating effectively in criminal proceedings (Cohen et al. 2016; Lamb and Sim 2013). Indeed, research in the US revealed that adolescents aged 11 to

²⁵ In Code C (updated July 2018) a young suspect may also now be deemed "vulnerable" under (Annex E).

13 were three times as likely as young adults (aged 18 to 24) to be “seriously impaired” on legal abilities, and adolescents aged 14 to 15 were twice as likely to be impaired (Grisso et al. 2003).²⁶ In particular Grisso’s research (1997) has also revealed that children view rights as conditional, considering that they can be withdrawn by authorities, and that they are unlikely to have the capacity to appreciate the implications of waiving rights. Concerningly, in addition, psychological research identifies that children are more vulnerable to interrogative pressure, and that, under pressure, they are more likely to confess, and to confess falsely, than older individuals (Kassin et al. 2010; Redlich and Goodman 2003).

However, such difficulties will not always be readily apparent. Qualitative work in this country (Plotnikoff and Woolfson 2002) and overseas (Peterson-Badali and Abramovitch 1992; Saywitz, Jaenicke, and Camparo 1990) suggests that for some older adolescents their physical maturity, and apparent familiarity with criminal justice processes can mask their vulnerability and social and emotional immaturity in this context. In particular, repeat experience of the YJS has not been shown to result in greater understanding of legal concepts, trial processes or rights (Plotnikoff and Woolfson 2002, Peterson-Badali and Abramovitch 1992). Indeed studies of young people repeatedly involved in the legal system in the United States have actually demonstrated poorer understanding of legal concepts than those with no such experience (see for example Saywitz and Jaenicke 1987). To complete the problematic picture, evidence provided to the All Party Parliamentary Group for Children (‘APPGC’), as part of their inquiry into the relationship between children and the police, suggests that children, in this jurisdiction at least, are less likely to make complaints if they perceive there to be a problem (APPGC 2014b).

These difficulties are related to normal development. However, research over the last 10 to 15 years has also seen a growing appreciation that “as a group” children in trouble with the law: “are seriously disadvantaged on a number of important social, educational and health indicators.” (Jacobson et al. 2010, 5). In particular, clinical research, predominantly with children and young people in secure settings (post-charge),²⁷ and reviews of existing findings, have revealed a significantly raised

²⁶ See also (Sarkar 2011).

²⁷ It is reasonable to anticipate that those in the secure estate may display slightly higher rates of prevalence than those likely to be found amongst the more varied group of young people who are arrested by the police (although cf Chitsabesan et al 2006). Nonetheless, the clinical research provides a clear

prevalence of a number of neuro-disabilities, cognitive disabilities and developmental disorders, amongst that group in comparison with the general child and adolescent population (see for example Hughes et al 2012; Loucks 2007; Carlile 2014). As will be apparent from Table 1.1 (below) the prevalence of rates of learning disability (‘LD’), attention deficit hyperactive disorder (‘ADHD’), autism spectrum conditions (‘ASC’) and communication disorders appear to be concerningly high amongst young people who offend.

Table 1.1: Prevalence of neuro-developmental disorders amongst convicted young people (substantially drawn from Hughes et al 2012).

	Prevalence rates reported amongst young people in general population	Reported prevalence amongst convicted young people	Citation
LD	2-4%	23-32%	(Kroll et al. 2002) (custody) (Rayner, Kelly, and Graham 2005) (custody) (Harrington and Bailey 2005) (custody and community)
ASC	0.6-1.2%	15%	(Anckarsäter et al. 2007; Anckarsäter et al. 2008) (custody)
ADHD	1.7-9%	12%	(Anckarsäter et al. 2007) (custody)
Communication disorders	5-7%	60-90%	(Bryan, Freer, and Furlong 2007) (custody) (Gregory and Bryan 2011) (community)

Note: Reference to “custody” and “community” refers to whether the young participants were accessed in custody post-charge or in the community.

indicator of a raised level of vulnerability for the police custody group, supported by clinical research with adults in police custody (see for a review of the literature Rekrut-Lapa and Lapa 2014).

Children and young people with mental health issues are also substantially more likely than their peers to find themselves in conflict with the law (Knapp et al. 2016). Although the rates of severe mental health disorders, such as schizophrenia, may not be high amongst young defendants and suspects,²⁸ many are likely to present with severe childhood-onset conduct disorders (Royal College of Psychiatrists 2006), and other disorders such as anxiety and mood disorders (which peak in adolescence (Merikangas et al. 2010; Kessler et al. 2005), and post-traumatic stress disorder (Steiner, Garcia, and Mathews 1997). However, a significant challenge for the YJS, and particularly the custody suite, is that many lifelong mental illnesses begin in adolescence, and their condition may be as yet undiagnosed or untreated (Knapp et al. 2016). Thus research suggests that young suspects have a raised likelihood of being doubly vulnerable, both as a result of their natural developmental immaturity and as a result of the high prevalence of developmental disorders and emerging mental health conditions, what might be called ‘dispositional vulnerabilities’.

However, many young people coming into contact with the police are likely to have a third level of vulnerability, arising from adverse life experiences or other childhood disadvantages. There are clear links between offending behaviour and psychosocial adversity (Harrington and Bailey 2005), and prevalence research suggests that young suspects have a significantly raised likelihood of having suffered childhood trauma, including childhood abuse (sexual, physical or emotional), family violence, traumatic brain injury, loss and victimization (Liddle et al. 2016; Jacobson et al. 2010; Boswell 1996). For example, research with young people in custody reveals high rates of bereavement, including traumatic and multiple bereavements (Vaswani 2014), experience of violence at home (Youth Justice Board 2007; Stuart and Baines 2004), and parental absence (Jacobson et al. 2010, 51).

In particular, children who are “looked after”²⁹ by a local authority are significantly over-represented in the criminal justice system (Howard League 2016; Staines 2016). Whilst accounting for less than 1% of the total child population (Department for Education 2014), children who were, or had a history of being, “looked after” accounted for 42% of the children in young offender institutions in 2016 (Prison Reform Trust 2018). Research by the Howard League reveals the difficult life

²⁸ Largely because of the age of onset of such conditions. Screening of adults in police custody suggests that rates of mental health disorders are very high (39% detected in (McKinnon and Grubin 2013).

²⁹ Defined by the Children Act 1989 as being a child on a care or placement order, or provided accommodation for a continuous period of more than 24 hours.

experiences of many of these young people: “70 per cent of children who offended in children’s homes in the year to 31 March 2016 had been taken into care because of acute family stress, family dysfunction, parental illness/disability or absent parenting. An additional 14 per cent were taken into care primarily because of abuse or neglect” (Howard League 2017, 4). Additionally, in 2017-8, 89% of children in Young Offender Institutions (‘YOI’s) reported having been excluded from school with 41% reporting that they had last attended school aged 14 or younger (HMIP 2018).

Recent advances in developmental neuroscience reveal that significant childhood adversity of these sorts can have a negative physical effect on the developing brain, including areas of the brain which control planning, emotional regulation and perspective taking (McCrory and Viding 2010) (see for a review of the evidence (Viding, Fontaine, and McCrory 2012). Deficits caused by developmental adversity can result in a range of behavioural difficulties, including raised impulsivity, volatile and hostile behaviour, and cognitive deficiencies including reduced IQ, working memory and attention capacities (Jovchelovitch and Concha 2013; McEwen and McEwen 2017). Research suggests that adverse histories can also make an individual more susceptible to providing misleading information (Drake, Bull and Boon 2008).

The picture that emerges of the children and young people likely to find themselves in police custody is one of complex vulnerability. For all young suspects, the effects of their natural developmental immaturity alone underline the importance of proper adjustment to cater for their needs. However, some young people experience what might be described as a perfect storm of interlinked vulnerabilities. These also intersect with the vulnerability every detainee experiences by virtue of their detention, in the total control of the officers in the custody suite. As the empirical chapters develop we will see just how demanding the custody process is, and how substantially these additional vulnerabilities can affect a young suspect’s ability to cope with detention and engage effectively with the interview process.

“All but invisible” – An Introductory Overview of the Existing Literature on the Custody Process for Young Suspects

Having explored the intersecting vulnerabilities of young suspects, and the procedural protections intended to support them, I turn now to the existing literature on the custody process. What do we know about the implementation of custody procedures for young suspects, and how they experience detention and interview? I provide in this section a

brief overview of the scope of the available literature in respect of young suspects. A detailed consideration of the existing research and commentary in respect of each aspect of the process is provided alongside the empirical findings as the thesis unfolds. I provide here a sketched outline of what we have in terms of young suspects, what gaps there are in that picture and the orientation of this thesis to addressing some of those shortfalls.

As identified in opening, the literature on the custody process for young suspects is relatively scarce, and there are two major areas in which the existing police custody literature is lacking. Firstly, and most importantly, the young suspect's experience of the police custody process is almost never heard. Brookman and Pierpoint wrote in 2003 (2003, 453) that young suspects were "all but invisible in the criminal justice literature". Their prominence has not increased significantly since then. Research which has included suspects' views and experiences alongside other observational or quantitative work is itself limited. In the last 25 years there have only been four empirical studies in England and Wales which examined the custody process as a whole and sought to incorporate the views of suspects. However the young suspect voice is rarely captured within such studies. The only study focusing specifically on children in custody in the United Kingdom was conducted in Northern Ireland.

The earliest of those research studies engaged the largest number of child suspects. Choongh's 1992 fieldwork in two police stations, included 8 'juveniles' within the 80 interviews conducted with suspects exploring their views of the fairness of their detention and interrogation experience, and their understanding and engagement of their rights (Choongh 1997). Subsequent studies have tended to focus on adult experiences.³⁰ In 1999 Newburn and Hayman charted the introduction of CCTV cameras in a single custody suite, interviewing adult suspects, and officers, about their experiences of watching and being watched, situating the analysis within contemporary theories of surveillance (Newburn and Hayman 2002). Subsequently, Skinns has led two research studies in custody suites. In the former, dating back to 2007, she drew on 23 interviews with suspects, alongside other qualitative and quantitative data, analysing the experience of suspects and staff in their wider "socio-political-historical context", focusing particularly on the use of power, and issues of legitimacy and governance in

³⁰ Although it is important to note that all of these studies predated the inclusion of 17 year olds within the 'juvenile' category. As a result some studies, such as Newburn and Heyman's (2002, 92) included 17 year olds, but they would not have experienced the protections afforded to 'juveniles'.

police custody (Skinns 2011b). This research now forms part of a comparative assessment of custody in other jurisdictions as well (Skinns 2019). Her more recent research, the “Good Police Custody Study”, has combined survey data and analysis of Her Majesty’s Inspectorate of Constabulary (‘HMIC’) ³¹ reports with observations and interviews of 50 detainees, and 49 police staff, to explore whether police custody can ever be ‘good’ for suspects, and which types of custody suites might be ‘better’ (Skinns, Wooff, and Sprawson 2017; Skinns et al. 2017; Wooff and Skinns 2018). This latter study is understood to have included an interview with one young suspect. ³²

In Northern Ireland, Quinn and Jackson conducted a mixed methods study looking specifically at the experience of young suspects in police custody. This included custody record analysis, observational case studies based on the police interviews of 12 young suspects and follow-up interviews, where practicable, with young people and those supporting them. Nine young suspects were spoken to in total, but the material from young people themselves appears to be very limited (Quinn and Jackson 2003; 2007).

These ‘whole process’ studies have been supplemented recently by a thematic inspection of the welfare of vulnerable people in custody, conducted by HMIC published in March 2015. The inspection considered the effectiveness of police forces at identifying and responding to the vulnerabilities, and associated risks to the welfare, of those detained in police custody, including children alongside other vulnerable adult groups. The inspection included interviews, conducted by NatCen Social Research, with nine young people and children who had had experience of police custody (HMIC 2015).

Looking beyond ‘whole process’ studies we also have some evidence of young suspect views from a study conducted by Kemp and Hodgson as part of a comparative European study investigating procedural safeguards for juvenile suspects during pre-trial interrogation. The empirical work with young suspects is, like NatCen’s, small in scale involving a single focus group with five children and young people with experience of police interrogation, alongside separate focus groups with groups of police, lawyers and AAs and the analysis of 12 young suspect interviews (Kemp and Hodgson 2016). Finally, two young people gave evidence about their experiences in

³¹ Now part of Her Majesty’s Inspectorate of Constabulary and Fire and Rescue Services (‘HMICFRS’). HMICFRS’s work independently assessing the efficiency and effectiveness of police forces includes inspections of custody provision by force area.

³² Telephone discussion with Amy Sprawson, 13/07/15.

police custody as part of the All Party Parliamentary Group for Children's inquiry into the relationships between children and the police (APPGC 2014a). Casting the net wider still, there have been several research initiatives which have sought children and young people's views about, and experiences within, the criminal justice system more generally, which have revealed scattered insights into their experiences in police custody. Most useful amongst these are the 37 interviews of 13-17 year olds conducted by (Hazel, Hagell, and Brazier 2003; Hazel 2006), the interviews of 65 young defendants by (Plotnikoff and Woolfson 2002) and the Home Office research with young people in custody (Lyon, Dennison, and Wilson 2000).

It is understandable that research studies in this area do not often involve young suspects, or are on a small scale, given the logistical and ethical challenges in accessing this group which I discuss in detail in the next chapter. Nonetheless, there is a significant gap in the literature in respect of young suspect experiences of the custody process. What little evidence we do have is either of some age now (Choongh 1997), is not specifically focused on police custody (Hazel et al. 2003) or draws from very small sample groups (Kemp and Hodgson 2016) (and in a different jurisdiction Quinn and Jackson 2003). I am unaware of any study which has focused primarily on the young suspect experience (in England and Wales) from their perspective, and does so on any significant scale.

The limited evidence that we do have reveals how important such a focus is. I explore the material in detail in the empirical chapters that follow, but the insights that we do have reveal a detention experience which is marked by fear and anxiety (APPGC 2014b; HMIC 2015), and a sense of anger and powerlessness (Choongh 1997; Hazel et al. 2003). Young people spoke of the boredom and distress of being confined in cells (HMIC 2015; Quinn and Jackson 2003), and detention was widely experienced as coercive and punitive (Hazel et al. 2003). Lack of trust and humiliation characterized their recollections of their dealings with officers (HMIC 2015; APPGC 2014b), whilst there were clear indications that young people did not understand or feel able to engage their rights (Plotnikoff and Woolfson 2002; Choongh 1997). These insights find some reflection in research with young adults in pre-trial detention settings (Jones 2007) and international research with young people with experience of police custody (see for example Canadian research Goodwin-De Faria and Marinos 2012), but also reveal experiences particular to children and young people, and particular to this jurisdiction which require further investigation.

The second area in which the literature is scarce relates to the consideration of the functioning of the custody process as a whole for young suspects. As indicated above even in respect of adult suspects ‘whole process’ studies are uncommon. In addition to the four studies which sought suspect views set out above, the mid 1990s saw two sizeable Home Office research studies. These employed observations in custody suites, custody record analyses and data gathered from questionnaires to produce a review of the exercise of police powers across 25 police stations (Bucke and Brown 1997), and a survey of police arrests and their outcomes in 10 police stations (Phillips and Brown 1998). Although, each of these ‘whole process’ studies to a degree captured aspects of the process as they unfolded for young suspects, none focused specifically on the young suspect journey.

We do have some more focused, discrete, literature which has looked at specific aspects of the process with a particular focus on the young suspect. I explore this literature in more detail in the empirical chapters. But, for example, in respect of the AA safeguard, analysis of interviews with young suspects by Evans (1993) and Medford, Gudjonsson and Pearse (2003) revealed significant concerns about the effectiveness of the AA safeguard in interview, particularly in light of their passivity and the tendency of family members to intervene in ways which could be unhelpful, or unsupportive of the young person. Subsequently a Criminal Justice Joint Inspection³³ (‘CJJI’) produced a thematic review of the provision of AAs for young suspects (CJJI 2011). This raised concerns that the role has become focused on fulfilling the requirements of the process, rather than on safeguarding the young person and meeting their welfare needs in custody, noting, as other commentators have, the need for clarity around the role of the AA (Pierpoint 2004; 2011; Evans 1993; Littlechild 1995). Other safeguards identified as functioning problematically in more focused research studies include concerns around the low uptake of legal advice by young suspects (Skinns 2009b; Kemp, Pleasence, and Balmer 2011; Brookman and Pierpoint 2003) and the detention of children and young people in the police station overnight, especially after charge (CJJI 2011; Skinns 2011a).

These more discrete studies, therefore, raise a range of issues about the functioning of particular aspects of the process for young suspects, especially the central safeguards intended to mitigate the process for them. The material that we have is

³³ An inspection led by HMIC with HMI Prisons, HMI Probation and other healthcare inspectorates.

concerning in isolation. But, without placing it into the context of the rest of the process, it is not possible to build a true picture of how effectively the process is adjusted to accommodate young suspects, and how the safeguards operate, and combine in practice, to counteract the harshness of the process as it unfolds, if indeed they function effectively in this regard at all.

Purpose and Scope of the Study

This study aims to provide an original, and it is hoped important, contribution to our knowledge in this area by addressing these two gaps in the existing literature. I discuss the methods used in detail in Chapter 2, but in overview the research responds to the question prompted by the *Confait* case, and the subsequent Fisher Report (1977). Can we be satisfied that the sort of injustice experienced by Lattimore, Leighton and Salih is not being repeated today? Whilst prompted by the *Confait* case, my concern is not just with egregious cases of injustice, but also with fairness in respect of the less serious allegations for which the majority of young people are commonly arrested. For clarity, I break the enquiry into two separate questions. Firstly, and most importantly: How do children experience being detained as a suspect in police custody? In addition to the important task of building a better understanding of what might be called their ‘lived experience’ of police detention, I also want in particular to explore the extent to which, in light of the protective arrangements that should be in place, young suspects feel able to participate effectively in the custody process. In conceptualising ‘participate effectively’ I draw on the definition developed in the European caselaw (particularly *SC v UK*, *T v UK*, *V v UK*, and *Panovits v Cyprus*’) and have in mind the young person’s ability to understand the process and to engage actively with it, including exercising their defence rights (see for discussion Owusu-Bempah 2018). It is this capacity which, in my view, underpins the fairness of the process for them, with the potential to prevent injustice. Secondly, and in order to understand those experiences, I ask: How is policy regarding the detention of children as suspects in police custody implemented? I am interested, in particular, to explore how the protective provisions intended to mitigate the process for young suspects, and enable their engagement and the exercise of their rights, are operationalised in practice, and how they interact across the process.

The structure of the thesis

As indicated above, the thesis begins with an outline of the methods used in gathering and analysing the data in this study (Chapter 2). The primary method was the

interviewing of children and young people with experience of police custody (n=41),³⁴ supported by observations in police custody suites and discussions with officers, professional and volunteers operating in that setting. There follow 5 empirical chapters, which incorporate an assessment of the relevant existing literature and explore the young suspect experience as the process unfolds. On arrival at the police station a suspect will be booked in by the custody sergeant, they will be searched and their detention must be authorized. A risk assessment must be conducted and generally the suspect will be told of their rights and entitlements whilst they are in custody before being taken to their cell or detention room. Chapter 3 examines this initial phase of the custody process, detailing young participants' reactions to the process and their understanding of, and engagement with, the demands made of them. Chapter 4 turns to the experience of detention itself, and details the conditions of detention reported by young people, their welfare whilst in police custody and in particular how they experienced being confined in the cell or detention room.

Against that background, Chapters 5 and 6 turn to the two most critical protections for young suspects: the provision of an AA and legal advice. In Chapter 5, I explore the extent to which young participants found AAs helpful in navigating the custody process, the scope of the role in practice and barriers to the effective provision of that support. Young participants' experiences of legal advice are then appraised in Chapter 6. The analysis explores factors associated with waiving or accepting legal advice, the challenges legal consultation presents for both young suspects and legal advisers, and young participants' accounts of making the legal decisions required of them in the custody suite. The final empirical chapter, Chapter 7, addresses the interview itself, reviewing how effectively provisions to ensure that a young suspect is fit for interview are engaged, before turning to young participants' accounts of questioning itself, and the extent to which they felt able to cope with interrogation and provide their own account, or exercise their right to silence. The thesis concludes with a discussion, drawing together the findings on young suspects' experiences of the process and policy implementation, to respond to the question prompted by the *Confait* case: Can we be satisfied that the sort of injustice experienced by Lattimore, Leighton and Salih is not being repeated today? I close with a consideration of the factors giving rise to the current treatment of young suspects and advance a tentative proposal for reform.

³⁴ I refer to these interviewees as 'young participants'.

Chapter 2

Methods

At every turn the design and implementation of this PhD study has raised challenges, and required compromises. This chapter charts the negotiation of those issues, and the choices that shaped the study. But in outlining the course that I have taken, I hope also to be able to give a sense of the degree to which the challenges faced have also been instructive; not only because they provide insight into the scarcity of research of this sort, but also because they illuminate some of the tensions at the heart of the treatment of children who find themselves detained in the police station.

By way of example, the simple choice of terminology for the main subjects of the study proved tricky but instructive. A child rights advocate would urge the description of 10-17 year olds as ‘children’, but many of the young people to whom this study relates would feel that the term denied their life experience, and their hard-won resilience. To many custody staff encountered in this research 10-17 year olds are not children but ‘juveniles’, with connotations of coltish transgression.³⁵ Indeed, a reference to ‘children’ during observations often raised eyebrows, even prompting the occasional dig at my naivety: “They’re not all little cherubs” (Custody Officer (‘CO’) 25). These tensions tap into a challenge at the heart of this study, both the research design and the custody process itself, the need to acknowledge and understand vulnerability, whilst respecting children’s distinct capabilities and enabling them to engage their rights. Ultimately I chose to adopt a flexible approach, rather than crystallise the issue. I have, as a result, referred to my research participants variously as ‘children and young people’, ‘children’ or ‘young people/suspects/participants’ (depending on their situation).³⁶ My solution in this instance, as in many issues encountered in designing the research, was to compromise, a pragmatic approach in the interests of achieving the broadest engagement and the richest material.

³⁵ ‘Juvenile’ is still used in PACE, despite the longstanding change in terminology from ‘juvenile’ to ‘youth’ elsewhere in the YJS.

³⁶ It also accords with the approach taken in the APP.

This chapter begins with an overview of the research design, and an introduction to some of the ethical issues arising in the study. I turn then to address in more detail the central methods adopted: the semi-structured interviewing of young participants, and the conducting of observations in police custody suites. I describe the approach taken in each case, how I achieved informed consent for the various participants and I reflect on the challenges of undertaking each aspect of the research. I close with a description of my approach to analysing the data.

An Overview of the Research Design

As set out in Chapter 1, my review of the existing literature posed two particular questions. Firstly: how do children experience being detained as a suspect in the police custody suite? Secondly: how is policy regarding the detention of children as suspects in the police custody suite implemented, particularly the protections intended to mitigate the process for them? However, given the lack of academic research in this area, and the breadth of the questions, I was keen to carry out some preliminary investigation of the issues. I therefore conducted a scoping exercise, in mid 2015 and early 2016, gathering the views of 16 experts in the area, (in person or by telephone). This expert group included academics who had conducted research on police custody or with children in conflict with the law, practitioners with experience working in custody from a range of disciplines, and informants from relevant non-governmental organizations. Their input added an extra dimension to the issues gleaned from the literature, underlining the importance of gaining insights into the extent to which children understood what occurred in custody, how they engaged with the protections and the impact of the custodial experience after release. Their accounts also revealed a striking degree of consistency in terms of the difficulties for young suspects, despite the significant variation they described between forces, which assisted with settling the scope of the observations. Whilst the range of inter-related issues that the experts raised across the custody journey confirmed the importance of addressing the custody process as a whole.

Identifying the appropriate qualitative method for engaging young participants

My primary research method was the semi-structured interviewing of children and young people who had had recent experience (ie within the last 12 months) of being arrested and detained in police custody. I sought to approach them as engaged social actors, with different rather than lesser competencies (Woodhead and Faulkner 2008),

capable of being reliable and competent research participants (France 2003). My prior professional experience talking to young defendants was that they often, spontaneously and at some length, spoke about their treatment in police custody. Such insights were rarely relevant to their case and were infrequently motivated by desire for compensation. Rather, they seemed to raise the issues because there is no other setting or process in which they have the opportunity to voice, or make sense of, those experiences. Their eloquence in describing these episodes supports Scott's observation (2008, 104) that, "by pre-adolescence children are quite capable of providing meaningful and insightful information" in an interview setting. I wanted to give the young participants in this study as much scope as possible to explore their experiences and to focus on those aspects that they considered particularly important.

However, the method chosen also had to be a highly effective use of the limited time available. Not only was I conscious of the likely lower stamina for discussion of some of my participants, but I also had to be aware of constraints arising in respect of the use of gatekeepers, particularly with regard to venue availability (discussed further below), and, in some cases, the convenience of parents or carers. The interview format offered the facility to engage with a young person immediately, with the minimum of preamble beyond the informed consent process.

I initially retained some concerns that the very adult mode of the research interview would too closely mirror the police interview, and would therefore accentuate the power imbalance of the research situation that I was keen to defuse (Mayall 2008). The differential lay not only in my age and position as researcher. I anticipated that for most of my participants I would also clearly be an 'outsider' on almost any relevant measure: being a white, middle-class, woman with a 'posh accent' and a university education. I was attracted to peer to peer research and other participatory approaches, which lend themselves well to engaging young people on difficult issues on a more level footing (see for example Beckett and Warrington 2015; Goldsmith 2011). However, the lack of prior literature in respect of young suspects, the breadth of the process that I hoped to cover, and my desire not to underscore young participants' criminal justice experiences with protracted engagement with the research³⁷ meant that predominantly participatory approaches were unsuitable for this study.

³⁷ Mindful of the criminogenic effects of prolonging contact with the criminal justice system and agents connected with it (McAra and McVie 2010).

Similarly, I have previously found focus group work a helpful method for mitigating such a power imbalance (Bevan 2015), and the utility of this approach for the generation of rich and reliable insights is well documented (Hood, Kelley, and Mayall 1996; Eder and Fingerson 2002). However, I rejected this method on account of the sensitive nature of the material, and the likely challenges of organising group interviews. Indeed the very personal reflections of some young participants in this study, particularly about the support of parents or their experience in the cells, in comparison to that elicited in focus group work in this area, supports this conclusion (see for example Kemp and Hodgson 2016).

Of course, key to ensuring that the interviews were an effective and appropriate method lay in making young participants feel equal partners in research done “with” them not “to” them (Veale 2005). My solution was to position the young participants as “experts by experience” in the interview process, seeking to reinforce the agency of the child participant by requesting their help and expertise, arising from their experience (Cohen, Manion and Morrison 2000). This approach has been adopted with significant success in other research with children in this area (Hazel et al. 2003; Beckett and Warrington 2015). It also enabled me to introduce, as neutrally as possible, my own background. I felt that it was important to explain my interest in my young participants’ experiences, and my familiarity with the sort of material that they were likely to reveal – that I would not be shocked or disapproving. However, this arises substantially from my previous work as a criminal barrister, with substantial experience representing children in court. In positioning the young participants as “experts by experience” I could emphasise that, whilst I was expert in supporting young people in court, I had no experience in the custody block, where they were the experts and had all the answers (Dent and Flin 1992).

In that vein I began each interview with a question asking how the young person would, in a few sentences, explain to someone who had never been in police custody what that experience was like. From that point I could guide the discussion focusing on the issues that they raised as important. Although interviews ranged freely around the topics as a result, I also introduced into the discussion, where I could, further questions positioning them as experts. In particular, I asked my participants how they would describe what makes a ‘good’ officer within that setting and what advice they might give a child coming into custody for the first time. These questions were generally well

received, and on occasion prompted important reflections not generated otherwise in the course of the discussion otherwise.

Getting at the context - deepening understanding, not verifying

The focus of the study is squarely on the perspectives of young suspects. However, in order to be able to answer the second research question, and to analyse young people's accounts from an informed position, I also decided to conduct observations in custody suites (also known as 'custody blocks', or 'custody'), and to interview officers, professionals and volunteers working in the custody suite, about the functioning of the protections, and the adjustment of the custody process for children and young people. In due course quantitative work will of course be required to produce a full picture of the operation of those protections. However, given the interaction of the protections and the lack of prior research into the operation of the custody process as a whole for young suspects, it seemed to me that this study could make a significant contribution by providing insights into how the protections function and inter-relate in practice for young suspects. I therefore decided to observe the treatment of young suspects in the custody suite directly, tracking where possible their progress through the process.

I also felt that, in order to understand young participant accounts, I needed to experience those other aspects which are hard to appreciate second-hand, including the noise, smell and general atmosphere of the custody suite. I found the experience deeply affecting, and it is plain to me that I could not have begun to appreciate the accounts of suspects or officers without having spent time there. Of course, being present on the block, engaging in 'researcherly' pursuits, cannot in any way begin to replicate the experience of the suspect, or indeed that of the officer shouldering the responsibility for their care, but it does provide some base level insights and context with which to receive those accounts.

It is important to be clear that the purpose of these additional, but significant, elements of the research design was not to verify the accounts given by the young people. I do not seek to triangulate young people's accounts with other data. Given that the phenomenon studied is by its nature adversarial, producing inevitably polarised viewpoints and distinct realms of knowledge, the search for a fixed truth seems inapposite. Rather I am aiming at a "thick" description of experiences and actions, to borrow Ryle's terminology (Ryle 1971; Geertz 1973), constructed from understanding

young participants' accounts by situating them alongside, and informed by, other perspectives.

The question arose as to whether to observe a single custody suite or several different forces and venues. There is obvious value in a focused case study approach (Yin 2014), examining in detail the effect on the detainee experience of the individual culture of a particular custody suite. However, the scoping study, as well as previous custody research (Phillips and Brown 1998; Kemp 2013), suggests significant variation between custody suites in terms of protection implementation. On reflection, although the decision was finely balanced, I considered it more in-keeping with the broad scope of this study to seek to observe some of those structural variations which affect the custody experience for young suspects, and so to encompass several custody suites and force areas in my observations.

Ethical Issues

This study plainly raises a range of ethical issues and dilemmas. The subject matter is highly sensitive, engaging as it does both aspects of offending behaviour, as well as personal information and experiences. All the child participants are 'vulnerable' by virtue both of their youth and the sensitivity of the subject matter. In designing the framework and addressing the issues arising I have drawn on the Economic and Social Research Council Framework for research ethics³⁸ and the British Society of Criminology, Statement of Ethics for Researchers 2015.³⁹ Once the research design was finalised, ethical approval was obtained from the LSE Research Ethics Committee in advance of fieldwork beginning. I touch on the many ethical issues that arose in this study as I discuss the approach in more detail beneath, but introduce here two overarching issues: confidentiality and anonymity.

Confidentiality and data security

A 'minimisation' approach was taken to personal data. Numerical signifiers rather than names were used in fieldnotes and transcriptions of interviews, and indirect identifiers removed or pseudonymised. All data has been securely stored and processed, with original data kept separate from anonymised data. This information was explained in an accessible way in the 'Participant Information Sheet' (tailored to the different

³⁸ As updated January 2015, accessible at <https://esrc.ukri.org/files/funding/guidance-for-applicants/esrc-framework-for-research-ethics-2015/>, last accessed 22/04/19.

³⁹ Accessible at <http://www.britsoccrim.org/documents/BSCEthics2015.pdf>, last accessed 22/04/19.

participant groups) which I talked through with participants in the informed consent stage before interview (see Appendix A). The focus for participants was on keeping personal information (their name and anything which might identify them) securely and not making it public. The document specifically stressed that I would not tell police, prosecutors, or lawyers anything which might identify them. I also emphasised that I would not be reporting back to gatekeepers, particularly YOT workers, if young people did not engage, or in respect of any information that they might have provided.

I explained to every child, and each parent that participated, that there were, however, some limits to that pledge of confidentiality. I set out in the information sheet that my focus was on the police station and not on any offending that may have led to detention. However, if they chose, for example, to talk about criminal behaviour, of themselves or others, then that would not be communicated to anyone in an identifiable way save if what they said made me worried that someone might be in immediate danger of being physically harmed. For younger children I tended to give a practical example to help them to understand what I meant. In cases where the young person asked questions about this aspect, I also explained that we would talk about it first if something did come up. No such disclosure was made.

Anonymity

All participants (young people, lay and professional adults, and forces) were told that research outputs would be anonymised and that they would not be identifiable to others in any publication produced, although they might recognise themselves, and their own words or experiences, in quotations. Although I appreciate that there are those academics who argue against the use or promise of anonymity (for example Walford 2005), given the age of the main participants and the nature of the subject matter this seemed an essential measure for all parties and sites in this study.

Amongst the adult interviews that I conducted, are seven interviews with parents who acted as AAs for their children, who were also participating. I interviewed the parents and children separately and in their regard I have, in some instances, not linked specific incidents or details to pseudonyms, or designated numbering, in order to preserve, as far as is possible, their anonymity with respect to each other. I have tried to achieve a balance between taking these precautions to minimise the risk of identification and any harm resulting, whilst not undermining the robustness of the evidence. One particular exception is a parent/child pairing (Jake and his Mum) who

were present, at their request, for each other's interviews, or the significant parts of them, whose experiences are deliberately contrasted.

Details of professional participants have been recorded at the occupational category level, and in non-specific form. For example, those officers (or private contractors) assisting Custody Officers (COs) are variously known in different force areas as Custody Assistants, Designated Detention Officers or Custody Detention Officers. In this thesis they are given a designation starting 'CA' (Custody Assistant), or are referred to collectively as (custody) staff. Similarly officers spoken to in their role as an investigating officer, whether a Police Constable or a Detective for example, are given a designation 'IO' (Investigating officer). (See Appendix C for details of adult discussions and interviews). COs and IOs are referred to collectively as 'officers'. Young suspects whose experiences were tracked during the observations in police custody are given numbered designations starting 'YS' (Young Suspect) (See Appendix B, Table B.2). For young participants, the children and young people whom I interviewed, pseudonyms are used, reflecting their gender and ethnicity (where specifically identified) (See Appendix B, Table B.1).

Semi-structured Interviews with Young Participants

I turn now to discuss in more detail the implementation of the research plan, the challenges involved and how I addressed the crucial ethical issues which arose in that regard.

The sample

The study focuses on the experiences of those detained as 'juveniles' in police custody, that is 10-17 year olds. There can be no doubt that young adults experience a range of challenges in police custody (Jones 2007), but they fall outside this study. The question however did arise as to whether I would interview young participants from across the whole age-range, or to focus on a particular group. Research suggests a considerable difference between the competencies of younger children in that age group, and those who are 16 or 17 years of age (Grisso et al. 2003). However, given the lack of previous literature generally in this area, I proposed to interview young people from across the 10-17 age range.

In planning the study I anticipated that interviewing 40 to 45 young people would provide the detailed picture of the child custody experience, and the understanding of the process itself, that I was seeking. I selected this substantial number

in order to ensure sufficient material across the whole process, taking into account that I wanted young participants to have the freedom to steer the interviews, and that younger children in particular may not be inclined to engage for as long as older participants. I kept the number under review, with a view to stopping recruitment once saturation had been achieved (Glaser and Strauss 1968).

As I discuss beneath, recruitment of young participants at the outset was extremely difficult, and the first two participants were older than this stated age bracket. In each case they had had significant experience in police custody and whilst I bear in mind their greater maturity, and the passage of time since their experiences, I have included them in the sample because of the breadth of experience in custody both had before they were 18. The youngest participant interviewed was 12 years old. It was initially difficult to make contact with children in the 10-14 age bracket, not least because there are fewer arrests of that age-group. Towards the end of the fieldwork period I had, in my estimation, achieved saturation in respect of accounts from those aged 15 and above, but was concerned to receive more accounts from younger participants. I therefore informed gatekeepers of this and that I would narrow the age limit to 10-14 year olds for the closing stages. As a result the last four participants fall into this younger age bracket. Table 2.1 below shows the spread of ages.

The sample of young participants is broadly representative of the child suspect population as a whole. Of the 41 young people that I interviewed, eight identified themselves as girls and 14 as being of black, Asian or minority ethnic ('BAME') status. Both measures are slightly above the proportions within the population of child arrests for the period of the fieldwork (YJB/MOJ 2018), as Table 2.2 below demonstrates. I was pleased by the (relatively) high number of girls in the sample, since they have been significantly under-represented in the limited previous research in this area.⁴⁰

⁴⁰ See for example (Choongh 1997; Quinn and Jackson 2003; and more recently Kemp and Hodgson 2016) where child participants were almost exclusively male.

Table 2.1 Age ranges within the sample

Age range	n=41
10-14	5
15-16	19
17-18	15
Over 18	2

Table 2.2 Proportion of girls and BAME participants within the sample

	In current study (n)	% in current study	% in child arrest population (2016/17)
Girls	8	c.19.5%	16%
BAME	14	c.34%	28%

The sample also captures variation in participants' experiences as young suspects, both in terms of the severity of the allegation and outcome of the particular detention episode discussed, but also in respect of their prior experience of police custody and the youth justice system. Within the sample there was a spread of those who had had only one custody experience (n=6), some who had had several (2-4 episodes) and a group who had been arrested and detained on a more regular basis (5+ episodes) (n=17). There is also variety in terms of their uptake of legal advice (see Appendix B, Table B.1 for details).

I also achieved a relatively wide geographical spread, speaking to young people whose experiences had been in major metropolitan areas, other inner-city settings, and rural areas, from as far North as Oldham, to Portsmouth on the South Coast. Although unfortunately Welsh experiences are under-represented with only one young participant having been detained in a Welsh custody suite. I had hoped to interview a number of participants who had had custody experiences within the 3 force areas in which I conducted observations. I managed to speak to 4 young people who had been detained in force area 2 ('F2'), and 16 young people who had been detained in force area 3 ('F3') but failed, despite significant efforts, to recruit any participants from force area 1 ('F1'). I do not, however, consider that this significantly undermines the findings themselves. As already identified, I was not seeking to analyse young people's experiences in respect of their specific location or arresting force, nor was I seeking to evaluate the effectiveness of the approach to young suspects in particular stations. Indeed, as anticipated by the research literature, young participant interviews showed that custody episodes can vary in countless ways: depending on the suite in question, who is on duty, the behaviour of other detainees, the state of mind of the particular individual, the allegation faced etc. So much so that, looking at my larger sample of F3 participants, all of whom had spent time in one particular suite (Suite 6), one could not identify distinctive features that arose specifically in that setting. Likewise, despite the variation in geographical location across all young participants, there was a very significant degree of similarity in respect of many of the experiences and responses recounted. As a result I do not feel strongly that the study is deficient for the lack of this element of correspondence.

Not seeking to interview in the custody suite

Recruitment of young participants proved to be the most difficult aspect of the study. This was anticipated, but the difficulties encountered provide new insights into the challenges of conducting research of this sort in times of austerity. In contrast to previous research with adult suspects (Choongh 1997) and children (Quinn and Jackson 2003) I did not seek to interview child suspects in the custody suite during their detention or immediately after their release. Given their vulnerability and the stressful experience of being in custody I did not think it likely to be appropriate to make further demands of, and potentially confuse, a child suspect by interviewing them during the process, or to delay a child by interviewing them immediately on release. Nor am I

satisfied that the coercive surrounds of the custody suite would be well-suited to achieving valid consent, especially given the resigned compliance observed in respect of many young suspects.⁴¹ Where available I did speak briefly to young suspects immediately before their release about the option of being interviewed at a time and place of their choosing. Almost universally they expressed enthusiasm, but none followed up on the conversations. Whilst there are undoubtedly a range of reasons for this attrition, it does tend to underline the dangers of acting on apparent compliance in the custody suite.

Although the majority provided significant detail in their accounts of events, inevitably delay will have had an impact on the sharpness of some young participants' recall.⁴² However, I had to balance this deterioration against the welfare of the young participants and the integrity of the custody and prosecution process. As a result in my approaches to potential participants I sought young people who had experienced police custody within the last 12 months, although many that I interviewed had had experiences within the preceding six months.

Access challenges

Given this decision, it was necessary to rely on 'gatekeepers' to identify, and facilitate access to, potential participants. I identified as potential gatekeepers YOTs, firms of defence solicitors (particularly those who specialise in representing young people), Police and Crime Commissioners' ('PCC's) Youth Commissions⁴³ and non-governmental organisations ('NGO's) who promote the engagement of young people in criminal justice related issues. I sought a range of organisations because I wanted to interview not only those who had been prosecuted or cautioned, but those against whom no further action was taken. I recruited gatekeepers through previous professional contacts, and contacts made at conferences and round-table events. I also, with the assistance of the Youth Justice Board ('YJB'), emailed every YOT in England and Wales with details of the research, following up with subsequent emails to a smaller sample of YOTs within an hour and a half travel radius of my home address.

Once the appropriate authorisation had been obtained, from the Local Authority or YOT leads where relevant, I provided to my contacts within each organisation copies

⁴¹ See Ch4 for discussion.

⁴² Indeed the extent to which young people retained an understanding of, and familiarity with, the process is relevant to questions of whether prior experiences in custody can equip young people to engage on subsequent occasions as some professionals assume, discussed in Chapter 3 below.

⁴³ Youth Commissions are organised by a number of PCCs to promote youth engagement.

of a colour bifold flyer (attached at Appendix A) which set out the essential information to participants in an accessible format. The gatekeepers agreed that they would aim to distribute these flyers to all the young people with whom they worked who fitted the criteria for participation, explaining the study in person where that was possible. Gatekeepers then followed up to check on interest in taking part, and to support the giving of parental consent where that was required. In some cases, with the express permission of the participant I was provided contact details and made arrangements to meet directly with the participant (and/or their parents/carers). In other cases, gatekeepers organised for me to meet potential participants at their premises.

A significant number of organisations expressed support for, and an interest in assisting with the research. However, translating that enthusiasm into the recruitment of young people proved very difficult. In total I recruited 41 young participants through six YOTs, one legal firm, one Youth Commission and two NGOs. My approaches to gatekeepers began in early 2016 but it was not until the end of September 2017 that I managed to recruit sufficient numbers of young people. Of course the welcome decline in numbers of young people coming into the system (YJB/MOJ 2018) will inevitably have affected recruitment, but there were other practical difficulties which shed light on the striking lack of qualitative research with children about their experiences with the criminal justice system.

Moving from interest to engagement with gatekeepers often required repeated emails and meetings, with safeguarding concerns, rightly, paramount in discussions. I was in the fortunate position of having a professional history representing young defendants, recent vetting by the Ministry of Justice (in respect of a former employment), as well as vetting by three police forces (as the study progressed), in addition to the standard enhanced Disclosure and Barring Service certificate. It was plain to me that a researcher who was unable to demonstrate such a substantial vetting history might have made very little progress. Gatekeepers, understandably were also sometimes hesitant to overburden a young person with a research interview on top of commitments preparing for trial or sentence, or complying with a court order. Once prosecution was completed, or an order nearly concluded, gatekeepers were sometimes then reluctant to contact young people for fear of retraumatising or labelling them, or more generally avoiding the criminogenic effects of ongoing contact with criminal justice agencies (McAra and McVie 2010).

Undoubtedly there is good reason for this protective approach, but it does plainly reduce children's potential to participate in research about them (Grodin and Glantz 1994; Liamputtong 2007). Of course the irony is that when a young person is arrested they receive very little protection. They are required to reveal deeply personal information in an often public and intimidating setting and to make crucial decisions in the absence, frequently, of any significant parental/carer input.

Additionally, budget reductions as a result of austerity clearly affected the ability of gatekeepers, particularly YOT gatekeepers,⁴⁴ to support the research. The hard work required to engage young research participants falls not so much on the researcher as on the gatekeeper. Where recruitment was successful it was clear that this resulted from the individuals involved spending their own time putting in the very significant efforts required to set up an interview.

Reflecting on recruiting through gatekeepers

The advantages and pitfalls of recruiting through gatekeepers have been widely discussed in the literature (see for example Groundwater-Smith, Dockett and Bottrell 2015; Greig and Taylor 2007). I had three particular concerns in this regard. Firstly, my aim and stated intention was for the study to be as inclusive as possible, but I anticipate that there may well have been some selection of potential participants. Given the effort involved I sensed that gatekeepers were not keen to spend valuable time pursuing children who were unlikely to attend or to engage. Nonetheless, whilst I did meet a number of young people who were extraordinarily articulate, they did not predominate, and I experienced a number of cancellations and 'no shows'. Likewise, I interviewed several young people who disclosed significant dispositional vulnerabilities or for whom engagement with an unknown researcher plainly did not come easily. Inevitably, this research will not have engaged the most marginalised of young people with police custody experience, however I am confident that, in terms of functional capacity, a good cross-section of young participants has been achieved and I doubt whether more direct recruitment approaches would necessarily have enabled wider access.

Secondly, yielding the initial introduction of the research to potential participants meant that I lost some control over how the study was represented. My concern was particularly with the voluntariness of young people's participation, given

⁴⁴ The annual grant for YOTs in 2016/17 was £67 million, a reduction of 9.1million on the previous year's grant.

that, in the case of YOTs, young people's general engagement is at heart coerced. I stressed to all YOT gatekeepers that participation in the study had to be voluntary, and that any meeting with me should not count as a statutory appointment or be required for a reparations programme. When talking through issues of consent I emphasised with young participants that whatever their worker might have said they were not required to engage with me at all, or for any length of time, and that I would not be reporting to their worker about their response to me. No young participant indicated to me that he or she was under any different impression.

Thirdly, working with gatekeepers on occasion involved logistical restrictions. Some gatekeepers preferred meetings to be held at their premises, or at pupil referral units, for safeguarding reasons or for ease of securing attendance. Although I think this did have a positive impact on attendance rates, it constrained the degree to which I was able to give young participants agency in terms of the interview timing and its setting. In addition, some interviews were curtailed slightly by the closing of YOT offices, or rooms being required for other purposes. I discuss the effects of the setting on the interviews themselves beneath.

A 'thank you'

Like many other similar studies, I made use of a 'thank-you' to encourage the participation of children and familial AAs ('FAA's) in the study. These were in the form of a £15 gift-voucher for a high-street store, internet retailer or mobile service provider. Potential participants could choose in advance what sort of voucher they would prefer, generally a JD Sports voucher, and I carried a variety of vouchers with me. The sum was calculated to be appropriate considering the age of the participants and the burden of the research exercise (Rice and Broome 2004). The use of an incentive in research of this sort is commonplace (see Punch 2002).⁴⁵ For example, NatCen who conducted the 'user voice' research for HMIC's recent thematic inspection (HMIC 2015, 210) used a similar thank-you.⁴⁶

Potential participants were notified of the thank-you on the flyer (Appendix A), with the intention of incentivising them. I was, however, watchful for any indications that it operated as an inducement rather than an incentive. Undeniably given the

⁴⁵ I also discussed incentives with two YOT gatekeepers in early planning. Both organisations observed that they use incentives fixed at a similar level for their 'user voice' work and would expect me to do the same.

⁴⁶ Conversation with Caroline Turley of NatCen 17/07/15.

circumstances of some young participants and their families, vouchers, particularly the supermarket vouchers for FAAs, were very much welcomed. However, the majority of young participants engaged enthusiastically, and the spontaneous feedback from older participants, was very positive. Many welcomed the rare opportunity to talk about their experiences, suggesting to me that they had not felt coerced or exploited by the experience, although I cannot of course rule out that possibility. On balance, I feel that the benefits of giving voice to this marginalised, but sizeable, group of young people outweighs any negative potentialities.

Free, Informed and Ongoing Consent

Vulnerable participants may experience research as coercive or violent (Spivak 1988), and the need for special care to be taken when seeking consent from children is well-established (see Morrow and Richards 1996). It was essential that free and informed consent was obtained from every participant before any interview was conducted, and that every participant understood, and could exercise, the right to withdraw at any time. In understanding what that meant I kept in mind the four criteria for morally valid consent identified by Charles Bosk: disclosure, understanding, voluntariness and competence (Bosk 2002).

Children under 16

Where the young person was under 16, I also required free and informed consent from a parent or carer before conducting an interview. This consent was not to override but to supplement the child's view. In imposing a strict age criterion I departed from the 'Gillick Competency' framework of assessing a young person's competence to give consent based on their "maturity and understanding and the nature of the consent required" (*Gillick v West Norfolk and Wisbech Area Health Authority and Department of Health and Social Security*).⁴⁷ It also meant in practice that young people whose parents did not consent (or where logistically consent proved problematic) were not able to engage in the research even if they wanted to. Some researchers have called into question seeking parental consent where competence is clear (Masson 2004) and I appreciate that the approach taken could be said to undermine the agency of young people, and in particular to discriminate against young people without engaged parents or carers, potentially particularly those in a residential care setting.

⁴⁷ [1984] Q.B. 581.

Why then adopt such an approach? First I was conscious of the potential for the interviews to be traumatic, in recalling past coercive experiences, and I wanted to ensure that young participants' carers were content for them to be interviewed, and could be watchful for any issues arising at home thereafter. Whilst subsequent issues may arise in the medical treatment context to which *Gillick* relates, in those cases there is generally an ongoing relationship with medical professionals. Although I provided all lay participants with an advice sheet at the end of the interview with links to sources of support and information (see Appendix A), and where relevant reminded young people of support available through their YOT, there was no directly comparable support structure in this research study. I also bore in mind the sensitive details (both legal and medical/psychological) which research discussions might unearth. Finally, more pragmatically, I was operating within the parameters of YOT teams and other gatekeepers. Planning discussions with early YOT engagers identified that parental consent would be required for them to recruit their younger service users. In fact, although there were some logistical complications in ensuring that I had parental consent at the appropriate time, this requirement did not prevent any pre-planned interviews going ahead. Likewise, I did not receive any reports from gatekeepers of young people who had expressed interest, but failed to achieve consent from parents/carers, but this is of course no guarantee that the situation did not arise.

Obtaining informed consent

Obtaining consent began with gatekeepers, explaining the process to the young people they were in contact with, and providing them with my flyer (Appendix A). I only met with those who indicated to the gatekeeper that they might be interested. For under 16s the flyer had on the reverse a consent form for parents to complete in advance if they wanted to. Where that occurred I would verify with the gatekeeper that the person completing did indeed have parental responsibility. In some instances parents/carers attended with their children, in which case I took them through the consent process myself.

Before any interview began I would talk through the 'Participant Information Sheet' (included at Appendix A), which in question and answer format addressed important aspects such as the voluntary nature of their involvement, confidentiality, and anonymity. Like Alderson, I felt that it was appropriate to address what the purpose of the study was, (Alderson 1995). Although I glimpsed the importance of this aspect

during planning, the interviews themselves illustrated just how critical that explanation was for young participants in particular. A number explained what a negative impact lack of explanation or justification had on their willingness to answer questions put in the police station (for example during risk assessment). Alive to literacy issues, although I provided the sheet to the participant, I talked through each aspect checking for understanding and questions, and in each case I satisfied myself that the young person had capacity and was competent to consent. I stressed that it was entirely up to them if they wished to participate or not and that they could decline to be involved, or stop the interview at any time, without any explanation to me, or any report to the gatekeeper organisation. They then signed a consent form (see Appendix A for a pro forma), providing their name and age and ticking to confirm their understanding of the salient aspects of the process and their approval of digital-recording (see beneath).

The informed consent process with young participants presented two particular challenges. Firstly, whilst a conscientious approach is essential and appropriate, the fully informed consent process can itself be quite lengthy and demanding for a young participant. It was necessary to prepare carefully for consent discussions so that they were as simplified, but comprehensive, as possible, to avoid unduly reducing the available time for rapport building and the substantive discussion. Secondly, it was essential to ensure that a young participant could in practice activate their right to withdraw. Conscious that consent is an ongoing state (Back 2007; Buckingham 1991), and mindful of the uneven power dynamic, I took an active approach to this issue, not waiting for a child to make an explicit request, but remaining watchful during interviews for implicit indications of a desire to withdraw.

Formulating the interview plan

The topic guide

I prepared a topic guide in advance of the interviews. In its formulation it progresses through the custody process, from arrival to release, setting out clarification and prompt questions. The purpose of the document was to act as an aide memoire rather than a script. I did not expect that every participant would want, or be able, to talk about every aspect of the custody process, but it provided a framework for me to have in mind during the interviews, and to mentally dip into to explore a particular issue. I did not propose to have it open or refer to it physically during the course of the interview. My concern was to avoid young participants feeling as if there was a pre-ordained format to

the interview, or a series of questions that had to be answered, as in a police interview. The topic guide drew initially from the literature review and scoping conversations. Given the recruitment challenges piloting was not realistically achievable, but I did have the opportunity to test my approach in a ‘Youth Forum’ discussion group organised by a potential YOT gatekeeper in June 2016. Following the police station observations, and as the interviews progressed, I returned to it to add or change sections, reviewing the guide before each interview. Additions included references to graffiti, the presence of friends/acquaintances in the booking-in area and the challenges arising from the number of new people encountered during a custody episode – all issues which emerged as the interviews progressed.

The length of the interviews was guided by the interest and engagement of the young participant. In planning I had anticipated that the interviews would be between 30 and 60 minutes long; this proved to be a reasonable estimation. The shortest interview was just over 14 minutes, the longest 83 minutes long, with the average interview length being just over 43 minutes. Subject to consent, the interviews were digitally recorded. Concerned again not to enforce a set-up which too closely replicated a police interview I stressed my willingness to take notes instead. I was also happy for young participants to have control of the device; indeed several enjoyed examining it, switching it off for me, or pausing it when there was an interruption.

Biographical details

I was struck during observations by the sheer volume of questions a young person is asked during a custody episode, by a range of adults: COs, AAs, medical staff (where involved) as well as the police interviewers. The risk assessment alone could be 30 questions long. Many of those questions were couched in very adult terms, for example “What is your self-defined ethnicity?”, “Do you have any diversity needs?”, “Are you currently undergoing any medical treatment?”. As Morrow and Richards (1996) have observed such questions can lead young people to feel inadequate if they feel that they are not able to provide the sort of answer an adult may want.

Keen not to replicate this experience, and mindful of the confusion that many of these questions wrought in young suspects on observation, I decided against requiring young people to complete further biographical details in paper form (beyond their age), or to submit to a set of formalised questions during the interviews. Rather I preferred to address topics as they emerged or to introduce questions more naturalistically. This also

enabled me to tie biographical details, such as a spell in residential care, more accurately to a specific custody episode. Inevitably this does not create a particularly clean dataset. But to me this approach is more in-keeping with the qualitative design of the study, than the formalised gathering of data, which may be inaccurate and which is of questionable relevance to the observations made. I am not seeking to generalise from my relatively small sample group, rather I am concerned with gathering rich, contextually grounded data.

Interviewing Young Participants: Issues and Challenges

I interviewed the majority of young participants at YOT team offices (n=28). I also spoke to young people at Pupil Referral Units ('PRU's) (n=4), in their own homes (n=3), in residential care homes (n=3), in cafes (n=2), and at their workplace (n=1). Interview location can significantly affect how the participant perceives the researcher and the discussion, and how they choose to respond (Morrow and Richards 1996). Woodhead and Faulkner, for example, describe finding themselves unwittingly, and with limited success, seeking to engage young children in research activities in what was "the naughty room" in a nursery (Woodhead and Faulkner 2008, 10). There is a sense in which, when interviewing young people at YOT offices, we were in a very real way in "the naughty room".

Indeed the institutional nature of the setting was brought home to me on several occasions. In particular several young people when discussing what a cell is like inside would look around the room at the YOT office and say "well, it's like this but...". Was this simply an easy way of conveying the idea of a small room, or was it indicative of something more? Whilst conducting, and analysing the interviews, I was very alive to the likelihood that in those institutional settings (the YOT offices and PRUs) I may have been situated by my participants in the same mode as the teachers and YOT officers who normally occupy those spaces. Mindful of this I emphasised the voluntary nature of their involvement. I also attempted to defuse the physical replication of a YOT appointment by arranging the chairs, where possible, in a more informal way. Despite my efforts (albeit rather constrained) it is inevitable that the setting will have had some effect on the engagement of some of the young participants.

In only one instance was I particularly concerned about the coercive impact of the setting. One young participant, Abigail, whose interview I stopped after only 14 minutes, asked, "Can I go now?" at the end of the interview, indicating a sense of

compulsion she would surely not have felt in her home setting. There are no other striking features of inhibition or compliance that arose on analysis, indeed those young participants who expressed more negative views of the police and authority tended to be those interviewed in an institutional setting. Nonetheless, when I review my recollection and field notes, the few interviews that I conducted with participants in their homes felt more relaxed, although this is not particularly notable in the recordings.

Interviewing in other settings outside YOTs raised further issues. For a young person in residential care finding a place to conduct a private conversation (which is not a bedroom) can be challenging. Likewise, at one PRU a young person and I found ourselves moved between three different rooms because of the pressure on available space. In both settings this meant disruption for the interview but more importantly the lack of that sort of privacy that is usually so vital for more sensitive discussions. But it also served as a useful reminder for me of the lack of autonomy and control over personal space which is a feature of being young, but particularly of being young in an institutional setting. The young people that I spoke to in these difficult circumstances more often than not volunteered quite personal information despite the reduced privacy of our discussions. My conclusion however is not that this is a sign of trust in me, rather it felt more as if they were simply inured to the experience of being asked personal information often in very public settings. It echoed for me observing the sometimes surprising willingness of some young people to answer in great detail risk assessment questions about self harm, for example, in front of a full booking-in area in police custody. The need for special care to be taken in respect of the circumstances of this sort of questioning is underlined by such observations.

Despite the limited time available for rapport building most young people were very engaged in the interview. For some that engagement was less orthodox than others. One young person would not sit down and paced about whilst talking, another 13 year old young person spent much of the interview wearing an empty sports bag on the back of his head like a hat. Far from detracting from my receiving their accounts, I found these spontaneous responses to a stranger in a relatively unpressured environment very instructive. When one seeks to transpose those perfectly natural responses to a police interview setting one starts to understand how difficult the very restrictive confines and the high pressure of the police station must be.

Dealing with questions from participants – do no harm

Identifying my own history working within the criminal justice system inevitably prompted participants to ask me questions of their own. Like Oakley, I find unpalatable the idea of side-stepping such queries, as the ‘text-book’ response would require, and taking a “purely exploitative attitude to interviewees as sources of data” (Oakley 1995, 48; see also Reinharz 1992). Similarly to those authors’ work, in this research I was asking young people to recount incidents that were potentially embarrassing, perhaps even shocking, and where their own behaviour, or ability to cope, may not have been as they would wish. To refuse to respond entirely to any enquiries they might have would have felt like an abnegation of the study’s approach. As a result I decided that, if asked a question directly, I would try to answer it. Of course to answer a question in a very real way changes the participant and I was conscious of the need for great care in answering, keeping my responses brief and neutral. I was concerned not to try to influence the young participants, whilst also mindful of the need to maintain the focus of the interview itself.

Some aspects of the custody process inevitably raised difficult issues in this regard. For example, I wanted to explore what young participants understood of their rights with regard to having contact with their AA. I was interested to know if young suspects were aware that they were entitled to speak to their AA at any time.⁴⁸ Such a right lies at the heart of the role the AA is meant to play for the young person. But equally, I appreciate that often that right simply cannot be met, especially where a non-family member is to be the AA and it is late at night or early in the morning. A line of discussion which is likely to reveal the existence of this right carries with it, it seems to me, some responsibility in terms of appraising a young person of the potential issues which may arise. I decided that I would explore AA rights with young participants, and, if asked directly I would confirm the existence of the Code C 3.18 right, but also briefly indicate that it may not always be straightforward for custody staff to meet that request.

More difficult still was the temptation to give advice where it was not requested. I found it extremely difficult to listen to a young person recount, for example, why they felt legal advice was not required even for serious allegations. In those circumstances I resisted the temptation to proffer advice unasked during the interview, but in more extreme cases I might speak to the young person after the interview about the

⁴⁸ Code C 3.18.

availability of information or assistance. The advice sheet was particularly useful for this purpose.

Reflexivity in analysing the young participant interviews

Before moving on to discuss the observations, I want to touch on the particular importance of reflexivity in this study. Although an “indispensable ingredient of rigorous investigation” (Wacquant 2011), as Phillips and Earle (2010) identify, reflexivity is not always unproblematically employed. I have sought in this study to approach this aspect with an appreciation of my multiple identities (mature, white, middle-class, graduate, mother, legal professional to name but a few) and how my positionality has shaped my approach to the research, the data that I have elicited and how I interpret it.

For example, it is notable that very few young participants recounted instances in which they felt that they had been discriminated against on the basis of their ethnicity in the police station. On first assessment this is welcome, and it may represent the factual infrequency of such incidents. But it is important in analysing this feature of the data to be clear about what can reliably be understood by it. In doing so I bear in mind the potential effect that my ethnicity might have had on the discussion generated. As a white adult researcher, BAME young participants may well have felt inhibited from raising incidents of a racist nature (Connolly 2008; Phillips 2010). Equally, some young participants’ natural immaturity and difficulty in coping with the custody experience may provide another explanation of that deficit. Namely that the relative absence of accounts of racial discrimination in the custody suite, contrasted with the slightly higher rate of accounts of such discrimination at the point of arrest, reveals instead that the overwhelming challenges of the custody suite for some young people, particularly the desire to ‘get out’, may drown out the occurrence of other concerns, such as racial discrimination, in that setting.

Observations in Custody Suites

Access

In contrast to the difficulties of recruiting young participants, gaining access to custody suites proved relatively straightforward. I made use of conferences, particularly the NPCC’s yearly conference on Children and the Police, to make contact with custody leads in different force areas. Almost without exception senior officers approached

about the research expressed concern about the challenges for young suspects and custody staff, and enthusiasm for further insight into how such problems may best be understood. Following up initial enquiries with a short research outline, I found that I had a choice of forces with whom to arrange my observations. In respect of each force which participated in the research I underwent the full force vetting process before observations could begin.

The scheme for observations

For the observations I selected a county force with both significant urban areas and a more rural catchment as well (Force 1), a second county force with significant areas of urban deprivation (Force 2) and a regional metropolitan force (Force 3). I was also able to achieve a mix in terms of different arrangements for AA provision, legal advice and medical support, including a variation in Liaison and Diversion Service ('L&D') provision,⁴⁹ as well as different contractual arrangements for the provision of CAs. The observation of different custody suites within force areas enabled further variation in location, facilities (older and newer blocks, larger and smaller facilities) and teams to be observed.⁵⁰ Table D.1 in Appendix D sets out details of the areas identified, their significant characteristics and the observation periods.

I completed the observations before embarking on the young participant interviews, so that I was familiar with the custody setting and its challenges. The observations were conducted across 8-9 days in each force area, between July 2016 and November 2016. In F1 and F2 the observations were completed in a single stretch, in F3 I conducted 2 sections of observations. I observed a single 8-10 hour period in each 24 hour period, varying the shift to encompass day and night shifts. In total I spent 192 hours conducting observations across 6 custody suites in 3 force areas.

Issues of consent in custody

Senior management provided informed consent for my presence in the custody suites, to talk to officers and other staff about their work and to track (anonymising the data in my notes) the experiences of young suspects passing through. On arrival at each block (and at handover), I ensured that everyone on duty was aware of my presence, the purpose of

⁴⁹ In 2014, following recommendations in the Bradley Review (Bradley 2009), the government funded through NHS England a scheme for FMHPs to be available in police stations and courts in 10 areas across England and Wales, intending to rolling out provision nationally in 2017.

⁵⁰ In force area 2 a single custody suite was observed, in part because of local closures for refurbishment, and also because of its scale and throughput.

the study, and the position with regard to confidentiality and anonymity. Posters setting out the details of the study (see Appendix D) were displayed prominently in the custody area and common areas for staff, and in any public waiting areas for the custody block. The first time that I had face to face conversations with officers and staff, I repeated the information about the study, emphasising that their engagement with me was voluntary. I took the same approach with external individuals present in the custody suite (legal advisers, healthcare practitioners ('HCP's),⁵¹ AAs etc). I would show my identification, point out a poster and then explain in more detail the relevant information before seeking verbal consent.

Obtaining informed consent from all the detainees passing through the blocks was not practically possible. For adult suspects, COs agreed that they would draw attention to the posters (appreciating that literacy may be an issue) and explain that there was research going on in the custody suite, that it would not record identifying details of anyone and focused on young people, but they could ask for information relating to them not to be included. I was not present for every such encounter but I was not informed of any issues having arisen. Where young suspects came to be booked in, the custody sergeant would repeat the same process, but, if I was present (as I often was) I would explain the study very briefly, stressing again that I was not recording identifying details. Only one young arrestee declined to be included in the tracking process. Otherwise I spoke briefly to check the consent of a young suspect as circumstances allowed. In total I tracked (in whole or in part) the progress of 47 young suspects during the observations (see Table B.2, Appendix B).

Approach during observations

During observations I adopted a range of different viewpoints. I spent a considerable amount of time positioned at the booking-in desk (or bridge) where suspects are brought on first arrival and where the majority of their out of cell interaction occurs. This enabled me to observe the comings and goings of the suite, booking-in, non-intimate search and risk assessment processes as well as to make contact with key individuals in the custody process. In suites where staff are alerted to new arrivals I would particularly make my way to the desk if a young person was being brought in to make contact with them at the earliest stage.

⁵¹ On the basis of information available from the Medical Research Council I did not seek Health Research Authority approval for discussions with medical staff. Discussions did not refer to individual suspects, nor seek disclosure of patients' personal details or treatment.

I also spent time in areas used by CAs. This would often be where the call bells or buzzers for each cell would be answered and where banks of monitors would screen CCTV footage from cells which had that facility. Positioned in this setting I could observe individuals within the cell, I could hear exchanges over the buzzer and, with the assistance of CAs as their duties allowed, access the custody logs to track any activity with young suspects that I had not directly witnessed. I would also shadow CAs carrying out their range of tasks: preparing and providing food to detainees, conducting cell checks, and taking a suspect through ‘process’ (the term used for taking biometric information: fingerprints, photographs and DNA samples). I also shadowed Inspectors on review. In many cases I would discuss events with COs and CAs as they unfolded, but I also had longer discussions with staff, HCPs, legal representatives and visitors to the suite, as their duties allowed, in interview or consultation rooms. The tables in Appendix C detail the different individuals spoken to. In total I had discussions during observations with 43 COs, 2 Inspectors, 8 investigating officers, 43 CAs (Table C.1), 14 HCPs (Table C.2), 11 AAs (Table C.3), 9 legal representatives (Table C.5), and 3 independent custody visitors⁵² (‘ICV’s) (Table C.7).

I made the decision in advance that I would not seek to observe the police interview of any young person. Predominantly this was because I did not consider there was sufficient justification for me to intrude directly upon this most critical aspect of the custody process, the observation aspect of this study being subordinate to the central focus of gathering children’s perspectives. To do so could jeopardise the process and unsettle the young suspect, as well as being liable to cause delay. Additionally, there has been some examination of interview techniques, predominantly through listening to interview recordings (Kemp and Hodgson 2016; Sim and Lamb 2018; Quinn and Jackson 2003).

Conducting the Observations: Issues and Challenges

Although senior officers were aware of my professional background, I did not spontaneously volunteer information about it to custody staff (although I would not deceive if asked directly). Previous empirical research suggests that although a researcher may be a “challenger” (Holdaway 1983), for some officers a lawyer, still sometimes referred to as a “brief”, may be seen as actively obstructive (McConville,

⁵² ICVs are independent, trained volunteers, coordinated by PCCs, who make unannounced visits to custody suites (under Police Reform Act 2002 s51) to check on the treatment of detainees, the conditions of their detention and that their rights and entitlements are being observed (see Kendall 2018).

Sanders, and Leng 1991). I was keen to avoid officers being conscious of the presence of a lawyer who might be scrutinizing their attention to the legal requirements. Although I found this economy with the truth rather uncomfortable, I am not alone in having concluded that it was necessary (see for example Goldsmith 2011).

Despite the welcome and support that I received in custody blocks, I found the observations very challenging, in particular the experience of ‘passive’ observation. This was especially the case where I observed treatment of a young suspect which fell below, as I perceived it, what would be optimal in the circumstances, where, for example, detention was very lengthy or restraints were used to prevent self harm. My anguish in these situations was in part attributable to my feelings of helplessness. As a lawyer I am used to being able to take action; as a researcher it was not my place to interfere. I could only try to understand through discussions with staff how they responded to a young suspect in that situation. However, even asking those generalized questions I had plainly ceased to be a passive observer. Reflecting on that experience I find Alison Lieblich’s description of similar observations in a prison, and her use of the term “reserved participation” very apt:

We watch, hear, take notes, drink tea, chat, experience periods of engagement, distraction, warmth, sadness or fear; we are entertained, frustrated, fascinated and puzzled – we are no more ‘passive’ agents in our research than our ‘research’ partners are. The term ‘reserved participation’ may be more appropriate than observation to capture this activity. (1999, 160)

It is important to keep in mind the ramifications of this “reserved participation”. Bourdieu emphasizes the need to be critically reflexive in qualitative research. He describes the need to take two steps back from the research process – the first to gain an idea of what is going on, and the second, a step back from oneself, to enable an understanding of how much one’s own subjective experience is part of, and shapes, the data (Bourdieu 1990). I have tried in the analysis of this fieldwork to be alive to the effect that my presence will have had on participants’ behaviours, an ‘observer effect’. But I also bear in mind that my personal engagement with the actors in the research setting may affect how I perceive those behaviours. Sharing rounds of tea inevitably changes the way that I view those participants and their behaviours, as much as my previous experiences cause me to focus on some aspects of young suspects’ experiences at the expense of others, and colours my analysis of what I do observe. Phillips and Earle identify in some research a “tendency towards sociologically ‘airbrushed’

accounts, cosmetically enhanced for objectivity”, an approach which they felt “brackets away the subjectivity inherent in human interaction, disguising and diminishing its role in the production of criminological knowledge.” (2010, 374). I hope in this study to have avoided advancing an ‘airbrushed’ account, by tackling with purpose and honesty the emotional dimension of the research.

Semi-structured Interviews with Adults

The final part of the research was 18 semi-structured interviews that I conducted with adults, who work in, or support young people in, the police station (see Appendix C). During observations I had had the opportunity to speak to many officers and other professionals about their work, but there were some gaps in the groups of adults accessed in this way that I wanted to fill. These interviews were conducted outside the police station. The largest group of adult interviewees was comprised of AAs (Table C.4), including seven interviews with family members who had acted as AA for a young participant. I also interviewed two further AAs from a residential care home (accessed through making arrangements with regard to a young participant interview), a YOT worker who frequently acted as AA (within F3, accessed through a YOT gatekeeper) and an experienced trained AA who co-ordinates AA provision as part of a scheme which provides services nationally. Other interviewees were predominantly professionals encountered in the police station, but with whom there was insufficient time to talk at length, such as ICVs (n=3) (Table C.8) and legal representatives (n=4) (Table C.6). In each case the same informed consent process as conducted with young participants was undertaken (with some adjustment), and written consent was obtained. The materials, and consent forms were adapted accordingly (see Appendix A).

Analysis

All young participant interviews were transcribed, either by myself (n=24) or through a transcription service (n=17). Professionally transcribed interviews were listened to and checked through for accuracy. All the adult interviews were noted and, where particularly relevant, I transcribed them in full. All fieldnotes were transcribed and organized into four separate extended documents for each force area: background information (relating to the facilities and operation of the custody suite in question), general observations, face to face discussions (including discussions arising ad hoc and separate, longer discussions) and a young suspect log, which drew together all the material gathered about the suspect, in chronological order as far as possible. My initial

analysis work involved rereading fieldnotes and transcripts and listening again to interviews to immerse myself in the data, recording memos about recurrent features and emerging themes, those being the occurrences, responses and experiences prevalent across the data as a whole.

All the interview transcripts, fieldnote documents and young suspect logs were uploaded into Nvivo 11.4.1.⁵³ I coded the material using a hybrid approach (Fereday and Muir-Cochrane 2006). This combined deductive methods (Crabtree and Miller 1992) with inductive approaches (Boyatzis 1998), particularly inductive thematic analysis (Braun and Clarke 2006). My approach was an essentialist or realist one, aiming to provide a rich description of the data obtained. The initial coding structure was formulated using the structural elements of the custody process. Within this framework, those themes that emerged through rereading and re-listening were represented in separate nodes, or where relevant to a particular aspect of the process, as sub-nodes. This enabled examination of the process as it unfolded across the data, and was particularly suited to answering the second research question. In order to allow deeper exploration of the young person's experience and perspective, and to compare it with the perspectives of adults, separate nodes were created at the outset to reflect their different perspectives, with sub-nodes for the collection of themes identified in the initial immersion phase and as the analysis progressed. For example within young people's responses 'resignation and powerlessness', 'trust and respect' and 'unfairness and pettiness' became prominent sub-nodes. Some material was therefore coded for several nodes and I aimed, apart from irrelevant introductory or closing material, to code all the young participant content. In addition, some nodes captured specific question responses: for example to collect material provided in response to 'expert' questions such as 'Advice for others' and 'Change proposals', or to collate specific aspects such as 'Timing'.

As the coding and analysis proceeded I tried to achieve a form of constant comparison approach (Fram 2013), to ensure that all my data was systematically cross-compared with the other data in the study. I would review emerging themes across the dataset, and cross-compare between the perspectives of young participant, officer, AA and clinician, for example. Within the groups, I also sought to interrogate the material gathered within the nodes with regard to BAME status, gender and for younger and

⁵³ Nvivo Qualitative Data Analysis Software, version 11.4.1. QSR International Pty Ltd.

older young participants. The group of BAME young participants included a range of self-identified ethnicities, including Black Caribbean, Black African, and mixed ethnic backgrounds. There was only one young person who identified him or herself as Asian, and one who identified him or herself as an Irish Traveller. Because of the low numbers in each status group, to preserve anonymity I have not identified the different backgrounds of BAME participants on the young participant log (Table B.1, Appendix B). Nor, given the numbers, was it possible to do much meaningful analysis between BAME groups. Review by age also presented some complexity because some accounts are vague about the exact age of the experience recounted, and often a 17 year old participant might recall their emotions when first detained in custody at the age of 10 or 11. I have indicated as far as possible where this has been the case, since the retelling of younger emotions may be substantially changed by the act of recall and revision to suit an older presentation of oneself. Given the complexity of the age-related information in this analysis I have worked with only two age bands: ‘younger’ (10-14 year olds) and ‘older’ (15-17 year olds).

At the conclusion of the coding process I returned to the earliest transcripts that I had coded to ensure that I could be confident of a level of consistency across the coding, and, where necessary, I reviewed the content of relevant nodes. As the analysis progressed, and particularly in identifying the more prominent themes and aspects of the process, I have sought to take the step back from myself, as Bourdieu counsels (Bourdieu 1990), remaining mindful of my own positionality and the effect that has on my analysis. I did not consider it practical to seek to conduct validity checking with individual young participants, not least to prevent the extension of their contact with criminal justice agents in the form of their gatekeepers. However, it is proposed that the anonymised findings be explored and discussed, in an age appropriate manner, with young people engaging with some of the YOT gatekeepers involved.

Conclusions

As I identified in opening this chapter, balancing the competing demands which arise in respect of conducting research with children is challenging but instructive. In designing and implementing my research plan I have found myself navigating some of the complexities which are prominent in the empirical chapters which follow: the challenge of building trust within time constraints, the need to accommodate varied participatory abilities, and the importance of enabling children to engage their rights whilst providing

sufficient support for them. I turn now to consider the opening phase of a young person's police custody experience: arrival and booking-in.

Chapter 3

Arrival and Booking-in

Elijah, a BAME young participant who was 15 at the time of his research interview, describes his first experience in police custody when he was aged 9, he thought:

So they've took me out to the main reception, that's when I've seen people coming in and out of their cells. So I'm lookin' at people and they're lookin' at me and I'm just starin' at them, like, scared, but tryin' to act not scared...so I'm starin' at them thinkin', "Who's this?" and, "Who's that? Which one of these is gonna be the one to hurt me or kill me?" and they're just lookin' at me, thinkin', "He's young." ... Because I was so young and I'd never experienced it before, when I first went in, obviously. I was always lookin' around and I was always scared of everythin' that I didn't know about, no matter what it was. (Elijah)

Rezar, 15 at the time of his research interview, recounts a typical experience for him:

When you get to the booking area, you just want to go in your cell as quick as possible... You're just standing there, and they're just typing. Then, they're asking you something, then typing, then asking you something, typing. Then, they will talk to the officer. You're just sitting there. You're sitting, you're sitting, you're sitting. Plus, you've waited an extra 20 minutes outside in the hallway, to wait for everyone else to get booked in, so that you can go in and get booked in....Then, you're waiting another half an hour on your feet. Your feet are starting to hurt. Your wrists were hurting for that half an hour, or hour and a half, of handcuffs....Then, at the book in, they take it off. Then, you're there. Then, another person will come to get booked in. He will probably be drunk or something. So, he's there screaming down the hallways. Then, it gets too much. You just want to go. You just say, 'Just put me in my cell.' (Rezar)

This chapter traces what happens to a child arrestee from when they first arrive at the police station until they are ready to be taken to where they will be detained. This period can last a matter of 15 or 20 minutes or, as Rezar's experience above relates, can extend to over an hour or more. Often immediately following arrest, this can be a time of high emotion and uncertainty for a young person, particularly if, like Elijah above, they have never been in police custody before. For the vast majority of young suspects they are entirely on their own during this critical period. The cast of supporting adults and professionals – legal representatives, AAs, HCPs – are not yet within their reach. More often than not, as Rezar and Elijah describe, they are handcuffed, and surrounded by officers and frequently other, often older, suspects. What happens to a young person, and how they react during this opening phase, can have a fundamental effect on their custody experience: how they are treated, what support they may be afforded and how they are able to cope with the process.

With a focus on my first research question I explore young participants' experiences of this early stage in the process, following them through the holding area and up to the booking-in desk and their first exchanges with the CO. The chapter then traces the procedures that they undergo and their engagement with them: search, authorisation of detention, and risk assessment, concluding with the rights and entitlements process. In seeking to answer my second research question, the analysis pays particular attention to the protections that should be in place for young suspects, and how in practice the arrangements function to adjust the process for the young suspect, or not as the case may be. In closing, I use Packer's theoretical framework (Packer 1964) to reflect upon the findings in respect of implementation and their effects. The chapter begins, however, with a review of the procedure engaged at this stage and the literature previously available in that regard.

The Procedure and Existing Literature

The approach taken to a young person arrested and brought to the police station should be adjusted to suit their needs even before arrival at the station. The APP requires that COs should "prioritise and triage" vulnerable detainees, including young suspects, as part of the booking in process; indeed the custody team should be notified in advance of

their arrival “where practicable”.⁵⁴ Interestingly, this earliest moment is where protections for young suspects also start to fall behind those provided to young defendants. Youth justice legislation emphasises the importance of the separation of children from adults “charged with an offence” in the police station, in transit and at court.⁵⁵ However, the majority of older arrestees in the police station will not yet have been “charged with an offence” and the spirit of the legislation is not reflected in a requirement in Code C, or guidance, for young arrestees to be kept separate, save that they may not be “placed in a cell with a detained adult” (Code C 8.8).

Searches

There is no specific adjustment required either for the general searching of children. However, guidance stresses the importance of conducting all searches with “courtesy, consideration and respect” and with “proper regard” to any “sensitivities and vulnerabilities” of the arrestee.⁵⁶ Although the CO can retain a suspect’s clothing and personal effects, this must follow individual risk assessment (‘RA’) balancing the need to “protect the right to life” with respect for the detainee’s dignity. The power to retain is restricted to a limited number of bases, including where the CO believes the person may use the item to harm themselves or another or to damage property (s54 PACE). The importance of explaining the reasons for search and for retaining items is underlined in the APP⁵⁷. Searches should also be conducted by a person of the “same sex” as the person being searched (s54(9) PACE).

A strip search, involving the “removal of more than outer clothing”, is only legitimate where the officer thinks it is necessary to remove something which may be concealed, and which the detainee would not be allowed to keep. But such searches should not be conducted routinely if there is no reason to consider that articles are concealed (Code C Annex A 10). The removal of an item of clothing to prevent self-harm can constitute a strip search.⁵⁸ Whilst the police in custody have a duty to take reasonable care to prevent a person self-harming,⁵⁹ officers should “not automatically”

⁵⁴ APP (Response, Arrest and Detention) 2.2.

⁵⁵ s31 CYPA.

⁵⁶ NPCC’s Personal Safety Manual 2016.

⁵⁷ APP (Control, restraint and searches) 6.2.

⁵⁸ *D v Chief Constable of Merseyside Police* [2015] EWCA Civ 114.

⁵⁹ *Reeves v Commissioner of Police of the Metropolis* [2000] 1 AC 360.

consider that strip-search is the best way to prevent self-harm.⁶⁰ An intimate search involves a physical examination of a person's body orifices other than the mouth. Code C rightly draws attention to the "intrusive nature" of searches of this sort, cautions against underestimating the risks involved, and requires these searches be conducted "with proper regard to the sensitivity and vulnerability" of the individual" (Annex A 6 and 11(d)).

There is adjustment for the strip and intimate searching of child arrestees. Save in cases of urgency (where there is a risk of serious harm to the detainee) an AA must be present when a child or young person is strip-searched, although the young suspect can ask that the AA not observe the search itself (Code C Annex A 11(c)). Before an intimate search can be conducted the AA must be present for the young person to be informed of the authorization and grounds for the search (Code C Annex A 2A), and consent is required to be given where the intimate search is a drugs search.⁶¹

There is very limited previous literature on the searching of young suspects, or their experiences of it. Children in HMIC's user-voice study indicated a "strong view that strip-searches were undignified and degrading" (HMIC 2015, 89-90), echoing the opinions of adults (Choongh 1997). HMIC encountered some efforts to consider alternatives to strip search, but had also observed strip-searching in the absence of an AA, and in circumstances that breached privacy requirements and seemed unnecessary. Newburn et al's all-ages study revealed striking ethnic disproportionality, with detainees of African-Caribbean heritage being slightly more than twice as likely as white European detainees to be strip-searched (Newburn, Shiner, and Hayman 2004); a disproportionality reflected in HMIC's thematic investigation (2015).

Authorisation of detention

The first substantive act in custody is the authorisation of detention. The CO, who is independent of the investigation, hears the grounds for the arrest from the arresting officer ('AO'), and can only authorise detention to "secure or preserve evidence" or to "obtain such evidence by questioning" (s37(3) PACE). The test is strictly one of "necessity"; the APP stresses that COs should authorise detention "only when it is **necessary** to detain rather than when it is convenient or expedient" (bold in the

⁶⁰ APP (Control, restraint and searches) 6.2. See also obiter comments of Pitchford LJ in *D* (above) at [44].

⁶¹ Consent must be sought from the child or young person (where he or she is over 14 or over) and their AA. Where the child is under 14 only the AA's consent is sought. (Code C, Annex A, 2B).

original).⁶² It is important to note that there is no requirement for an arrested person to be detained at a police station in order for them or their home address to be searched, and for items such as a phone to be seized from them,⁶³ or for them to be required to attend for interview under caution.⁶⁴

The wording of the APP reflects longstanding concerns about the unnecessary detention of arrestees addressed in the RCCP (1981) and debated during the passage of PACE through Parliament⁶⁵ (Ashworth 1994). Douglas Hurd, then Home Office Minister, stressed the importance of a strict application of the test, memorably glossing the term “necessary – not desirable convenient or a good idea but necessary”⁶⁶ (Sanders 2010). However, the Courts have effectively endorsed routine authorisation of detention by COs, with limited consideration of the grounds for arrest.⁶⁷ Research has consistently identified what has been described as a ‘rubber-stamping’ approach taken by COs (Dehaghani 2017a; McConville et al. 1991; Phillips 1998; Bucke and Brown 1997), with near blanket approaches taken to authorisation.

International obligations suggest that there should be an even more rigorous approach for young arrestees, given the obligation under Article 37 of the UNCRC that detention be used for a child only as a means of “last resort”. PACE and Code C provide no specific adjustment to the authorisation process to take account of children. However, the APP requires officers to take particular care to ensure that the provisions of PACE have been “strictly applied” to avoid lengthy detention for children.⁶⁸ There has been no study of the particular application of the test in respect of young arrestees, nor of young people’s awareness of this critical decision.

Risk assessment

COs have the essential job of ensuring the safety and welfare of the detainee whilst in police custody and keeping a record of their detention. The CO must conduct a RA as

⁶² APP (Response Arrest and Detention) 3.2.

⁶³ Power to search premises of an arrestee: s18 PACE. Power to search the defendant on arrest and any premises he/she was in at the time of arrest or immediately before arrest: s32 PACE.

⁶⁴ An individual can be de-arrested, or arrested and released on bail (including with certain bail conditions) to attend the police station under s30A PACE without first being taken to the police station.

⁶⁵ Hansard, H.C. Vol. 60, cols. 378-415, 1984.

⁶⁶ Hansard H.C., Standing Committee E, col. 1229, 1984.

⁶⁷ *DPP v L* [1999] Crim LR 752, *AL-Fayed v Commissioner of the Police of the Metropolis* [2004] EWCA Civ 1579, *Richardson v Chief Constable of West Midlands Police* [2011] EWHC 733 (QB), *Hayes v Chief Constable of Merseyside* [2011] EWCA Civ 911, *Hanningfield v Chief Constable of Essex* [2013] EWHC 243 (QB). See (Dehaghani 2017a) for discussion.

⁶⁸ APP(CYP) 2.

part of the booking in process, to identify whether the detainee presents any specific risks to staff, others or themselves in custody (Code C 3.6). The APP acknowledges the police's duty under the Children Act 2004 to have regard for the need to safeguard and promote the welfare of young suspects, and recognises the raised prevalence of dispositional vulnerabilities and adverse childhood experiences within the child suspect population (discussed in Chapter 1). It also stresses the importance of a wide-ranging and thorough RA, and counsels against relying on chronological age or physical maturity in gauging their ability to engage with the assessment process.⁶⁹

Clinical research has examined the efficacy of RA approaches in respect of the general custody population, raising concerns about the under-identification of suspects with mental health issues and LD (McKinnon and Grubin 2010; McKinnon and Grubin 2013; McKinnon, Thorp, and Grubin 2015). Concerns have also been raised that the language of the RA, and the physical environment, are not conducive to young arrestees disclosing vulnerabilities (CJJI 2011; HMIC 2015), and that COs have extremely limited training in respect of child development, disorders commonly affecting children and child protection (APPGC 2014a; HMIC 2015).

Rights and Entitlements

The booking-in process concludes with the young suspect being informed of their 'rights and entitlements' by the CO, acting as both "informer and gatekeeper of suspects' rights" (Quirk 2017, 57). Firstly the CO must tell the suspect "clearly" about their "continuing rights" which they can exercise at any stage (PACE Code C 3.1). These are the right to "free and independent" legal advice (dealt with in detail in Chapter 6), the right to have someone told of their arrest and the right to consult the Codes of Practice. This must be done in the presence of the AA if already at the station, or repeated on their arrival (Code C 3.17).

When booking in a young suspect the CO also has a duty to inform an adult responsible for their welfare (Code C 3.13 – often referred to as "intimation") of the arrest, and to inform the AA of the arrest and ask them to come to the station (Code C 3.15). There is no specific requirement to involve the young suspect in this process, although they must be told about the AA's role and that they can "consult privately" with the AA "at any time" (Code C 3.18). In addition to these notification requirements, young suspects have the right, as all suspects, not to be held "incommunicado" (Code C

⁶⁹ APP(CYP) 3.1-3.2.

5.1 ff), including being “allowed to telephone one person for a reasonable time” (Code C 5.6). Although there is no clear requirement in Code C for the CO to tell the suspect of this right.

To support what COs may say about these rights, Code C also requires that every suspect be given a “written notice” about their rights and entitlements. This must repeat the continuing rights, and inform the suspect of others, including their right to remain silent, their right to medical assistance, and their entitlement to, amongst other things, food and drink, access to washing facilities and exercise “where practicable” (Code C 3.2). This is the only format in which the CO is required to inform the suspect of these further entitlements. There is no requirement for the CO to outline for the suspect the contents of this notice, or why it might be worth reading, but they must be given an “opportunity” to read it (Code C 3.2A). Concerns about the accessibility of this notice have long been raised (see for example Clare and Gudjonsson 1992; Parsons and Sherwood 2016), although not specifically with regard to children.

The APP⁷⁰ reminds COs that children may be “less aware of their rights and entitlements than adults” and of the need to tailor communication to meet “any speech, language or communication needs”. Particular stress is placed on the importance of ensuring that young people are aware of the role of appropriate adults and their right to legal representation. The importance of children being told how to complain is also underlined, although, perhaps surprisingly, there is no corresponding requirement in Code C for the CO to inform a suspect of this right.

Concerns arise in several studies about the extent to which young people are fully informed of, and able to understand, their rights in the custody suite (Choongh 1997, 143). Skinns observes that rights are often delivered in a “routinized” way, with officers paying only “lip service” to PACE and Code C (Skinns 2011b, 129). This echoes earlier concerns surrounding the inadequate, or high-paced cautioning of children in interview (Evans 1993, and more recently Sim and Lamb 2018). We have no other qualitative research conducted with child suspects examining in particular their understanding of the custody process and their rights and entitlements. However, work with young defendants at court, and with young offenders, suggests that many may be unable to engage significant rights as a result of their lack of understanding (Plotnikoff

⁷⁰ APP (CYP) 3.3.

and Woolfson 2002; Jacobson and Talbot 2009; Hazel et al. 2003; Goodwin-De Faria and Marinos 2012).

Arrival

Into the unknown

In order to understand how children experience being in police custody it is important to appreciate the state of mind in which they arrive at the police station. Previous research suggests that children have very little understanding of what to expect following an arrest (Bevan 2015), and that this is a source of anxiety (Hazel et al. 2003). Indeed fear of the unknown is prominent in the few detention accounts of children (APPGC 2014b) and young adults (Jones 2007) that we have.

In line with these findings, a substantial number of young participants explained that they had had very little idea of what would happen following arrest. For some this was not unduly problematic, but for others, like Elijah above, it was a source of fear and real anxiety: “The first time I was so scared, like ... I didn’t know where I was going, what was gonna happen, if I was gonna get fed, you know what I mean, I was just worried.” (Aidan). Fear could be magnified when combined with very limited knowledge of the wider criminal justice process. Elijah explained, “I didn't realise that the system was bigger than that, I thought it was just prison straight away, as soon as you get arrested and I was scared, scared.”. In the absence of better information, young participants relied on what they had learned from listening “to tracks, like music” (Hudson) (see McAuley 2007), watching TV or from peers with experience of arrest. However, the inaccuracy of these sources was liable to cause greater anxiety, particularly around the nature of the cell. Avery was concerned about other arrestees, thinking that custody might be “like America sometimes when you see them in films they’re all in a big cage together”. By contrast Edison had been reassured by the idea of multi-occupancy cells, since he thought he would be detained with his brother, and had been scared to discover that he would be held alone. Those with friends or relatives with police custody experience tended to be better informed, although the picture that young people got from friends tended to be very negative (see similar in Loader 1996), adding to their disquiet: “I just got told it’s dirty, not nice an’ it’s cold” (Riley).

For a number of young participants their overwhelming emotion was anxiety about the repercussions of their arrest. Some expressed concerns about criminal justice outcomes (an issue in Jones 2007). Kate explained, “I thought I was gonna get sent to

jail 'cause they were right going on, 'It'll go to court' and all this and that, and I'm thinking, 'Oh my God, what have I done to my future now. What's going on?' It was scary.”. But young participants were generally more worried about how people close to them would react: “I don't even care about getting arrested. I'm just caring about what my mum is going to say.” (Rezar). Whilst for others the concern extended beyond the family. Simon, for example, was particularly worried about whether teachers would be informed, and whether people locally would see him being dropped home by police and know where he had been.

Several young participants talked about feeling shocked on their first occasion in custody. Indeed, where adults made sympathetic observations this was the emotion most remarked on. A number talked about “first-timers” as “shell-shocked” (CO15) or having “startled rabbit syndrome” (L&D6). The shock often arose from the fact of their arrest, as Cole explained, “I didn't think that day was going to come” or the unfamiliarity of the process: “I was proper shocked, like what is going to go on?” (Jo). Jackson explained the numbing effect of this feeling, which dominated his thoughts in the initial stages of custody, when he was pre-occupied with “wishing” that he had not been caught.

The importance of the arrest experience

The contingent nature of the custody process is apparent from the outset. Although young participants understood my focus to be on the police station, many were keen to discuss their arrest, particularly the inappropriate or unnecessary use of force by AOs. Approximately half described arrests in terms that might at best be described as heavy-handed, and at worst involved allegations of significant violence and assault (according with findings in Lyon et al. 2000). Handcuffs were often the source of complaint, especially when young people felt they had been used, or kept on, without justification. I frequently observed children brought into the booking-in area in handcuffs, often after a considerable, and apparently wholly compliant, wait.⁷¹ For example, YS32 was booked in after a 2 ½ hour wait in rigid cuffs.

The evidence illustrates how problematic coercive processes unadapted to children can be. Several young participants told me that they could slip off handcuffs, and would work to “squirm” their way out of physical restraint (Aaron). Officers too

⁷¹ The routine production of children to custody suites in handcuffs has been noted elsewhere (HMIC 2016).

noted that children can be: “more supple when it comes to restraint.... a child folds up almost. They are harder to restrain – their arms come back. Like a cat or a snake – they turn in on themselves.” (CO10). At the same time, officers reported that their restraint training is “not juvenile specific” (CO15), you just have to “use your common sense” (CA21),⁷² and the handcuffs used are of an adult size and weight. The result seems to be a harsher restraint experience for younger, often smaller, arrestees. Young participants frequently complained about handcuffs being, “bare (too) tight so it cut your wrists” (Jamal). Such behaviour was seen as petty, and sometimes deliberately punitive, “... when you say, ‘Can you take it out, it hurts’, they do it up tighter.” (Will), and emblematic of the police’s lack of concern for their welfare, “They don’t loosen them, just silly things like that. The police officers they just don’t care.” (Carter).

More serious allegations of inappropriate use of force often arose in respect of arrest experiences exacerbated by youthful immaturity. Young participants frequently described arrest arising from a chase. Sometimes this was sought out and thrilling: “boom, you bolt off and the police would jump after you, the sirens, the flashlights out, you’re hiding in the bushes and everyone’s heart’s racing and it’s literally like an adrenalin rush” (Simon). Recognisable to cultural criminologists, the sheer pleasure of transgression (Katz 1988) and the capacity of such expressive behaviour to break the monotony of young participants’ lives (Presdee 2000; O’Malley and Mugford 1993) is clearly identifiable in Simon and others’ accounts. But for others running away was more a function of their fear, as 14 year old Michael explained: “Cos I got scared and when I get scared I run fast. Like I go. And then all I want to do is just run home”. Whatever its motivation, the chase that followed not infrequently ended in greater use of force. For example, Michael had been knocked off his bike by a police van in pursuit, Luke had been tasered, and Jake’s co-arrestee and Jamal had been bitten by police dogs.

Alternatively, the police might, as a result, use greater numbers even for minor arrests which could enflame the situation further, as Avery describes, “But you’re just winding me up more by having seven officers jumping me and nicking me like.”. Such shows of force were liable to elicit fear and aggression in young suspects: “when I just feel like they’re just kind overpowering me in a way that, that I don’t feel comfortable with, I just don’t like it.” (Jamal). This could in turn trigger a more aggressive

⁷² By contrast the lack of juvenile-specific restraint training for officers in the secure estate has been the subject of successful legal challenge see <https://howardleague.org/news/howard-league-legal-challenge-brings-an-end-to-the-routine-use-of-adult-restraint-techniques-on-children-at-feltham-prison/> , last accessed 22/04/19.

response, “There's times when it's too much. And I feel like I have to fight back and let them know that I'm not scared” (Alex).

BAME participants were represented amongst those who were vocal about mistreatment by street officers, but they were not over-represented in that group and did not generally express more negative views than white participants (contrasting with previous research Lyon et al. 2000; Bowen 2017; Bowling and Phillips 2003) and the disproportionality literature see (Lammy 2017; Amnesty 2018 for discussion). One young BAME participant (Carter) explained, “There are certain police officers that won't, how do I say it, won't be racist in front of everyone, but they will be racist to you on the sly, if you understand what I mean?”, but more commonly young participants did not identify ethnicity as a factor in adverse experiences on arrest. Zayn encapsulated the general view of BAME young participants, “They (the police) don't care (about ethnicity). The only thing changes is how polite you are.” However, I approach these observations from BAME young participants with some care, since they may have felt inhibited about raising issues of race in discussion with me, being a white middle-class woman. The exception to this general position was the single young participant who was an Irish Traveller who complained of discrimination by officers both on the street and in custody, observing: “we're not dogs, we're humans”.

The prominence of these problematic arrest accounts in the interviews gives some indication of the profound emotions they engendered at the time. Sometimes many months after the event, young participants spoke with real emotion about the incidents, and their anger remained palpable. The intensity of emotion engaged in such expressive transgression appeared for these young participants to magnify the hostile control responses of adult officers such that they were overwhelmingly experienced as punitive and for some, deliberately provocative. Aidan described being cuffed to the rear on the floor: “you have to stress 'cause it's hurting your arms, you know what I mean? And that's what they want. And like, if you go sick at them, that's when they kick up more and annoy you more.” (reflecting similar views expressed in HMIC 2015).

For some young people problematic arrest experiences had a direct effect on how they presented, and were treated, on arrival at the custody suite. Even if calm on presentation, as part of the booking in process the CO would be informed of any restraint used on arrest, and often would be notified ahead of arrival if the arrestee was a “fighter”. Sometimes a problematic young arrestee would be held “on the van” to calm down before they were brought into the suite or would be taken straight into the cells,

without being booked in and informed of their rights and entitlements. Apart from immediate treatment there was also a longer term attitudinal effect of these encounters which affected how young participants reacted to custody, and the wider justice system. For some this was straightforwardly negative, such as for Carter who concluded, “most police officers, they’re just dickheads”. For others the unnecessary and punitive nature of the arrest, resulted, over time, in a form of detachment, even a sense that the process was farcical. Harper explained, “I find the situation completely hilarious as to why I’ve been arrested”. This was particularly the case where the young person felt that their arrest had been petty and unjustified. Elijah explained "These lot are just takin' the piss now. They're just arrestin' me to take the mick. Like, they're tryin' to do it to annoy me." Harper explained how damaging this realisation could be: “I think the police now have got that reputation in the sense of they can’t be trusted because of the system as a whole is just corrupt.”

In Holding

Prioritisation

Despite the requirement in the APP to “prioritise” young arrestees, the data suggests that this rarely occurs. Like Rezar above, young participants often described lengthy waits to be booked in, spending “an hour or two” in a holding cell (Azade) or “over an hour in the van” (Zoe). Only in F1 was the suite notified in advance of young suspects being brought in. During busy periods on observation I could discern no systematic prioritisation of young suspects in terms of booking in. Some COs suggested that they would “bring them (juveniles) through or might deal with them first” (CO22), others only if there was a “medical issue” (CO32) whilst some were plain that they would not prioritise a child. I observed several young suspects made to wait for lengthy periods including, for example, YS29 who I watched wait an hour and 45 minutes, sitting with adult arrestees in the holding area, whilst older arrestees were booked in before him (see for similar HMIC 2015).

Not only does lack of prioritisation extend the period of uncertainty and distress for young suspects, but it can also present further difficulties. Sometimes swift processing of an arrestee can be a critical factor in the overall length of detention. For example, YS31, a 14 year old, arrived at the police station at 11.25am having been arrested on a warrant, requiring production to the next available court. Timely booking-in would probably have enabled his production to court that afternoon, but by the time

he was booked in, approximately 2 hours later, that was no longer possible⁷³ and the CO then had to detain overnight or struggle to find a local authority bed.

Most straightforwardly, children lack the stamina to cope with lengthy, boring delays, as 15 year old Rezar's account in the introduction identifies. As IO4 observed, "It's a very long dragged out process to have a juvenile in it – it's wrong." For a young person of school age, a wait of even 40 minutes can be unfamiliar and hard to deal with, and can adversely affect their ability to engage with the RA and rights process which follows. Some custody staff did not seem to appreciate the challenges of delays, complaining of young arrestees lacking patience, "They want everything now" (CA27), whilst young participants spoke of wrestling with the urge to "kick off": "I sort of felt like I should, but then I thought it's just gonna make it worse. If I just get on with it and do what they want me to do and then I'll probably get out quicker." (Tom).

Separation

Perhaps the greatest difficulty arising from lack of prioritisation, however, is the contact with arrested adults that this often produces. Unsurprisingly, given the lack of requirement in s31 CYPA and Code C, the data suggests that separation is not routinely attempted, save with regard to cell occupation,⁷⁴ and infrequently achieved. One young participant had noted that officers "don't like kids being near other people coming in" (Jake), and several professionals suggested that officers worked hard to keep young suspects separate from older detainees, but this simply was not borne out on observation or in the majority of young participants' accounts.

In some areas waiting arrestees are placed in holding cells outside the booking-in area. In this sense some separation can be achieved. However, many holding cells have glass doors meaning that whilst physically separate a young arrestee can still see, and be seen by, older arrestees. As Azade recalled "it was just like everyone was looking at everyone". This could be distressing for those unfamiliar with the process. Michael, for example, described "crying a lot" in the holding cells: "The people who was arrested in the other holding cells...They looked scary...I was just breaking down – I thought I was gonna go in the same cell as them". The significant fear for these young people was, of course, that they might be hurt by the other arrestees: "you're sat

⁷³ The problem of courts closing their lists for the day early – at 1 or 2pm – has been the subject of concern raised elsewhere (HMIC 2015).

⁷⁴ The requirement that a "juvenile" may not be "placed in a cell with a detained adult" (Code C 8.8) is invariably observed.

there thinking ‘What have they done? Has he killed someone? Has he done something serious? Am I gonna be sat with him in the cell?’ (Simon). This was particularly associated with arrests when very young, or inexperienced in custody, as we see with Elijah, in the introduction.

The unpredictability of the situation was also a concern. Luke explained that older arrestees could be, “like scary. Cos you don’t know what they’re gonna do... do you know what I mean?”. He described being detained, handcuffed, in a holding cell with a drunk adult man. The man had taken exception to the way Luke was looking at him and stood up, at which point, thinking that he needed to defend himself, Luke had kicked the man, who had fallen over. Luke continued, “And then the police come and that. They asked what occurred and I said to them, and he was like well you’re getting done for assault”, although no further action was apparently taken.

Concerningly, this was not the only account of a young person being involved in a physical confrontation with an adult detainee. Evan described his first experience in custody: “Somehow, I got into a fight with a 30-year-old man that had just been brought in for ABH.... And then police dragged me away like it’s my fault... I went, ‘I’m nine years old, I want my mum.’ They went, ‘No’.” These incidents are shocking, not just because of the gross failure in the police’s duty of care, but because they provide a stark insight into the punitive response of many staff to children in custody – a theme that I will develop throughout this chapter. The effects of such incidents can be far-reaching. Evan reflected, “To be honest, after that one night, I did not care. I’ve been the same way every day.”. Also concerning is the degree to which such encounters fundamentally undermine the legitimacy of the police in the eyes of young suspect. Luke recalled his response to the threat of prosecution, “I said whatever and started laughing at him.”

A number of young participants gave accounts of striking up conversations with adult detainees, whilst waiting in open holding areas. Rezar explained, “That’s where your little last five-minutes of talking is going to really happen... You just ask everyone and anyone, ‘Why are you here? Why are you here?’.” I saw this occurring in suite 3 where the holding area was visible from the custody desk, enabling me to watch a young detainee in lengthy conversation with an adult arrested for possession with intent to supply (YS29).

In the harsh surrounds of the custody block such conversations could be welcome. Kate described how an older arrestee, whom she had met in holding, had

helped her during booking-in, “My mind-set was scream and shout at first, and then seeing him all calm and just collected and be like, ‘Don't worry (Kate) you'll be out of here in a bit,’ it calmed me down a bit.”. Luke also described how an older arrestee could be reassuring, “he’s there as well, like you’re there, you’ve both done wrong and you’re in it together.”. It is plainly concerning that the process enables young people to associate with more serious offenders, and particularly worrying that they might be cast as a supportive presence, potentially normalising relatively serious offending.

I saw nothing to suggest that prioritisation of young suspects and separation of them from adults during holding is not achievable. In each area AOs could call ahead to notify the suite of impending arrivals, and all the suites that I observed had holding rooms, secure waiting areas or cell capacity in which a young suspect could wait. Indeed separation is achieved in respect of co-arrestees, sometimes rigorously enforced, as Hussain described, “you’re not allowed to look at each other, you’re not allowed to talk to each other, you’re not allowed to make gestures or anything.”. Sometimes staff were extremely pressured, but often failures in this regard seemed to arise from a lack of appreciation rather than impracticability. Indeed some staff could not see the need for separation: “They don’t need to be segregated – it doesn’t make a difference. The ones that are new here aren’t here for long and the regulars have seen it all before anyway.” (CO36).

In contrast to the treatment of child defendants, the data reveals that, from the outset, child arrestees experience processes largely unadjusted to account for their youth. Protections to ameliorate the experience, particularly prioritisation and separation, are rarely achieved. Combined with the application of adult restraint techniques, and young participants’ lack of knowledge of the process, this results in an experience that can be significantly harsher than that of adult arrestees. As we follow their progress through custody, we see that young suspects’ treatment in these initial stages can profoundly affect their ability to engage with the process and their rights during detention, as well as contributing to lasting attitudes towards the police and authority. As L&D7 observed, such experiences simply add to the construct “that authority is bad rather than helpful and supportive.”.

At the Desk

Booking-in areas can vary hugely, depending on their physical arrangement, numbers of police and the behaviour of any arrestees present. A solicitor during scoping

encapsulated the more problematic end of the spectrum in describing her local station, an older, smaller suite, as:

...a really frightening place. It's always overflowing – they're queuing to book them in. There are drunk, violent people, people being sick. The lighting is bad. The atmosphere is confrontational and aggressive... I'd be petrified if I was there as a detainee as an adult – let alone as a child or someone with mental health difficulties.⁷⁵

By contrast, I described suite F1/1, in my observation notes, a modern building operated under a Private Finance Initiative ('PFI'), as "really well-lit (with high windows)...bright and generally clean... no obvious smell.". Nor are booking-in areas always busy with officers or ringing with the shouts of detainees. They can be eerily quiet when at low occupation, especially in suites where the cells are some distance from the desk itself. What is common to all booking-in areas is the sense of institutional control embodied in the chest-high desk behind which the CO sits, elevated above the AO and arrestee, and reinforced by notices threatening prosecution for misbehaviour. They also feel very public arenas, with the constant reminder of ongoing surveillance in the presence of cameras and CCTV recording notices.

Adults, both lay and professional, were very negative about the suitability of custody suites as environments for children and young people, particularly in respect of the noise. For example FAA1 recalled "hearing people banging on doors, head butting the doors...It's horrible. It is horrible", whilst CA13 reflected that 10-13 year olds in particular should not be subjected to the "screaming, banging, abusive language and violence" of the custody suite. I certainly noticed on observation that young arrestees at the desk would often be distracted by shouting coming from the cells or other detainees who were being abusive to the custody staff, and would typically glance warily towards the source of the noise.

'you've just gotta stay calm'

Interestingly, young participants tended not to refer specifically to the physical features of the space and rarely did they make specific reference to the noise at booking-in.

Yemi was unusual in addressing this latter feature: "I thought they're just having a bit of a breakdown really.... I think they needed help, like with a nurse and everything like that. But I think they really came across as just really frightening, really scary."

However, young participants' accounts speak eloquently of the effect of the coercive

⁷⁵ Telephone conversation with Liz Thompson 10/06/15.

nature of the setting. The majority described their behaviour in terms of resigned compliance (recalling similar in Hazel et al 2003). For some young participants this sense of powerlessness arose from the presence of lots of officers, which made them feel “nervous” (Tyler). Rezar explained: “like it’s all of them against you. It’s just you there, you’re basically in their house You feel like you can’t say nothing to do anything. You feel annoyed and angry, but at the same time, you feel like you’ve got nothing to say.” (see also Skinns 2011b). A number of young participants acknowledged the sheer futility of “kicking off” in the police station, emphasising the importance of not reacting: “you’ve just gotta stay calm” (Aidan), “just try and keep it in” (Dexter). In discussion COs tended not to be particularly sympathetic to issues of powerlessness, as CO35’s response displays: “I don’t think juveniles see it as an imbalance (of power) – they come in with an attitude”.

Some young participants expressed a strong sense of the reciprocity in behavioural terms between staff and detainees (noted in other studies such as Skinns, Wooff, and Sprawson 2017). A number of young participants explained that aggressive or abusive behaviour would often, they felt, be repaid in some way by officers. Robert explained, “they just get you back. They just come in (to the cell), like pretend that they’re doing something like a job and then they’ll just come and hit ya.” Although no officers suggested that they would physically assault a suspect, there was a degree of confirmation from some staff that they would not hold back particularly in dealing with a difficult young suspect: “I treat them all the same. If they start being idiots I’m not going to hold back because of their age. At the end of the day they’re in here for a reason” (CA3). This sort of response makes no allowance for the natural developmental immaturity of many young suspects and can, inevitably, have problematic results.

More commonly young participants described moderating their behaviour for fear of prolonging their detention, “If you start kicking off with the police, you’re just gonna be in there longer, aren’t you?” (Riley). It was in this regard that a number of young participants commented disapprovingly on negative or disrespectful behaviour by older arrestees. As Aidan explained, “I know how I have to behave when I’m in there... How other people act, that’s their problem, they’ve gotta deal with the consequences.”. Although one or two young participants responded more subversively to the almost total control that they experienced in the police station, and exercised any form of agency they could. Jayden, for example, had identified that he could annoy COs

if he took a long time in answering straightforward questions or asking for a glass of water, “I just long it out, it gets them.”

Of course, young people may not have endorsed violent behaviour in consideration of my background or indeed as a result of their engagement with, or presence at, the YOT offices. However, these accounts fit with my observations. Most commonly young arrestees presented at the desk in a subdued state, some appearing to be frightened or nervy, more often they were silent or sullenly unco-operative. Some, particularly those in custody for the first time, looked numb or shell-shocked, and responded in barely audible tones, one or two holding their head in their hands or resting their head in a bored fashion on the desk in front. Only one young suspect, who had taken ‘spice’⁷⁶ was physically violent during booking in, and two others were mildly verbally abusive but subsequently co-operative, although three were reported to have been violent and contained in a cell or a van before being brought through.

Staying calm in this situation is challenging and several young participants explained that they would let out their emotions once in the cell. Dexter for example explained, “I just try and keep it in. But ... when I get angry and that, when I go in the cell I just bang the door and start booting it.” This was also noted by COs, “Juveniles are very agitated when they first come in. The majority are hard to talk to. Half an hour in and they’re trashing everything, banging in the cell, ordering lots of food and drinks.” (CO24). Interestingly Wooff and Skinns have described a different approach taken by adults detainees, who tended towards “emotional outpourings and aggression” at the desk, followed by more “self-reflection and privacy of emotions” in the cell (Wooff and Skinns 2018).

Acting up, acting tough

A minority of young participants described being verbally or physically abusive towards COs. Their accounts are very revealing of the triggers or factors which feed into such behaviour. Several reported responding violently to what they felt was excessive use of force or unnecessary treatment. Aidan described how he had “flipped once” during booking-in when he was arrested with an ex-girlfriend, “and they wasn’t being nice to her, you know what I mean, like they weren’t treating her well.” For a small number of young participants antagonising or being abusive to custody staff could also be a “thrill” (Luke), “part of the game” (Avery). They tended to be those with

⁷⁶ A synthetic cannabinoid associated with both catatonic but also extremely violent behaviour.

regular experience of custody, and it was notable that they had identified, contrary to the assumptions of the majority above, that there was in fact little comeback for such behaviour. Luke explained, “it’s funny, because they (COs) get annoyed and they can’t do nothing about it... (laughs)... You can abuse them and they can’t say nothing to you.” Aaron had spotted “There’s always someone different on (duty at the desk) by the time I get out.” This lack of redress was not lost on officers. CO34 described with some resentment: “We remanded a young person – major issue all night – he was kicking and banging. When he gets to court the CPS lawyer says he’s got a ‘cute little face’ and didn’t oppose bail when we’ve had him all night.”

A number emphasised the importance of not showing fear or weakness. Azade, aged 14, for example reflected on being worried about her Mum, but countered “well obviously I don’t show that, innit”. She described being verbally abusive to COs: “If I go in there (the custody suite), the police officer I’ll get rude to him and I’ll say go eat your donuts or something.”. Notably girls were disproportionately represented in the group of those who reported being abusive towards COs, or were disruptive during observation. It may be that the need to “act tough” was a factor in this feature. Several young participants were more explicit about the importance of being assertive to avoid being manipulated by the police. This group tended to comprise BAME participants in particular, like Alex who explained, “I feel like, police officers, if they think you’re weak they will try and like, I don’t know, target you.”. As RHAA3 observed of young suspects generally, “They are intimidated by the system and embarrassed. They don’t want to admit that they’re vulnerable... You know that the cockiness or rudeness sometimes hides vulnerability and insecurity.”

Additionally young participants who reported being more disruptive were also more likely to have disclosed a mental health issue, or a developmental or behavioural disorder. A few COs made the link between vulnerability and problematic behaviour: “Juveniles are very rarely violent – the violent ones tend to be the ones with mental health issues.” (CO15). But generally I was conscious of a fairly widespread lack of sympathy across custody suites for young suspects, but especially those who were regularly arrested and behaved problematically. A number of officers, in different roles, described young suspects in very pejorative terms as, for example, “feral” (IO7), “Mr Obnoxious Bastard” (CO23) and “some of them are not vulnerable they’re preying on the vulnerable” (CO30). They had, in effect, lost the right in officers’ minds to be treated as children; one CA observed with some resentment, “we have to treat them as if they

were vulnerable” (CA18) echoing findings in (Dehaghani 2017b). In discussion it was clear that many COs relied on outward signs of what they considered to be vulnerability, an approach observed by Skinns (2019) in other jurisdictions as well. Thus the CO booking in YS26, a 16 year old first time arrestee, explained: “If he was very vulnerable I would be happy to go into a room with a young person (for booking-in). You can tell looking at them waiting in the corridor if they’re really frightened”. As CO21 identified, “the problem is they (young suspects) are rude to the staff here and so they can be overlooked – their vulnerability.”

Several officers also expressed concerns that children might “play up because they know they’re being watched by adults.” (IO6). However, whilst on observation young arrestees often appeared acutely aware of the audience, playing up to impress older suspects was not an impulse that young participants described. They were more likely to report trying to deflect such scrutiny, “some people will just stare you out when you go in and you take no notice innit” (Nathan). However, the position was rather different in respect of peers. Staff variously complained, with some bemusement, that young people who get booked in with their friends might laugh and joke around together, as if it were a “day out at the police station” (CA18). Several young participants talked freely and animatedly about being arrested with friends. As Robert explained, “it’s just funny... We just look at each other and laugh”. As with the pleasure of “the chase” alluded to above, what strikes one about this behaviour is not that it is indicative of concerningly disrespectful attitudes towards the police, but rather the sheer (natural) immaturity of it, and yet the very punitive context in which such childish behaviour is played out.

Plainly clearing the booking-in area to deal with a young arrestee would address issues arising from the presence of others. Although several solicitors believed that this occurred, and some COs suggested that they were obliged to by PACE (eg CO15), there is no such requirement for separation in this way in Code C or the APP. I did not observe it occur, although I did see a number of young arrestees booked in at quiet times. Clearing the booking-in area would, undeniably, be very difficult in all the suites that I observed, although, as suggested above, eliciting the information required to book in a young arrestee in the privacy of a cell is an option. This latter approach was more commonly suggested to be used for charging young suspects for sexual offences. However, this appeared to be more about the nature of the offences, the dangers of recognition and retaliation by other detainees if they overheard, rather than the

particular vulnerability of the young person. However, even this does not seem to be invariably achieved; I observed a 14 year old suspect with a LD being charged with a sexual offence in a busy custody area (YS36).

The Custody Officer

Young participant accounts reveal that the way that a CO interacts with a young detainee can have a highly significant effect not just on that young person's initial impressions, but on their whole experience of the custody suite. Young participants' views of police officers were commonly very negative: "they're all piggy scum, every single one of them" (Will). But in general they had much more positive things to say about COs than about street officers. I made a point with young participants of asking what made a good CO, or CA. Despite the variety in their experiences, a number of factors were repeatedly raised in our discussions.

Friendly

Consistent with observations of young people in respect of street officers (Loader 1996, 137, 140), a number of young participants identified COs as "good" if they were "friendly" (Sadie), "proper polite and cheerful" (Riley) and spoke in a way "that I don't get angry" (Kaiden). As Evan explained this did not mean over-friendliness, but basic courtesy. Indeed often expectations were fairly low. Rezar described the "best" custody officer as one who "...proper treats you like normal. Not like an animal". A number of young participants talked positively about COs who could "joke around with you" (Jo), or have a "bit of banter" (Luke). I saw this used in each force area to very good effect to defuse situations and to engage and relax young suspects. YS12, volunteered, rather poignantly, to me during the booking-in process: "They've been really nice these officers – making me laugh. Making me feel wanted here". In the alien world of the custody suite, several young participants, generally the younger age-group, welcomed in particular being dealt with by someone familiar, known to them from the neighbourhood, as a Community Safety Officer at school or even through previous arrests.

Conversely, a number of young participants complained about what they perceived to be rudeness or grumpiness, and being sworn at by COs. In particular participants objected to what they considered to be arrogance on the part of custody officers, especially when issuing instructions. Riley, who was critical of a CO who "just tried fuckin' showing his authority", provided an example. Instead of asking, "Will you

take your laces out, please?” such a CO would instead say something like, “You’ve gotta take your laces out, don’t think you’re goin’ anywhere with them in.” Kate too felt some officers were “horrible for horrible’s sake. They were just being nasty”.

On observation it was generally the case that officers who sought to anticipate and defuse exchanges that might be upsetting or aggravating prompted calmer and more co-operative interactions. Unnecessary intolerance on the part of an officer was liable to be reciprocated. Avery explained this reciprocity, “I said it to the one officer before, I was like when you’re treating me with respect I’m gonna treat you with respect but if you treat me like a piece of shite I’m going to speak to you like a piece of shite. So it swings both ways.”. As with arrest, some young participants felt deliberately goaded by officers who would, “try and wind you up, ... push you to do or say stuff that can get you put into the cell longer” (Will). Although I did not observe verbally abusive behaviour towards young detainees, I did see several instances of this sort of unnecessary exchange. For example, the CO booking in a 15 year old (YS34) who had been arrested shortly after an unconnected court appearance observed for no reason, “So you lasted just over an hour before you were locked up”. When YP34 then started to express concern about the search of his mother’s address, the arresting officer aggravated the situation further by responding, “If no-one’s home they’ll just put the door in”, prompting YS34 to remonstrate.

Non-judgemental

Young participants also particularly welcomed COs who were not judgemental: “not like criticizing you because you’re in there.” (Sadie). Young participants, conversely, were vocal in their dislike and resentment of officers who they felt treated them as “criminals”, who “look at you as if you’re not a real human like if you’ve committed an offence.” (Zayn). Kate explained what a difference this attitude can make to a custody episode:

It depends on the police officers that you have 'cause like there was one time ...when I went in there was one really nice police officer that helped me and was like, ‘Do you want a blanket? Do you want something to eat?’ There was just one that gave me attitude all the time, ‘You're not having a blanket. You don't deserve it. You're a criminal,’ this and that, and I'm like, ‘Alright.’ But it was **really** scary to think how long I'm going to be in here.’ (bold emphasises stress in the original speech)

Closely allied to this area of concern was the frustration a few young participants expressed at officers who seemed to “stereotype” or “categorise” them as

criminals just because they are young. Harper felt that this prevented them from seeking to understand fully “why people do what they do...they don’t have like two minutes to kind of stop and kind of look at a person.”

Officers who care

Young people also appreciated a CO who they felt was not just doing a job. Elijah explained that good COs, “They don't just act like they care, they don't just say things like, ‘Oh, yeah, yeah, if you need anythin', we're here,’ and then, when you ask for things, they ignore ya. They actually care.” Interestingly, a number of young participants spoke positively about COs who tried to give them advice, to warn them off going down a path of offending. CO43 described giving such advice:

Maybe if I can make a kid see how Mum feels by their actions – then I’ll say something. Then I would try – maybe when releasing them or cautioning them. I do think it’s part of my role to say something in that situation, to try to prevent future offending.

Jo, for example, responded positively to receiving this sort of advice, “you can see that they are trying to help you out. They don’t want you to be in this situation.” Such an approach could have a profound effect. Avery spoke movingly about the interest shown in her by one officer which enabled her to turn her very chaotic life around. However, not all young participants appreciated such advice. Aidan and Luke in particular both resented being given what they considered to be “a lecture”.

In summary, in contrast to the often negative characterisations of young suspects’ behaviour offered by officers, the observations and interviews reveal that the majority of young suspects were more prone to resignation and a sense of powerlessness during this early stage than violent or abusive non-compliance. In particular, the accounts of young participants make plain the importance, and effectiveness, of humane and empathetic approaches to young suspects, treating them as ‘children first’. Judgemental, antagonistic responses not only breach domestic best practice⁷⁷ and international obligations,⁷⁸ but are revealed to be counter-productive and likely to yield lasting resentment. Yet rarely did I get the sense of young suspects being approached as children in the first instance by officers. However, we should perhaps be unsurprised that some COs are not engaging effectively with young people. It was

⁷⁷ See NPCC’s ‘Child Centred Policing: National Strategy for the Policing of Children and Young People’ 2016.

⁷⁸ Eg UNCRC Art37 enshrines children’s right to be treated with ‘humanity and respect’ and in a manner which ‘takes into account the needs of persons of his or her age’.

frustrating during fieldwork to receive confirmation of the absence of suitable training, as indicated in the existing literature (APPGC 2014a; HMIC 2015). No CO that I spoke to had received specific training on engaging with children. CO7's response to such an enquiry was typical, "I have had no youth specific training as a custody sergeant. You use your life experience, experience of your own children and everything." However, relying on individual experience is not a good basis for consistent, humane treatment, particularly because, as is apparent from Chapter 1, many of the young people in police custody have individual vulnerabilities and life experience very different from the children of COs and staff.

Search

Although searching is common-place in everyday life (entering events venues, for example, even some PRUs), it is important to approach general searching in custody in the context of the powerlessness young participants described experiencing during booking-in. Some young suspects, particularly those in the younger age-group, found it difficult: "I felt harassed – does that make sense?..." (Azade, 14). For example, 13 year old Kaiden explained that the only time he had been afraid in custody was when he was younger and his objection to being searched by a man was ignored. He stated, "now if a man tries to search me I will end up punching him in his face.". As identified in Chapter 1, some young arrestees will have experienced abuse by adults, and may be distressed by search in the intimidating and adult setting of the custody suite. Even without a background of abuse, for a 12 or 13 year old child such as Kaiden, who lives in a female-headed household, one can understand how being searched by a male stranger might be a daunting prospect.

Some officers appreciated that a more delicate approach to searching may be appropriate for young people, but they also identified the tension between more sympathetic approaches and the need for effectiveness. A young suspect found in the cell to have an item of contraband missed in a search might lead to a "conceals" marker on the Police National Computer ('PNC'), and regular strip searching, as described below. The few objections raised by older participants tended to be that undue force was used. Robert for example, complained that an arresting officer took the search as an opportunity to assault him beneath the eyeline of the CO, "toe pecking" him and stabbing his pen into his foot when lifted during search.

It was routine, on observation, for all the personal effects of young suspects to be seized, often including an outer jacket. I only observed one young suspect allowed to retain a non-clothing item, in that case a book. The overriding consideration seemed to be physical risk, rather than the emotional welfare of the child, and I saw little apparent assessment of the actual risk presented by the individual young suspect. Property seized in this way was invariably recorded in the custody record and signed for, but I did not observe anything more than the most cursory explanation about seizing personal items, certainly nothing which amounted to the sort of explanation or justification required in PACE or the APP. This blanket approach is understandable to a degree, saving time-consuming assessment of the individual risks. However, the experiences of young suspects illuminate how upsetting, and how punitive these routine approaches can be (see in particular Chapter 4).

The major point of contention for many young participants was the taking of laces and cords from their clothing, ostensibly to prevent them being used for self-harm. The data suggests that there is a near blanket approach to the taking of these in some areas; as one Inspector observed to me in F2, “You’d have to be Mother Mary to be allowed to keep your cords in this place”. Young participants generally understood why laces and cords were taken, and a reasonable number did not object, although not all of those considered that the measure was justifiable. However, this was a source of real anger and resentment for a number of participants. There was particular frustration when the cords were cut out, “I go mad when they cut ‘em, me.” (Dexter), or when it was not possible to put laces or cords back in, “it does my head...it’s like you’re just ruining my clothes” (Sadie).

Risk aversion seems to overwhelm any appreciation officers may have of how much a hoodie or pair of shoes may be valued by a young person, particularly those whose backgrounds are significantly disadvantaged. Or it obscures the understanding that walking home without laces in one’s shoes can be embarrassing, potentially notifying the observant of your arrest, (Malik). However, some of the episodes recounted, where, for example, COs were resistant to offering alternative footwear, or objected to suspects simply removing shoes (Riley), seem to display such a depth of disregard for young suspects that they had something of a punitive character. Not only does this approach tend to cause outbursts in the custody suite, “The only time we get kicking off is taking laces or cords.” (CO24); but it has the capacity to undermine the legitimacy of the police. Several found police attitudes to laces and cords laughable.

Will retorted, “I normally just sit there and think to myself – what are you doing? I just laugh at them. I just use them as a laughing stock – that’s what they are.”

The seizure of mobile phones was also contentious. Young participants tended to appreciate why phones would be seized. It was their retention for “evidential purposes”, sometimes for many months, and far beyond what seemed reasonable to enable data downloading, which caused significant anger. Indeed for Malik, for example, this was “the worst thing” about the custody experience. For several young participants, especially those trying to maintain family ties whilst living in residential care, this had the capacity to be seriously punitive, and young participants described considerable frustration at being passed from pillar to post in their efforts to recover phones.

Strip search – a violation

Issues surrounding strip search prompted emotional accounts from young participants, but also considerable anguish from COs. Whilst a necessary tool, the data reveals how problematic strip search can be. For Carter, who had been strip-searched 11 times, the experience felt “like a violation” (echoing similar accounts in HMIC 2015).⁷⁹ Several young participants complained about being required to remove all of their clothes at once (contrary to Code C Annex A 11(d) guidance). Sadie described being watched by a female officer who required her to take all her clothes off as “weird” and “uncomfortable”. Aaron similarly objected to being required to take off all his clothes in the absence of an AA, only to be given them back 10 minutes later, “I started goin’ mad, innit? I went, “You fuckin’ paedo... I were goin’ sick, me.” One can appreciate how exposed a child might feel in such a situation, the more so for a young person with a history of abuse at the hands of an adult.

Most concerning were the accounts of repeat strip searches where a young person has a ‘warning marker’ on the PNC or force custody system for “conceals blades”, or similar, often associated with a girl hiding razor blades in a bra, or using the underwiring in a bra to self-harm. Avery described how these ‘markers’ operate. On one occasion in custody she had been found to have an unauthorized item with her in the cell (following an inadequate search, she suggested), resulting in a forcible strip search. After that first occasion “they like just put my name in the system then for some

⁷⁹ Although Carter is a BAME young person, young BAME participants were not disproportionately represented amongst those who reported being strip-searched, (in contrast to findings in Newburn, Shiner, and Hayman 2004).

reason it used to come up with that – snuck something into the cells before so they used to always do it.” Strip searching, she explained, feels “like they’ve taken all your dignity” and she would routinely respond violently when it was proposed. When Avery challenged the CO the response would be, “Cos you’ve done it in the past”, and indeed custody staff acknowledged that this did occur. As CA40 explained, “We tell them this is what happens every time you come in here – we can’t leave you.”. Abigail, who had had similar experiences, felt that such an approach was unjustified: “the excuse that they use is that I used to self harm and so they need to check me. That’s the excuse that they use innit.”.

Officers in all three areas expressed genuine concern about the traumatising effect of strip searching children: “No-one wants to do it – strip search – but sometimes it’s got to be done” (CO10). Mindful of best practice guidance, staff discussed using constant watch as an alternative to strip-search. However, as CO10 observed, constant watch is demanding and can be risky, “if they’re not fully searched and if you nod off – a few seconds that’s enough (for self harm to occur) and it could happen.”. It is also hugely resource intensive and for some COs it was not seen as an option for long periods. CO31 explained that he had used handcuffs to prevent self-harm, but observed that this would not be an option for a smaller young person who could slip out of the cuffs. There did not seem to be much consideration of less intrusive approaches. Difficulties securing AAs were also raised,⁸⁰ and several officers recounted urgent strip searches conducted on children with markers who were also displaying or reporting an intention to harm themselves, which had become really problematic. I heard accounts of young female suspects resisting violently, requiring other, often male, officers to intervene. Such instances were recounted with real anguish, as officers wrestled to reconcile balancing the need to keep a child safe against the traumatising effects of the search. As CA40 explained “You’re damned if you do, damned if you don’t.”. The need to address risk trumped concerns about the emotional effects on these most vulnerable of young suspects, and coercive approaches tended to predominate. As CO31 explained, “It all comes down to justification. I’d rather rationalise to a disciplinary hearing than to the coroner’s court.”.

⁸⁰ I address the particular role of AAs during strip/intimate search in Chapter 4.

Authorisation of Detention

The provision that has the greatest capacity to protect a young suspect is the requirement for necessity grounds (PACE s37) before their detention can be authorised. Given the critical nature of this decision it was extraordinary to observe how it functions in practice. What is most striking is that the young suspect is invariably entirely alone, with no solicitor or AA to protect their interests or inform the decision-making process. On observation there was routinely no explanation that the CO had to decide whether detention was “necessary”. If the CO provided any explanation at all they tended to say, “I’m going to hear now about the circumstances of your arrest” or similar. Unsurprisingly, only one young participant, Logan, showed a good understanding of this point in the process. There was no sense that any other young participant understood even that a decision had been made by the CO, rather than the AO simply informing the CO of the grounds for arrest and the basis for detention. The decision to authorise detention is one which, arguably, a young arrestee might participate usefully in, given the chance, in terms of providing information about, or contacts to investigate, alternative accommodation, or offering information to satisfy the officer of their return on bail.

Changing approaches in the force areas observed

One CO in recent empirical research observed that there may be “the beginning of a sea change” moving towards a true examination of the question “is it necessary to detain?” (Dehaghani 2017a, 202). Although the fieldwork in this study was conducted in mid to late 2016 (less than 2 year’s after Dehaghani’s) it appears, at least in the way COs discussed the issue, that the sea change was underway. In all three areas COs talked about, and many welcomed, a changing approach to authorising detention for children and young people, and this was also noted by solicitors in all fieldwork areas.

However, what is notable from the data is that this was not resulting in more refusals to authorise detention. I saw one refusal (YS37) and one young participant described an instance (Logan). Rather, it was suggested that “stupid arrests” had stopped, because “it only takes once for a cop to be embarrassed (by a refusal)” (CO24), and, “the message has got out” that COs had “started giving bobbies a hard time.” (CO26). Although, as CO26 noted, whilst local officers had got the message, detectives from specialist divisions still “look at you if you ask for necessity grounds.”

Particularly interesting were the reasons given by COs for refusing authorisation. Although the impact of custody on a young person, and their vulnerability were referenced in discussions, the issue of the ‘risk’ appeared to be the primary motivation in refusing authorisation: “with the risks they present it’s just not necessary” (CO7). Reflecting on the prevalence of self harm, and the potential for a police contact death if a child is detained, COs37 and 38 confessed “we are petrified of juveniles coming in”. Contrary to the COs in Dehaghani’s research, who indicated that they felt pressurised by senior officers to authorise detention (Dehaghani 2017a), officers in the force areas that I observed were more likely to feel pressure to refuse for fear of criticism from senior officers. COs in F3 complained about receiving “the usual email” (CO34) or “getting into trouble” (CO43) for detaining a young person overnight. My data does not reveal the particular motivations of more senior officers, although there was some suggestion that this may be a result of the more rigorous recording of overnight detention figures (following (Skinns 2011a)).

Independence issues

Despite protestations about giving AOs a “hard time” my observations suggest that it is still difficult for COs “to stand back from their institutional and collegial ties with other officers” (McConville et al. 1991, 42). As CO32 explained, “I have refused detention – I don’t like to because the officer has felt it is the best course of action.” Similarly, Logan recounted being told by a CO when he complained about the basis for his detention, “if she’s arrested you, we ‘ave to take you.” Several officers remarked that prior notification of a “juvenile” coming in was welcome because they could avoid the awkwardness of face to face refusal: “they get criticism if I refuse at the desk” (CO35) (see (Dehaghani 2017a) for similar).

Few young participants appreciated the significance of the CO’s distinctive white shirt⁸¹ or understood their intended independence from AOs and investigating teams. Those who were aware did not consider the separation to function meaningfully: “Yeah but the way they speak to each other from what I’ve known, from my experience, they seem like they are all cool with each other.” (Hussain). Robert described a CO responding to his complaint about treatment on arrest: “if you think that’s happened complain....Otherwise we can’t do anything because they’re coppers, they’re good people, you’re the criminals.”. Indeed, Malik recalled a CO offering to help an arresting

⁸¹ Intended to distinguish them from street officers.

officer to construct her grounds for detention, “ ‘We can go to the back if you want to talk about it’ ...I still remember what he said” echoing a suggestion in (Dehaghani 2017a) of collusion between COs and arresting officers in constructing necessity grounds.

I observed one instance which illustrates what can go wrong when COs do bow to these pressures, and engage in “easing behaviour” (Cain 1973, 37). In this case a 14 year old was brought to the desk for breach of the peace (YS43). The CO rightly spotted immediately that detention could not be authorised.⁸² However YS43 had reportedly been extremely violent on arrest and was described as “kicking 10 bells out of the back of the police van”. It was plain that refusing to authorise detention would be very awkward, so to help the AO the CO suggested initially “Plan B, go for a public protection order”. The CO then discovered that YS43 was due to be voluntarily interviewed in respect of an alleged serious sexual offence in a few days time, and so authorised his detention, “for his own safety and outstanding offences”, stating to the arresting officer, “If he’s not arrested for the other ones (offences) I want him out”. When offered a solicitor YS43 replied “What’s that?”. The CO responded “Gives you legal advice. But for breach of the peace you can’t be prosecuted yet”. YS43 refused a solicitor, but was duly arrested for the sexual offence, and after six disruptive hours in a cell, was interviewed in respect of it, with a FAA but no solicitor. This was undoubtedly not a usual case, but it illustrates how problematic maintaining independence can be, and the damaging consequences of flawed decision-making.

Necessary or convenient?

Despite the rhetoric of change, amongst the young suspects that I tracked, there was a significant number of detentions for which it was doubtful that necessity grounds were made out. In particular a number of detentions related to multi-handed arrests in respect of which the sort of “routine” authorisation noted by previous commentators (McConville, Sanders, and Leng 1991, 43) still appears to occur. For example, YS14 and 15 were both 16 year old boys who had been arrested in the early hours for non-dwelling burglary and theft arising from their presence in an unoccupied commercial building. Neither had a previous record, both had engaged parents. The grounds for detention, to “obtain evidence by questioning” (YS14) and to “detain for interview” (YS15), plainly reflected case-construction convenience, to avoid collusion and to

⁸² See Cape 2011 for full discussion of this exceptional common law power.

encourage admissions, but not “necessity”. I did see one example of a multi-handed arrest where detention was plainly necessary (5 handed arrest for violent disorder leading to a stabbing, YS45-47), but this was the exception.

There were also several detentions said to be necessary to enable search or seizure of items, especially mobile phones. For example, the grounds for detention in the case of YS34 were given as “to search home address”, prompting even YS34 himself to ask: “What do you need to keep me for?”. As identified above, the powers to search and seize do not require custodial arrest.⁸³ For some officers the “necessity” requirement was over-ridden because it was considered “in the interests” of the young suspect for them to be detained. For example the CO dealing with YS34 explained: “it’s in his interests too – to stay here and to be interviewed, following strip search and home search – it’s not good for him to send him home and then say come back another day.” Undeniably voluntary attendance processes can extend timescales, if only minimally, but this seemed really to be about police convenience; voluntary attendance being viewed by some as “hard work” and “much more hassle” (CO41).

Benefit to the young person and the community was also used to justify detentions which had an incapacitative or social discipline aspect (Choongh 1997) - the control of young people as “police property” (Lee 1981, 53-4). CO34 described keeping a young suspect overnight, “It sends a message and keeps the community safe. I really had to write up my rationale. It was partly for his own protection and family members – someone had given him an alternative address and it was my decision to keep him in.” Little consideration was given to the possibility of negative repercussions, “...if they’re out and about at night, being in a cell for a few hours. I don’t see anything wrong with it. It won’t do them any harm – especially if they know they’ve been up to something.” (CA33). Some officers emphasised the perceived deterrent value of custody, “What is the harm in coming here – cooling off, shouting in the cell? We don’t care if they kick off here. I think it is a bit of a deterrent. I’m telling officers we can’t accept them when I think we should be able to accept.” (CO43), and there was some concern that refusing to authorise detention might undermine operational effectiveness. IO6 stated “There’s a feeling that they’re getting away with it (if not arrested)”, although when challenged as to whether this had been expressed, he countered, “no-one has said it yet as a juvenile. But in the long run it might stack up.”

⁸³ PACE s18, s32

Domestic allegations

Detention following arrest for domestic assaults was very common on observations (10 instances in the YS sample), and often in circumstances which called into question necessity grounds. There appeared to be three structural factors which drove these numbers. The most prominent factor was the lack of availability of other options, for families and officers, and the failure of other resource-stretched services, such as Child and Adolescent Mental Health Services (CAMHS) and the Local Authority to meet a family's needs.⁸⁴ Not infrequently the AOs and CO have little option practically and detention is authorised on a 'safeguarding' basis. For example 11 year old YS5 who had an ASC diagnosis was detained for over 8 hours following his arrest for common assault on family members one Sunday afternoon. Officers had been called out several times over the weekend. His mother, being unable to cope, had sought help from the local authority but had been told to try to manage until Monday. The CO observed, "What can we do? We can't keep him here." Formally his detention was authorised but it was implicitly accepted that the necessity grounds for investigation and interview were not made out. The officer in the case reflected, "Whatever he says (in interview) we're going to go for avoiding caution and prosecution. We'll refer to YOT for intervention and try to get some services engaged ... We don't want to criminalise them this young". His view aligns with that of IO4 in F2: "Juveniles are generally here for low level offences. They're normally having other problems. Crime is often not the central feature – the problem is with drugs or at home."

There were four other similar cases of children with dispositional vulnerabilities (such as emerging mental health conditions, ADHD, ASC, and LD) arrested for assault on a family member: (YS1, YS13, YS22, YS28 – all aged 14). The authorisations of detention in these cases were understandable, given the lack of available alternatives, but it is a rather perverse conclusion that the detention of these extremely vulnerable children is desirable from a safeguarding perspective.

These authorisations are enabled by the second factor, that there is a gulf between what may be a lawful arrest, often to prevent further harm, and the grounds for authorising detention under s37 of PACE. This has been noted by commentators who have suggested that necessity is not a workable criterion (Dehaghani 2017a; Sanders 2010) since a strict application would negative too many lawful arrests. In my

⁸⁴ See Health Committee 2014 and United Nations 2016 for the devastating effect of austerity measures on services for young people, particularly CAMHS.

observations this difficulty was sometimes evaded by an elision of the grounds for arrest and grounds for authorising detention. For example CO4 commented that authorisations of detention in domestic violence cases “tend to be straightforward – there is someone at risk”. This may be, of course, a ground for arrest but is not, however, a ground for authorising detention. Thirdly, the requirement for officers to take “positive action” in domestic assault callouts⁸⁵ also contributes. As CO31 observed, “There is limited discretion for domestic violence cases. Questions are asked if you do not take positive action – it’s an expectation.” (see similar in respect of children in HMIC 2015).

Detaining the most vulnerable

My observations also support longstanding concerns that this requirement for “positive action” is contributing to the unnecessary arrest and criminalisation of children who are ‘looked after’ by the local authority, especially those in residential care (HMIC 2015; Laming, 2017). In F2 there were a substantial number of residential homes and officers commented that their residents were disproportionately represented amongst young arrestees: “Otherwise juveniles are being diverted from custody. Just care homes – we don’t see many other juveniles” (CO20). In that force area, I tracked 19 young suspects of which 7 were ‘looked after’ by the Local Authority and one more was a ‘child at risk’.⁸⁶ Four individual episodes involved arrests arising out of young people involved in assault or damage in their children’s home (YS17, YS26, YS27, YS30). Each of those young people had dispositional vulnerabilities in addition to their ‘looked after’ status: including self-harm, ADHD, anxiety and depression and mental illness. In YS30’s case, for example, grounds for arrest were recorded as “to prevent injury” following criminal damage to an item in the home which she had broken in order to self harm, detention authorisation was recorded as “investigate offence (interview)”.

In my view, rigorous application of the very high threshold of “necessity” before detention is authorised should have resulted in many of the young suspects that I tracked on observation being turned away. This analysis has revealed a range of factors

⁸⁵ APP, Major investigation and public protection, Domestic Abuse. Domestic abuse is defined as ‘any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality.’ Positive action does not absolutely require arrest, but the discretion not to arrest is arguably significantly reduced by the requirement for officers to “justify the decision **not** to arrest” (bold in the original) where there are grounds and it would be proportionate.

⁸⁶ Although the true figure may have been higher – there was no specific question asked during booking-in which meant that ‘looked after’ status would be routinely identified.

which prevent consistent implementation of the protection and which are holding back the “sea change”. In the first instance the thin veil of independence cast over the CO by PACE functions imperfectly in practice, for both institutional and structural reasons. This is compounded by a lack of scrutiny by any representative on behalf of young suspects, who are themselves not generally enabled to participate effectively in the process. COs appear to be conflicted. Some recognise the undesirability of detaining children, if only because of the risk they represent, but feel obliged to detain because of a failure in community support and other services. Others continue to be motivated by case-construction imperatives, or deterrence principles, viewing the custody process as having a purpose beyond the gathering of reliable evidence. Whilst there has been a sustained and welcome fall in child arrest numbers nationally (YJB/MOJ 2019), the result is that those who are still being detained tend to be those who are the most disadvantaged and for whom custody is likely to be a seriously punitive experience.

Risk Assessment

Although formats varied across areas, a number of common issues emerged which reduced the effectiveness of the RA process. Most critically, there was no RA format tailored for young suspects, despite the different issues presented by children, particularly their general physical good health, and the prevalence of developmental disorders, such as ADHD and ASC (see Chapter 1). Some COs were concerned that young suspects did not understand the questions, particularly that a single question about “mental health” would not prompt relevant disclosure about dispositional vulnerabilities: “I’m not sure all juveniles would recognise that (ADHD or ASC) as a mental health issue, so it doesn’t get mentioned” (CO29). Notably questions which might trigger useful information, such as special help at school or “looked after” status, are not routinely asked, nor are RAs often repeated with the AA. Although some COs adjusted their approach ad hoc for children, others reported that they did not “treat juveniles any differently” (CO31). The motivation for sticking to script tended to be risk aversion. COs were desperately conscious of the risk burden that they carried, “if anyone dies it’s our fault” (CO26), and were reluctant to miss out questions “in case something were to happen” (CO29); as Ins2 observed, “We’re very, very risk averse - we know no other way.”.

Explanation by COs about the purpose of the RA was often limited, and this could affect disclosure: “I could've told them that I've got an EHC plan⁸⁷.... I could've told them that I've been in hospital, but I didn't really wanna 'cause I didn't see the point in them knowing anything like that.” (Kate). Staff and professionals suggested that some young suspects were simply disinclined to raise issues, “It’s not in their nature to say that they have ADHD or dyslexia or to complain” (Sol8). The adversarial nature of custody also inhibited responses. Sandor, for example, explained, “I was really concerned about just the fact that I’m anxious or depressed, are they going to use it in a way so that I’d say everything that happened?” Some young participants decided against disclosures because they felt that the police did not have the “right to know” (Will) or it was “none of their business” (Carter). Conversely, Logan suggested that he might actively mislead, by saying that he had a particular difficulty requiring constant observation just to inconvenience the officers “you’re wasting their time, they got to stand there all night... it’s just something to agg ‘em by....I just laugh at them all night.”.

Many young participants complained about the length of the RA; that COs ask, “long, bare, unnecessary things” (Jayden). There was variation across sites but in F3, for example, the full risk assessment contained dozens of questions and it could take 20 minutes to complete “for a competent adult” (CO41). This was particularly difficult for participants in the younger age-group, some of whom described being bored and tired, and becoming abusive during lengthy RAs, or disruptive afterwards as a result. Regular attendees particularly objected to the repetition of the same questions week after week, perceiving it to delay interview and “just long out the process even more” (Harper). Logan suggested, “They should ask you ‘Has anything changed since the last time you came here?’”, and where, occasionally, COs did take such an approach this was appreciated by young participants.

A significant number of young participants referred to the presence of other arrestees during their RA, which unsurprisingly tended to inhibit their responses, particularly if the people were known to them, local offenders, or (for girls) members of the opposite sex. COs themselves raised concerns about the “very intrusive, very personal” (CO39) nature of questions concerning self-harm which, where answered positively, would routinely involve questions about most recent episodes, methods and

⁸⁷ An Education, Health and Care Plan is put in place for young people needing more support than is available through Special Educational Needs support in school.

triggers. This could be very upsetting for young participants: “you’re kind of bringing back kind of emotions that necessarily you might of, you might of like passed for that time being.” (Harper). This could also provoke angry responses: “If they ask about it, I just go, ‘Yes, but I don’t do it no more.’ And then they start goin’ into more about it, ‘Oh, when did you do it?’ And I’m like, ‘Just shut the fuck up.’ Oh, it pisses me off, innit.” (Aaron) (see Gray 2015 for similar distress reported by young people in custodial institutions).

Particularly concerning was the suggestion that a young suspect might be unwilling to disclose a vulnerability because of the harsh response likely to follow. Harper explained that she learnt to deny a history of suicidal ideation: “I didn’t tell them nothing. Cos then I feel that its gonna be used against me. Then like all your clothes get taken and they think you’re gonna commit suicide in your cell and it’s just daunting like having to like, if you say ‘oh yeah I’m suicidal’ or whatever.”. Given these difficulties, it is frustrating that the response to positive disclosures during RA is extraordinarily limited. As CO23 recounted, “It’s a monster – to write all the info down but then I only do one of 3 things: send them to hospital, to see the nurse or to the cell”. As I discuss in Chapter 4, positive disclosures rarely triggered adjustments to the detention experience of young suspects.

The RA process should be a key moment in gathering information which can be used to reduce the impact of detention on young suspects, and to ensure that they are in a fit state for interview. However, the data suggests that it tends instead to be a source of difficulty for young suspects; at best it is long and tiring, at worst it can trigger adverse responses and be traumatic in itself. It is also apparent that the information obtained is often unreliable, and the personal nature of the questioning is not justified by the limited adjustment which is achieved as a result.

Rights and Entitlements

The delivery of intelligible information about rights and entitlements is essential in ensuring a fair process for young suspects. However, on observation, the communication of this vital information was very variable. Some COs clearly appreciated the challenges in terms of comprehension for children (as identified by Kemp and Hodgson 2016), and were careful to deliver the material in an accessible manner. However, I also saw COs provide the information to children in an almost robotic fashion, and at significant pace, with no effort made to adjust the process to

engage with the young person, or check their understanding (also observed in Skinns 2011b). Here the emphasis was on moving through the procedure efficiently and on ensuring that the elements of the process are followed, rather than on enabling participation: “I do pretty much the same spiel with everyone – so that I know it’s been done.” (CO43) (see Kemp and Hodgson 2016; Kemp et al. 2012; Blackstock et al. 2014). The wording of much of what is said during the process is reasonably straightforward, or is habitually simplified by custody staff, for example the ‘Codes of Practice’ are typically referred to as “the rulebook”. However, there was also widespread use, without any explanation, of terms that plainly meant little to the young person hearing them eg: “recordable offence”, “speculative search”, and “PNC”.

There were several surprising omissions in the communication of rights. Despite the requirement that young suspects be told of their right to speak to the AA privately “at any time” (Code C 3.18)⁸⁸ I never saw this occur. This is significant in my view, given that the AA is the primary adjustment for young suspects and that the importance of communicating the AA’s role is a specific focus of the APP⁸⁹. Secondly, in no booking-in was a young person told of their right not to be held incommunicado (Code C 5.1). Although there is no requirement for this to be articulated face to face in Code C, it seems to me, if one was to treat a young suspect as a child first, that this would be a straightforwardly humane measure, especially where a child may be detained without any external assistance for many hours, and where family members may not be able to attend as AA (as frequently occurred). Indeed, one young suspect (YS34) attempted to engage his right to a phonecall on booking-in. The CO refused, “I can’t let you speak to just anyone”.⁹⁰ In some cases the CO would pass the phone to a young suspect to speak to a parent, who had been called for “intimation”. Although often welcome, this is not a fulfillment of the right to a phonecall, which is additional to rights regarding intimation and AA contact. Finally, I also observed no CO make any reference to a suspect’s right to complain, despite the emphasis in the APP.⁹¹

There are three features common to these omissions which may be instructive: firstly they are liable to increase demands on custody staff if detainees are aware of the right, secondly they are liable to mitigate the harshness of the experience and thirdly

⁸⁸ In the updated Code C at 3.15.

⁸⁹ APP (CYP) 3.3.

⁹⁰ The officer does have the power to delay such contacts (Annex B) but this requires certain technical steps to be taken.

⁹¹ APP (CYP) 3.3.

there is no requirement for the detainee to sign to confirm that they have been informed. What was apparent on observation was a rights process too often pared down to the bare minimum required were the process to be scrutinised at court. For many COs concerns to ensure the participation and emotional welfare of the young suspect appear to be overridden by practical constraints and institutional motivations, including an adversarial outlook which casts the child suspect as perpetrator rather than as vulnerable child. As CO22 explained of young “regulars” in the custody suite, “they have done something wrong so you can’t be too pink and fluffy”.

Young participants “not really” understanding

In analysing young participants’ understanding of their rights, it is important to bear in mind the delay between detention episode and research interview. Although many young participants could speak cogently about their rights, the intervening months will have affected the recall of some. However, even where they had limited understanding after the event, this is of relevance since, on observation, booking-in was almost invariably preceded by the CO asking, “Have you been here before?” or “Have you been arrested before?”. A positive answer generally triggered a less full explanation, on the clear assumption that a detainee who has been in custody is already familiar with their rights. This was reinforced by a general presumption in the custody suite that young suspects who used the “the right words: bail condition, CPS for decision...” could be relied upon to “understand the system” (PAA1). Understanding what young people retain of the process is, as a result, highly relevant. Indeed, as I uncover beneath, young participants with regular experience of custody revealed how flawed this approach could be, displaying often very limited understanding of their rights (see Barnes and Wilson 2008; Grisso 1981).

Discussing the “continuing rights” the majority of participants could remember having been offered a “solicitor”, being shown the “rulebook” and appreciating that someone would be informed of their detention. A base-level awareness of those rights was therefore widely apparent, although very few could list them spontaneously. Some young participants remarked that officers used “jargon” (Harper), and there were some words in particular that caused difficulty - the term “solicitor”, for example, as I explore in Chapter 6. However, what was clear is not that young participants were unable follow the syntax of the information provided, or attach a basic meaning to the words used, but that they were unable to engage with the meaning or significance of the

right. For example, young participants might understand that they were entitled to look at the “rulebook”, but in discussing that right it was apparent to me that they did not appreciate why they may wish to do so, how that information might be of use or have any belief that they could effectively challenge their treatment. Jake encapsulated this difficulty, describing his grasp as “not really” understanding. CO29 similarly reflected on the rights process: “They understand it - but I don’t think they understand the importance of it.” This accords with a developmental psychological appreciation that immaturity may affect decision-making, not by reason of cognitive deficiency, but through immature judgement and reasoning (Scott and Grisso 1997).

Natural developmental immaturity emerged as a factor in a range of barriers to a deeper appreciation of rights. The data suggests that the drawn out waiting process, and the lengthy RA, could significantly undermine young suspects’ ability to focus on, and take in, the rights and entitlements process. As Sadie explained, the process is so long and boring, “I just say yeah whatever...I just wanna get in and out”. Commonly young participants said that they avoided asking questions or revealing a lack of understanding, since this would simply prolong the process and may delay release. Malik described the frustration that builds up, “Yeah, so they’re asking me these fucked up questions man. Just do the thing, take me in the cell, interview me, let me out. Why take so long?” Here, youthful impatience is exacerbated by lack of knowledge - few young participants appreciated the separation of the CO from the investigation process and that the length of the booking-in process has little bearing, if any, on the timing of their release.

For regular detainees this desperation to get out is exacerbated by the repetitive nature of their experiences. Avery described trying to limit the rights process out of frustration, “in the end and that I was just like ‘Yeah, I know it all, I know it all’ before they’ve even finished their questions”, even though she had not really understood everything that was going on. Interestingly, just as some custody staff worked on the assumption of regulars’ prior knowledge, I heard the same beliefs expressed by young people themselves. Luke explained, “Me – I know the ins and outs of everything now because I’ve been in there so many times that – so it’s just, I know everything.” He believed that he had a firm grasp of his rights, although when explored his understanding was very patchy, with no appreciation of critical features such as the independence of the solicitor. These findings underline the importance of appreciating

the distinction between stated understanding and the deeper appreciation which is required to enable fully informed decision-making around the rights in question.

Additional, dispositional vulnerabilities could exacerbate comprehension difficulties still further. Evan explained that he had trouble holding lengthy or complex information in his head when younger, “I’d have to read it to myself because, while they’re talking, it’s like, when they get to the end of the sentence, I can’t even remember the start of the sentence.” Asked if he could get help with that in a custody suite he responded “If it were a good one (CO), then yeah. If not, then no.” We see in Evan’s case the critical effect that his different vulnerabilities can have on each other. Not only is he coping with the effects of his learning disability but, as is not uncommon amongst children (Grisso 1981), he is less inclined to ask for help or to raise an issue if he is not receiving the necessary support.

Unsurprisingly, given these findings, very few young participants had a good understanding of their rights and entitlements beyond the “continuing rights”. No young participant was aware of the right to consult privately with an AA at any time (considered further in Chapter 5), whilst the rights to make a phonecall, to have time in the exercise yard or take a shower were appreciated by few participants, and engaged by even fewer (considered further in Chapter 4).

Protections

Code C provides several protections to ensure that rights and entitlements are conveyed, and to support their accessibility. Firstly, the suspect, and the AA, are required to sign the custody record to confirm that they have been made aware of their rights. On observation, this signing process was very often peremptorily completed and rarely prompted any check on comprehension. Often, I observed, the process couched in a leading question such as: “Sign here to say you have understood and have no questions.”. Again, where the suspect is a regular the process may be telescoped further, “if it’s a parent (as AA) I go though it in detail, more slowly....If the young person’s a regular you can just say ‘sign there, there, there’.” (CO for YS14).

The notice of rights and entitlements

Secondly, the provision of the notice of rights and entitlements (‘the notice’) is designed to ensure awareness, especially of the wider entitlements, and to enable the information to be assimilated with more time after the booking-in process is completed. During observations the notice was routinely ‘provided’, either being handed to the suspect, or

pointed out as available on the desk between CO and suspect. Often reference to the notice was rolled into the signing process discussed above. However, it was notable that frequently young suspects did not even glance at the paper. Even where it was handed to the young person, the notice was almost invariably left on the custody desk, an approach confirmed by the majority of young participants. Rarely did the CO encourage the young suspect to take it with them, indeed often there was an accompanying comment, “That long boring piece of paper outlines your rights...” (CA to YS27), “You’ll probably rip it up but I’ve got to give it to you.” (CO to YS43). COs seemed generally unconcerned by neglect of the notice: “it’s very, very rare that they take the rights and entitlements notice – they’re not interested.” (CO25).

Some COs expressed an assumption that the AA would read the sheet with a young suspect, although only Tyler could recall this having occurred. Some COs suggested that they would “go over it” with the young suspect to check their understanding (eg CO29), although I did not observe this occurring either. At most a CO might touch on the availability of bedding, and food and drink, perhaps reading material. It was rare for young participants to suggest that they had been given an explanation of the notice. Unusually Riley described having been given time to read the notice,⁹² “...They just pass you the paper and say, ‘Read it.’ ...At the end of it, they turn around and go, ‘Did you understand all that or do you want me to go into any further detail?’”. His response was fairly predictable, “You just say you understand it...Even if I don’t understand, I’d say I understand Just to skip time.”.

Accessibility and the Easyread

The notices encountered on observations were in a format jointly approved by the Home Office, the Legal Aid Agency and the Law Society.⁹³ In terms of completeness, they included all the information required by Code C 3.2, although unhelpfully the material about the AA was very limited. It is the accessibility of the notice which is of greatest concern. The longer 10-page version resembles a GCSE exam paper in format. The shorter 4-page version is dauntingly close-typed. Unsurprisingly, most young participants suggested that, even if they picked it up, they did not read the notice: “it confuses” (Logan), contains “all big words” (Luke), or was just “boring” (Aaron).

⁹² Although a requirement of Code C 3.2A, given the length of the notice this requirement is simply impracticable at the desk.

⁹³ Either the 10-page June 2014 version (F1 and 2) or the October 2014 version, which condenses the same information into 4 close-typed pages (F3).

Some simply were not in a state of mind to read a long and complex document; others were more creative: “I just make paper aeroplanes” (Rezar) (see similar indifference in Kemp and Hodgson 2016, 134).

In 2011 the CJI recommended an “age-appropriate” version of the notice be introduced (CJI 2011, 10). I am not aware of such an adjustment, although I encountered ample supplies of two ‘easyread’ formulations of the notice during observations.⁹⁴ Although Code C 3.3A stipulates that an “illustrated easyread version of the notice should also be provided if available”, I did not observe this being provided to any young suspect. Indeed, staff responses to easyread versions were very striking. Some officers showed a distinct disregard for young suspects’ participation difficulties, confidently asserting that an easyread version was not available, despite clear indications to the contrary, or dismissing the easyread version as “The Beano” (CO23). The approach of some others seemed to stem from a reluctance to acknowledge young suspects’ particular needs, easyread being “really geared towards vulnerable adults” (CO41), “I don’t routinely give it to juveniles – it’s for those with ADHD, LD, Autism, Down Syndrome” (CO30), despite the frequent disclosure of such vulnerabilities by young suspects (see Hughes et al 2012).

However, in this reluctance to provide an easyread version it is possible to glimpse signs of a more concerning motivation. Previous research has suggested that inaccessible communication of rights may be a ‘ploy’ to prevent take-up of those rights, particularly the right to legal advice (Blackstock et al. 2014; Kemp et al. 2012). As I have set out, a range of factors inhibit young suspects’ understanding of their rights, not least the limitations on what a CO can realistically achieve on booking-in. Nonetheless, there are some suggestions that staff may not be particularly proactive in promoting rights understanding because ignorance of rights suits them. As CO41 observed in rejecting the easyread version, “it’s too prescriptive - it raises expectations and probably we can’t meet them.” CA1 described the irritation of an engaged suspect making demands from the notice, “I find it quite annoying... ‘but it says here...’...they (suspects) go on and on”. Not infrequently young suspects who made no demands on staff were described as “good as gold” whilst those who pushed for their entitlements tended to be framed as “demanding” (CA26).

⁹⁴ One 44 page version produced by Hertfordshire Police and another 10 sided A5 leaflet entitled, ‘*You have been arrested - this will tell you what will happen*’. The latter covered slightly different information to the approved notice.

Repetition of rights in the presence of the AA

Thirdly, Code C aims to address some of the challenges described above by requiring that rights and entitlements be repeated in the presence of the AA. Young participants provided some evidence that this could have a positive effect. Aidan explained that he would ask his Mum to explain any words during the process that he did not understand, whilst Tom identified that he simply found it easier to take the information in when he was told for the second time. Although fairly routinely complied with (only Jake complained that the process was not repeated), the data suggests, however, that this policy is not always effective, not least because it relies on the AA arriving in good time and being able themselves to support the young person's understanding. I explore these issues in detail Chapter 5.

However, I raise here one issue specifically related to the repetition requirement, namely that it can have an unanticipated, negative effect on the most vulnerable of young suspects. The difficulty is that, as a result of the existence of the requirement, some COs appear to take the view that, in the absence of the AA, the information required to be provided may not be understandable at all by a particularly young suspect, or one with significant dispositional vulnerabilities. Although this approach is motivated by an acknowledgement of participation concerns, it can have the effect of entirely depriving the most vulnerable young suspects of critical rights, sometimes for several hours, since the attendance of the AA is often delayed.⁹⁵ For example, the CO who booked-in, otherwise very sympathetically, 14 year old YS28 explained: "I made perfectly clear we won't be having him long. He's autistic as well so I haven't done rights or anything." In fact no AA was available and YS28 spent seven hours in the cell without proper explanation of his rights and entitlements before being bailed. Such delays are also liable to result in waiver of the right to legal advice, as I discuss in Chapter 6.

This analysis of the rights and entitlements process reveals a range of challenges for young suspects. Although superficially many may understand the meaning of the "ongoing rights", gaining the deeper awareness required to enable the exercise of those rights is often hampered by the child's intersecting vulnerabilities. Busy officers too often deliver a pared down version of the rights information which pays lip service to Code C (particularly those elements requiring verification on the custody record), but

⁹⁵ See AppB Young Suspect Schedule which shows delays before the arrival of the AA, where known.

without providing the greater explanation required in the APP, or checking on understanding. The entitlements are rarely fully explained. Throughout we catch glimpses of an adversarial cast of mind amongst the staff which seems to foster indifference to the difficulties of many young suspects, and the quite patent ineffectiveness of some of the protections designed to support their appreciation of their rights.

Conclusions

The picture which emerges from these early stages of police detention is one of a process largely unadjusted to account for young suspects. Seen through the eyes of young participants, it is clear that the NPCC's aspiration that officers approach all children, including arrestees, as "children first"⁹⁶ is rarely being realised at this stage of the process. Duties to "safeguard and promote the welfare of children and young people" (s11 Children Act 2004), and wider international obligations under the UNCRC appear, too often, to be overridden by an approach which recasts vulnerability in terms of risk and prioritises institutional objectives.

A number of thematic threads have also been identified which run through the thesis. Firstly progress through the initial stages reveals the contingency of the custody process. The evidence reveals the cumulative effect of the emotion of arrest, the exhaustion of delay in holding and the frustrations of the booking-in process, each experience affecting the behaviour and reactions of suspect and officers in the next stage. We can also see how the different layers of vulnerability of the young suspects intersect. For all children and young people brought to the police station natural developmental immaturity, their lack of stamina and patience, intersects with their situational vulnerability, the unfamiliarity of the process, the power imbalance of the adult world of the police station, to create a harsh, even distressing experience. For some these issues may also collide with adverse individual experiences, or dispositional vulnerabilities, exacerbating further the punitive nature of the experience, resulting in feelings of powerlessness and resignation, which affect their capacity to engage their rights as we progress throughout the process. For others this might result in abusive or violent responses which further reduce the inclination of custody staff to mitigate the experience for them.

⁹⁶ National Strategy for the Policing of Children and Young People, Key principles (2016).

A further issue to which I will return is the failure to implement, or where implemented, the limited effectiveness of protections intended to support the young suspect. At this stage we have seen: a lack of prioritisation, and failures to achieve meaningful separation of child and adult suspect and to ensure detention only as a “last resort”, and little evidence of efforts to provide greater explanation of rights, or to make accessible the notice to ensure appreciation of wider entitlements. Young participant accounts reveal how critical these protections are, and how problematic detention can be in their absence.

There are both structural and institutional factors driving these failures: custody staff are ill-equipped, but some are also disinclined to afford the protections required. Structural factors which emerge include failures in third party services (including community healthcare and residential care providers), the physical limitations of the custody suite, and a lack of training in respect of restraint techniques, communication with children and the conditions with which they are likely to present. These constraints are overlaid by institutional factors. In particular we see, especially with authorisation of detention, the lasting effect of ‘collegial ties’ between custody staff and street officers and a tendency to ease “case-construction” (McConville et al. 1991, 42) rather than rigorously require necessity grounds. The risk burden carried by the CO is also ever present. The threat of ‘Coroner’s Court’ reframes displays of vulnerability and need, especially with regard to self-harm, as risks to be neutralised, but the constraints of the custody suite mean that this can have a devastatingly punitive effect.

The early indications in this chapter of the effects of the adversarial nature of the custody process are perhaps most concerning of all. Young arrestees are cast too often as perpetrators for whom a softened approach is not appropriate, especially where they are regular attendees or not acting in an apparently ‘vulnerable’ manner. Indeed there was a sense for some staff that, precisely because of their youth, the didactic or deterrent effect of the custody suite is particularly important. COs and CAs in all areas expressed the belief that maintaining a harsh custody experience is important for young people, in order to “show them what is done when you’ve done something wrong” (CA21), and that “we’re still in charge” (CO29), indeed for a number there was a “need to change the style of policing – it’s too friendly, we need to make it less comfortable for them here” (CO15), that custody should be “harder – not traumatic but tougher” (CO12) to achieve that end.

Herbert Packer's theoretical framework for evaluating criminal processes is of some assistance in analysing officer attitudes in this stage of the process, and indeed as we progress through the different stages. Packer posited two normative models: a "crime control" model and a "due process" model, which compete for attention in the day to day functioning of criminal justice processes (Packer 1964). The "crime control" model prioritises the "repression of criminal conduct", aiming to produce a "high rate of apprehension and conviction" (1964, 9-10). It tends towards an "administrative, almost managerial" approach, favouring "extra-judicial" to judicial processes, and "informal to formal operations". Uniformity of procedure is preferred to enable the efficient processing of an endless stream of cases as if on an "assembly line or conveyor belt" (1964, 10-11). Successive screening processes, by police and prosecutors, aim to remove the possibly innocent, enabling the processing of those who remain in a routine fashion on the basis of a "presumption of guilt" (1964, 11-12). The Due Process model has a different emphasis, although Packer is clear that the two are not polar opposites. Conscious of the "stigma and loss of liberty" which the criminal justice system may impose, it favours "controls and safeguards" and providing the maximum protection to the innocent (1964, 16), operating in the manner of an "obstacle course" (1964, 13). It prefers therefore transparent and formal determination of the facts, rejecting the reliability of routinised, informal processes.

Packer's formulation is not without its critics (see for a discussion Ashworth 1994), or its limitations. In particular, in considering its applicability in the custody suite, the model does not appear to me adequately to account for the prominence of resourcing considerations, or concerns about the management of institutional risks, in the implementation of procedure. Nonetheless, the framework is a useful structure with which to analyse how procedure regarding young suspects is implemented. One can identify clear "crime control" inclinations in the processing of young suspects at this stage by some custody staff. Presuming guilt on the basis of the judgement of arresting officers, and their own assumptions about vulnerability, some COs process young suspects in a routinised fashion with an emphasis on implementing the procedure in a fashion which prevents future offending. Analysed in this way one can see how the due process approach, the affording of the protections and rights enshrined in Code C and the APP, becomes deprioritised. However, the complex picture of young participants' responses to the experience of arrest and booking-in reveals how problematic operating on such presumptions can be, and how vital due process protections are, not only to

ensure fairness, but also to secure the welfare of young suspects. In addition, young participant accounts suggest that the crime control mode can often be deeply counter-productive, whilst a non-judgemental due process focused approach was welcomed, and as we will see as the process unfolds, more likely therefore to have a positive effect on crime control. With these themes in mind I turn in the next chapter to consider how children and young people experience the detention process itself.

Chapter 4

In the Cell

I ask Carter, a BAME young participant who was 18 at the time of his research interview, about the conditions in which he was detained. He looks around the small interview room that we are sitting in:

It's really small, it's probably a bit smaller than this room... Like you can't eat, you can't go out... you can't go and get fresh air, you've got to sit there and it's nearly always dark in the cell...

So like, even in this room, you can look out and see what's happening outside, but you can't see that, so it's just, it makes you go a bit mad. You go crazy in the cell... it's hard to explain, it's like... you think fast and sweating... you see that, by putting you in a room, making you sit by yourself, it's not going to make you accept, reflect on the thing you've done. It's going to make you think like, 'You lot treat me like shit.' I might as well do worse things in there. I don't know, it makes you entirely a bit different ...

Basically, if I get treated like this, what's the point? The police officer don't see criminals as equals to them, they see 'em as people that are just... I don't know, they're less anyway so...

This chapter explores young suspects' experiences of being detained in police custody. It considers the conditions in which they are held and how, like Carter, young suspects responded to the way in which they were treated. The experience of being "in the cell" dominated my discussions with young participants. It was, for the majority, what they remembered most vividly, and responded to most forcefully. As Carter's experience demonstrates, the harsh confines of the cell can be extremely difficult for young suspects to cope with and can prompt very negative reactions. I begin by reviewing the protections, in law and guidance, which should be in place to support

children in detention and consider the implementation picture presented by the available research in this area. With that literature in mind I then analyse what young participants revealed about the conditions of their detention, and how they responded to that experience. In light of their accounts, and the fieldwork data, the chapter then assesses the extent to which the protections are in fact implemented, and how far young participants are able themselves to engage with their rights and entitlements to improve their own experiences in custody. I then reflect, in light of the failures in these protections, on the dynamics which shape the relationship between young suspect and officer, and constrain the adjustment of the process for them. I conclude with an assessment of the effects of those conditions on young suspects, and the ramifications of the detention experience on both their participation in those aspects of the custody process yet to unfold, and more broadly.

Policy and Existing Literature

As outlined in Chapter 1, the police operate within a framework of obligations which requires them to safeguard and promote the welfare of young people in their detention,⁹⁷ treating them with humanity and respect and in a way that recognises their needs as children.⁹⁸ In addition to the provision of an AA, considered in Chapter 5, there are a number of required adjustments or protections for young suspects.

Timescales

All detainees must be dealt with “expeditiously and released as soon as the need for detention no longer applies” (Code C 1.1). In respect of children the APP⁹⁹ requires senior officers to apply the provisions of PACE “strictly” to prevent them being detained “any longer than necessary, both pre and post-charge”, reflecting the requirement in the UNCRC that a young person only be detained “as a measure of last resort and for the shortest appropriate period of time.” (Article 37(b)).

Despite the exhortations in PACE and the APP, the existing research suggests an ongoing increase in length of detention for suspects before charge or release, including for young suspects (although the data is more limited). Phillips and Brown’s large-scale study (Phillips and Brown 1998, 110) identified that young suspects were detained on average for five hours (where arriving with an AA) and over seven hours if an AA had

⁹⁷ Children Act 2004 s11(1)(h).

⁹⁸ UNCRC Art37(c).

⁹⁹ APP(CYP) 2.

to be called, in comparison to an adult average of six hours and 40 minutes. Subsequent research suggests that detention times across all ages groups have continued to rise (Pleasence and Quirk 2001; Kemp et al. 2012), with HMIC (2015, 83) finding an all-age average detention time across inspected forces of just under 11 hours.¹⁰⁰ Kemp and Hodgson's recent study (2016), albeit a qualitative smaller-scale piece, suggests that detention times for young suspects may be lengthening still further. Explorations of factors associated with longer detention times across all ages reveal a complex picture but have consistently highlighted seriousness of the offence, timing of arrest, request for legal advice and the requirement of an AA as being associated with longer detention times (see for discussion Skinns 2010; Kemp et al. 2012).

In particular, the policy framework seeks to avoid the holding of children overnight in police cells. Section 38(6) of PACE requires the police to arrange to transfer a child who has been refused bail after charge to local authority accommodation, pending his or her appearance in court (whether this is overnight or during the day). There are only two bases for failure to transfer: where it is impracticable to do so¹⁰¹ or where the young suspect is aged 12 or over and the CO considers that secure accommodation is needed to protect the public from "serious harm" and none is available.

Research in 2011 suggested that overnight detention for children was routine, pre and post-charge, with over 53,000 under 16 year olds detained overnight across 24 police forces in 2008-9 (Skinns 2011a).¹⁰² Skinns identified a range of factors, including the nature of the offence and the timing of the arrest, delays caused by the attendance of AAs and solicitors, and difficulties in the referral process between police and local authorities (2011a). Since that time, there have been significant reductions in the numbers of child arrests (YJB/MOJ 2018) and at the time of conducting fieldwork the anticipated introduction of concordat arrangements promised improvements to referral processes in some areas.¹⁰³ However HMIC inspections suggest that problems still remain.¹⁰⁴ Although this study is qualitative in nature, and so unable to contribute

¹⁰⁰ Although these figures include some individuals remanded after charge.

¹⁰¹ This is restricted to transportation difficulties and not accommodation availability, Code C NFG 16, also (HMIC 2015, AppE).

¹⁰² "Overnight" meaning the child spent more than four hours in custody between midnight and 8am (Skinns 2011a, 27).

¹⁰³ <https://howardleague.org/wp-content/uploads/2017/03/DRAFT-Concordat-on-Children-in-Custody.pdf>, last accessed 22/04/19.

¹⁰⁴ See for example *Report on an unannounced inspection visit to police custody suites in West Midlands* by HM Inspectorate of Prisons and HMIC 30/01–10/02/17, available at

generalisable findings, I was interested to observe the effect of these factors on young suspect detention times, and in particular on overnight detention.

Detention conditions

In respect of detention conditions, importantly a young suspect must not be held in a police cell (Code C 8.8). However this prohibition does not bite if there is “no other secure accommodation” and the CO considers that it is “not practicable to supervise them if they are not placed in a cell”, or where other secure accommodation is less “comfortable”. Where a child or young person is kept in a cell a reason must be recorded (Code C 8.10). Young detainees should “whenever possible” be visited in the cell “more frequently” than the standard hourly requirement for adults (Code C 9.3, NFG 9B). This protection seems designed, in light of the low frequency of significant illness or substance dependency amongst children, to address their distinct welfare needs when detained in police custody.

A substantial section within the APP¹⁰⁵ details the raised prevalence of characteristics or “difficult life events” amongst young detainees which are likely to raise risks to their safety and wellbeing in custody. The extensive list of 18 bullet points include physical and mental health problems, ADHD, conduct disorder and depression, being in care, having a history of abuse neglect or trauma and being physically or emotionally immature. The APP requires officers to “carefully consider these when planning how to support, observe and care for children” who may have such vulnerabilities. Although, unhelpfully given the lack of specialist training of many staff (see Chown 2010 in respect of ASD; Cant and Standen 2007 re learning disability; and more generally Cummins 2007b; Royal Mencap 1997; Skinns 2011a), the APP provides no indication of what such adjustments might be.

Finally, girls in detention must be under the care of a female officer or staff member.¹⁰⁶ This is underlined by the APP¹⁰⁷ which clarifies that, subject to risk assessment, the carer “need not be physically present and with the detainee at all times, but must be readily available and assigned to the detainee throughout the period of detention” and that she “should visit the detainee and check on her welfare needs”. The detainee herself must be told that “she can ask to see the carer at any time”.

<https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2017/06/West-Midlands-police-Web-2017-1.pdf>, last accessed 20/04/19.

¹⁰⁵ APP(CYP) 3.1.

¹⁰⁶ s31 CYPA.

¹⁰⁷ APP(CYP) 7.

I sketched out in Chapter 1 the limited material that we have in respect of child suspects, the implementation of these child-specific protections and their experiences of detention. There are certainly indications, however, that the protections are not consistently implemented. HMIC's thematic study, for example, noted "few instances where they [children] were allowed to wait in interview rooms instead of in a cell" (HMIC 2015, 77). However previous research has not examined the full range of child-specific protections, the factors associated with non-implementation or the effectiveness of the protections.

Despite being limited in volume, the existing material on children's, and young adults' experiences presents a fairly consistent picture of distress and fear in police custody. Confinement in a cell was for the majority of Choongh's participants intolerable or extremely distressing (1997), whilst the children who gave evidence to the APPGC described detention as "frightening and daunting" (APPGC 2014b, 13) (see for similar HMIC 2015). Jones' young adult participants displayed what she describes as "entry shock", where feelings of distress and fear are more acute in the early phases of detention (Jones 2007, 174). This accords with increased levels of suicide and self-harm identified amongst adult detainees during the early hours of custody (Cummins 2008; Ingram, Johnson, and Heyes 1997). As detention wears on, uncertainty and lack of knowledge of the system lead to rising levels of fear and anxiety for some young detainees (Jones 2007; HMIC 2015).

Boredom is a consistent complaint of young detainees, with the total lack of stimulus a pervasive source of distress (Jones 2007; Hazel et al. 2003). Previous accounts give a strong sense that being in a cell for a long time becomes disorientating and stressful, and can emotionally destabilize a young detainee. A young witness told the APPGC (2014b, 13) that being in a cell can "mess with your head", an experience echoed by an HMIC interviewee who explained that he would "start going crazy...it just makes me go really mad" (2015, 189). Anger and frustration are also common themes, arising in particular as a result of unexplained delays and the sense of utter powerlessness experienced by young detainees (Hazel et al. 2003; Jones 2007). Some young detainees responded by lapsing into resigned, disengaged behaviours, whilst others engaged in problematic, sometimes aggressive behaviour.

There is, of course, a larger body of literature which addresses the experiences of prisoners in the secure estate, and prison literature has been a source of fruitful consideration for police custody scholars. I draw on this literature, particularly on

young people's experience in young offenders' institutions ('YOI's) and secure children's homes, where relevant and in my closing discussion.

Young Participants' Accounts: Conditions and Timescales

Detention conditions

In significant respects the evidence confirms the picture of police detention that emerges from previous research. However, the number and breadth of young suspect accounts in this study has enabled a much richer picture of their experiences to be constructed. Young participants were remarkably consistent in their overwhelmingly negative response to the cell or detention room itself; a large number describing it in similar terms as "terrible", "horrible", "crap" or "hanging" (meaning awful). Sadie's description was fairly typical: "It's just horrible – it's just 4 walls innit...it's freezing. It smells, it's just not a nice place to be". Like Sadie, several young participants' accounts were dominated by the blank, pressing presence of the walls "you're just in a square box, aren't you, it's concrete all around you" (Aidan). The absence of a window, especially, was considered a particular deprivation "there's nothing, it's just a wall" (Luke), drawing unfavourable comparisons with a prison cell from those with such experience. A number found their feelings hard to verbalise, "I just don't like it – going in them walls...I don't know, I can't explain." (Jayden).

In terms of comfort, a few were "warm enough" (Tyler), but the majority complained of the "hard" bench, "I call 'em trays, me. They're not beds, they're trays" (Evan), blankets like "you would put on top of a horse" and the thin plastic-covered mattresses "like what you got in PE" (Zayn). Some complained of being without a pillow, (Elijah), blankets or a mattress (Malik). Whilst some had found the cells clean, particularly in more modern blocks, others had been held in dirty cells, especially when arrested late at night. For a number the presence of an open toilet in the space was disturbing, especially when it was not flushed, and visibly dirty. Kate described being detained in a cell occupied immediately before her by "an addict" who had been sick in the toilet and on the floor: "I was like, 'Surely my human rights make me have a better cell than this?'". Some as a result found it hard to sleep, "it was just dirty, like all the walls just dirty...I couldn't really sleep in there" (Jayden).

The noise, particularly that made by adult detainees in other cells, was frequently raised by participants, often in distressing or traumatic terms. Rezar described how "if it's a weekend, Friday or Saturday, you've got all the drunk people in

there. It's always loud. They're always screaming, they're always doing something". Not infrequently children were exposed to significant levels of adult distress. Jayden described hearing, "a woman just screaming for like 3 hours straight, just screaming". Hussain recounted listening to a drunk man "he just made so much noise, he wanted to get out of his cell, or he said 'I'm gonna cut myself. I'm gonna do this, I'm gonna do that.'" As Jake observed "for someone's first time in the cell it can be quite frightening...all these people around you acting all crazy". On observations one suite (F1/2) was largely quiet, although not busy. However, in other suites, particularly the older blocks with low ceilings, I found the anguished adult screaming, which was common-place, hard to deal with; as was the repeated banging which frequently occurred and could be sustained for hours between different detainees. COs and AAs in various suites described noise levels as "awful" (CO34), "horrific" (CO40) or "like bedlam" (VAA2) (see for similar Kemp and Hodgson 2016).

Adults working in custody were conscious of the unsettling, even damaging, effects of such noise on young, often very vulnerable, children, especially where a young suspect is: "Sitting in the cell when terrified, not understanding the process and having people screaming and shouting" (L&D3). As Sol7 explained, "They talk about people they can hear in the cell next door, someone screaming. They laugh it off sometimes, but you can tell they're affected by it." Some young participants did indeed laugh off the noise as "entertaining" (Edison), "I was loving it basically, I was laughing at the time, innit but, no it's just stupid innit" (Cole). But more found it distressing, or described how it wound them up. Aaron recounted, "I start goin' fuckin' mad at them" and so got into a "massive argument". Inevitably young participants described not being able to sleep as a result. We see in Chapter 7 the effect this can have on their later decision-making and ability to participate in the interview.

Conversely, where a suite was quiet, silence too could be oppressive. For Tyler silence exacerbated feelings of isolation and containment so that although the space was, "open... it felt small because you were on your own and there was no-one around". Some struggled to cope: "you can't hear anything else outside if you know what I'm trying to say, so yeah, it's like the isolation there is worse cos like you could even hear yourself think to be honest" (Hussain). RHAA4 observed that this aspect could be particularly difficult for those in residential care, "it forces you to think in a tiny space... usually a child in care doesn't spend much time alone".

Food and drink

The overwhelming majority of young participants were very vocal in their disgust at the food provided. They commonly described it as “shit”, “horrible”, “disgusting” and “not nice”. Some complained that it was “cold”, even “frozen still inside” (Aaron), when they received it (recalling similar in APPGC 2014b; Skinns 2011b). Staff at all sites generally agreed that the food they served was pretty unpalatable, being largely microwave meals not requiring refrigerated storage. CO33 observed, for example, “The food here is awful – you wouldn’t serve it to animals”.

The prominence of eating and drinking in participants’ accounts is unsurprising, reflecting similar significance accorded to food in previous studies (Hazel et al. 2003; Jones 2007; HMIC 2015; Jessiman and Cameron 2017). Eating and drinking is also commonly identified in prison literature, as an “integral part of the prisoner’s bodily experience of the pains of imprisonment” (Ugelvik 2011, 54). In his examination of the “pains of imprisonment”, Sykes noted that having to eat the food provided by staff embodies not simply “deprivation of goods and services” but also “deprivation of autonomy” contributing for adults to a sense of “infantilisation”, the reduction of the prisoner to the “weak, helpless, dependent status of childhood” (Sykes 1958, 75ff). Food and eating becomes for adult prisoners the site of resistance and identity-work (Ugelvik 2011; Crewe 2009).

Young suspects seemed to experience the “pains” associated with food in detention at least as forcefully as adult prisoners. The closer familiarity, for some, with the dependent status of being served food by adults did not reduce their sense of deprivation, rather it seemed instead to underline the stark contrast between loving provision by family members, “a big scran at home” and what was perceived to be often uncaring, even insulting, provision of “a fucking little microwave meal” in custody (Aaron).

Like adult prisoners, for many absolute dependence on staff to bring food, and particularly drink, underlined for young suspects their lack of control and the power imbalance in their relationship with officers (see Counihan and Kaplan 1998 for an exploration of food and control). Delays in bringing food or drinks, or failure to do so, were often perceived to be deliberate and experienced as insulting and disrespectful. Aidan explained, “Like, it makes me think that they think they’re bigger than me... they’re better than me. But it just annoys me, and gets me vexed out.” Some young participants plainly felt provoked by the poor quality of the food, and its preparation.

Harper reflected, “I wouldn’t give it to the dog”, observing that the poor quality food was “adding more like flames to the fire” for a young person coming into custody in an angry state. Others were concerned that staff “use their power to their advantage” (Jamal) in respect of food and might “spit” in it (Abigail). Sealed foods, such as cereal bars, were as a result favoured by some, whilst others relied on different precautions. YOTAA noted that “a lot of juveniles won’t eat or drink anything in custody unless I make it for them”.

Although the scope for identity work was limited, young participants described defiant responses in the form of throwing food around the cell, “that’ll give ‘em something to tidy up” (Luke), or ordering, but deliberately not eating, the food. Indeed refusing to eat food was common and, in custody as in the early childhood, was one of the few ways in which a young suspect could display their power in their relations with adults, here the officers. However, the effects of refusal to eat or drink clearly contributed for many to their increasing desperation to “get out”. Additionally, we see in Chapter 6 and 7 how hunger and dehydration could affect capacity to participate effectively, as Rezar explained: “You’re hungry... That’s why I go, “No comment.” Straight away, “No comment, no comment, no comment.”.

Toilet facilities, CCTV and privacy

Unsurprisingly privacy, particularly around the use of the toilet in the cell, was a significant issue in interviews with young participants (as for adults in Newburn and Hayman 2002). For some the presence of CCTV cameras in their cell did not bother them, or even provided scope for distraction and to annoy officers: “I’d pull a mooney...just do weird things, just try and annoy ‘em, you know what I mean, it’s just funny.” (Aidan). But more commonly CCTV cameras were a source of general discomfort: “it was horrible...it was, like, imagine having a camera in your bedroom and someone watching you all the time.” (Tom), and for some inhibited their usual coping routines in the cell. Interestingly CCTV was understood as a form of surveillance rather than protection, with only one young participant, Rezar, expressing the view that CCTV might help to keep him safe.

Toilet issues generally were a source of feelings of humiliation and degradation. Having to request toilet paper was “bad” (Carter) and “embarrassing” (Logan), and several participants felt that staff delayed toilet paper requests deliberately. However, the greatest anxiety was expressed in respect of going to the toilet in the cell (see for

similar Newburn and Hayman 2002),¹⁰⁸ particularly whether they might be seen by staff conducting visits, or on CCTV. Such concerns might well have been anticipated by staff, but what was striking was the degree to which young participants seem to have been provided no information or reassurance on the point. Some participants had themselves checked for CCTV in the cell, or if the toilet could be viewed from the hatch. Others seem to have been provided minimal information: “The person who took me to the cell just Pointed me to the camera. ‘There’s a camera there’ and then that was it really.” (Elijah).¹⁰⁹ A number said that they had not been told about pixilation and were annoyed by that omission, or were doubtful about its implementation. Understandably, for a number of young participants these issues were a source of discomfort as they would attempt to “hold it” until release. Greater care taken by staff to explain and reassure could have made a significant difference to some experiences.

Timescales

Perhaps the most striking, and concerning, feature of detention accounts was the length of time young participants related having spent in custody. Almost three-quarters described detention episodes which lasted more than 10 hours, including 11 recounting custody periods of over 30 hours on at least one occasion (generally involving detention over a weekend as a result of being arrested for breach of bail). Given the observations young participants made about time dragging in the cell (below) one might be concerned about the veracity of their estimations. However, their experiences are generally in line with my observations. During fieldwork it was only possible to obtain the complete times for 33 of the 49 separate custody episodes tracked. Though only a snapshot the results show an average (mean) detention time of 11 hours 45 minutes, with 18 detention episodes lasting over 10 hours (see Appendix B, Tables B.3 & B.4), inkeeping with the general trend of increasing detention times observed in the literature review above.

Young Participants’ Accounts: Emotional Responses

I now consider how young participants responded to these detention conditions. The most frequently-used word in describing the experience of confinement in the cell was that it was “boring”.

¹⁰⁸ Although in contrast to participants in Newburn and Hayman 2002 there was no discernible difference between genders or ethnicities in their response to this issue.

¹⁰⁹ In only one observation site was a written notice given to detainees about CCTV and pixilation (F2). In all three areas verbal information about CCTV coverage was rarely given by COs.

Boredom

Megan's description captures the response of many, "It's boring. It does your head in. There's nothing to do". The prominence of this term reflects previous research findings (Jones 2007, Hazel et al. 2003). However, this study enables a deeper understanding of what was meant by this seemingly simple term. For a significant number of young participants "boring" was used straightforwardly to encapsulate the lack of stimulation and the relentlessly blank environment of the cell. Young participants recounted "staring at nothing" (Jackson), "looking at four walls. Every two seconds going round and round" (Simon); whilst the lack of distraction was also a common theme: "dead blank...nowt to do at all" (Cole), "I can't do nothing in there" (Kaiden). Almost half of young participants explained that they would try to sleep as a means of managing the tedium of the cell: "just get your head down 'cos there's literally nothing to do in there" (Dexter). For some, sleep was seen as "all you can do" (Abigail), whilst some others viewed it positively as the best mechanism for making time "go quicker" (Jackson).

A number of young participants, particularly those with regular experience of custody, described habitual mechanisms that they employed to cope. Some were very resourceful: Will explained that he liked to do complex arithmetical calculations in his head, whilst Evan described focusing on identifying "how everything's made" or re-running the route to the police station in his head to create a plan "like a GPS". Others were more strategic, with several using the space to think, "you just think about what sort of questions, you just think about your story if you wanna do a story, if you wanna tell lies" (Luke). However more commonly activities to pass the time tended to be repetitive actions as a means of simply getting through the waiting, for example counting tiles or bricks, walking around in circles, fashioning makeshift balls out of clothing or food packaging, or ripping up packaging into missiles to throw at cups or the sink. Several young people, generally, but not exclusively, boys, described exercising: doing sit ups, or using the mattress for punching practice. Only one young participant described doing graffiti, with the eyelet of their tracksuit trousers, or the zip on the mattress (Simon). For some using the buzzer, the call button situated in all cells which is answered by custody staff (generally by intercom), was a way of alleviating boredom, being the "only thing" that was exciting in the cell (Zayn), but this could cause difficulties, as detailed below. As Rezar explained, "You just do anything to get you unfocused for a bit".

However, these methods were not always effective, and a number of young participants had trouble coping with boredom, “it’s right hard” (Nathan). It was widely acknowledged, across custody staff, HCPs and AAs, that the lack of stimulus could be “really difficult” (L&D3) for some young people. Several young participants found themselves distracted by worry about their current situation “ ‘cos like all the stuff is going through your head you just can’t sleep” (Hussain). This could be worse for those whose lives were less settled outside. Yemi was worried, for example, about the effect of arrest on his placement in residential care, whilst Sadie explained, “All your problems come to mind and then more problems come to your mind because you’re in there. And then it’s just stress”. The emergence of thoughts about aspects of their lives that young people would rather not revisit has been noted in other custodial settings (Medlicott 2001; Gray 2015).

For some young participants the initial descriptor “boring” in fact related to periods of confinement that were close to intolerable for them. As Tom explained, aged 18 at the time of his research interview: “... I mean it would be bad for an hour but the length I was in there, it was terrible....I think if I had to go in now I’d cry. I would actually cry.” Some recalled feelings of serious agitation and emotional destabilization echoing, strikingly, individual accounts to HMIC (2015) and the APPGC (2014b). Zoe described the experience as “bugging out like, I was actually going crazy. I can’t be in a small room for too long”. For some it was the sense of isolation that was really difficult: “It’s cruel to be honest” (Hussain). HCPs also commented about young detainees being “visibly distressed” (L&D2), at times “too distressed to talk about it” (L&D7). This extreme distress was an issue raised across the ‘juvenile’ age-bands, although some of those with repeat experiences had developed mechanisms to contain their anxiety. Nor, for young people, did confinement need to be lengthy to be hard. As Zoe explained, “It’s bare long. Honestly every minute feels like 10 minutes.” Even detention in a cell of 2 or 3 hours could be experienced extremely harshly by a child.

Fear and uncertainty

On observations, some custody staff suggested, with regret, that police custody is no longer a “fearful place” (CO24) and that young suspects viewed it as a “kind of day out” (CA23). In line with fear on arrival (see Chapter 3) tellingly fear in the cell was an emotion that very few young participants volunteered initially, and indeed a significant number (both girls and boys) were keen to declare initially that they were “never afraid”

in detention. Azade for example twice stressed, “it’s not that I was scared...”.

Nonetheless, some adults, particularly HCPs and AAs, asserted that fear is a significant feature of some young suspects’ experiences of the cell. FNP2 described the “quivery lip sort of response” of those who are “daunted” by being in custody. Strikingly fear during detention was most often associated by young participants with uncertainty and lack of knowledge (see similar findings with adults Newburn and Hayman 2002; Jones 2007; Allen et al. 2008), rather than concerns about their physical safety, and was most often associated with ‘first-time’ experiences (as observed also in the secure estate Harvey 2007).

For several, fear was associated with what might happen in interview: “the worst bit was that I knew I was gonna have an interview, like straight after I get out of this cell, so the whole time I was like a bit paranoid in the head I was thinking right what am I gonna say, what are they gonna ask me?” (Hussain). Adults felt that this may be exacerbated by popular culture images: “They are not sure what to expect. Maybe they’ve seen too much TV – officers thumping their fists on the table” (VAA3). For others, the fear of going to prison loomed large: “I won’t will I?” was a common theme of questioning for “frightened first timers” according to VAA1. The associated fear of what family and friends, particularly Mum, would think was also significant, often drowning out criminal justice concerns: “It’s a scary thing cause you’re thinking ‘Oh my God, murderers and rapists have been here and I’m here now and what’s my mum going to think?’” (Kate).

The negative effects of uncertainty were not restricted to first-timers. Not knowing what was happening in their case, particularly when or whether they might be released, could be a source of considerable frustration and distress even for experienced young suspects (see similar in Wooff and Skinns 2018). Regular attendee Jo explained, “Well, sometimes you just like want to know, isn’t it. You’re like ‘Ahhhh’ Sometimes I just get pissed off over it...and I get stressed out too quick. I don’t even know why.”, whilst for Tom it was “just horrible” and for Will “probably like the worst bit”. Officers recognised that not knowing could lead to feelings of helplessness, “they don’t feel in control – don’t quite understand what’s happening” (CO38), and frustration: “It’s like me at A and E after a four hour wait, you get really pissed off. You know you’re being unreasonable but you just do it anyway” (CA43). However, officers are in a very difficult position; the contingency of the process works against them. It is often simply not possible to provide a likely outcome or a time estimate for release, since that

depends on a range of factors, including the actions of third parties. Providing a time estimate that was then not met could be problematic, “they make you excited, and then there’s nothing out of it” (Jo), “it’s just aggravating...just stressing” (Alex), and COs as a result tended not to give an estimate - “I won’t even say ‘in a few hours’.” (CO7), recognizing that it could be “quite easy to mishandle expectations” (CO41). Although CAs were more likely to “try and give an estimate if I can” (CA33).

Anger and resentment

As we see in Carter’s description in opening, harsh conditions were liable to give rise to real anger and resentment. Many young participants felt that their treatment during detention was unnecessarily unpleasant and disrespectful. Almost a quarter of young participants used the motif of being “thrown” into the cell, seemingly to emphasise what they perceived to be harsh or neglectful treatment. Likewise a significant number of young people described officers as “taking the mick” or “taking the piss” out of them by their treatment in detention. Several young people, and custody staff, used animal language to convey the inhumane nature of this treatment, including references (above) to food not fit for an animal (Harper, CO33), blankets suitable for a “horse” (Zayn), and indeed several young participants made reference to the cell feeling like a “cage” (Alex, Will).

Young participants’ dealings with custody staff were also marked by distrust, especially around the likely timing of their release, with some feeling fobbed off with bland reassurances designed to ease the jobs of officers (Robert), or being openly lied to (Jo). A number of young people expressed exasperation and disbelief that the custody process could legitimately take as long as it did: “I don’t get why they need to hold you for so long” (Jayden), “It’s pathetic. They should interview you right then and there as soon as you get there...It’s not like they’re doing anything whilst you’re sitting in the cell waiting” (Will). Jayden, who had spent 23 hours in custody on one occasion, concluded, as several others, that COs must deliberately extend their detention periods, “they just long it out”. As with the poor conditions, this was experienced as a form of punishment, as CO12 acknowledged, “Stick them in a cell – time passes slowly ... They see it as a punishment – more than what happens at youth court.”.

Defiance

Anger for some tipped over into the temptation, as Carter described above, to “do worse things”. Some disruptive behaviour was clearly in order to get the attention of officers:

“when I’m pressing the bell and they’re not answering I just boot the door “ (Abigail). But for others this behaviour was more defiant in nature. Sometimes young suspects teamed up with friends in neighbouring cells: “And we was just shouting for each ... we just banging on the door, going ‘Ugh, ugh, ugh’. Banging on the door all night like – for like four hours straight” (Luke). Several custody staff identified groups of young suspects who regularly behaved noisily in this way. This could be problematic both in terms of the environment of the cell block and in terms of cementing transgressive bonds between young people. Other young participants described acting alone in an intentionally defiant manner: banging or kicking the door, flooding their cell, or throwing food around, as identified above.

Their motivations for this destructive behaviour are informative. For some it was a way of processing strong emotions, particularly anger, frustration or anxiety: “They wouldn't get hold of my mum, they were saying apparently that they'd rung her and they tried everything they can, but they weren't doing anything. So I started kicking off, that's only because they weren't helping me, innit.” (Cole). Harper described destructive behaviour as a necessary coping mechanism: “Unless I like emotionally drain myself – when I feel so angry I just drain myself. That’s the only time I can sleep”. For others, like Kaiden, there was a sense of satisfaction, even enjoyment: “I don’t like behaving because there’s no fun in that.”. His account of his motivation for messing up his cell reveals the sharply adversarial nature of these interactions: “Well one of the police officer made me angry, so one police officer has to clean it up. So one for one... So basically it was like a game, he had 1-nil, I had 1-nil.”.

For a number, like Kaiden, defiant behaviour was a reciprocal response, a rejection of the insulting treatment they experienced in detention, intended to “piss off” or annoy custody staff. Luke described his anger at being put in an unclean cell: “I was only in there for five hours and that whole five hours I was just agging them, just terrorizing the beast, just kicking the door.” Luke’s behaviour in this sense closely conforms to Lawrence Sherman’s defiance theory (Sherman 1993); alienated from the police, experiencing detention as an unfair, stigmatizing response to him as an individual, rather than to the behaviour for which he was arrested, Luke rejects by his defiance the shame he has been made to feel. Sherman’s formulation also provides insights into the ramifications of such treatment. According to defiance theory the alienated individual is then predisposed to repeat the offending behaviour, since he has

symbolically labeled the sanction, detention, and the sanctioner, the police, as deserving of punishment, not the original behaviour which led to the arrest.

In immediate terms, however, these interactions tended to result in a spiral of harsher treatment and more entrenched resentment. Indeed several young participants described feeling deliberately provoked into this behaviour. Malik recalled exchanges through the hatch with an officer: “He’s opening and you know what he’s done, he goes ‘Boo’ and he just shut it... I thought ‘You motherfucker’. That’s when I started, started kicking doors and waah...”. Aidan described trying to contain his anger in the face of provocation, “But if they annoy, if they do step the mark, that’s when I do flip innit? And I know when they step the mark, and they always try to.”

Protections for Young Suspects – are they Implemented?

In my view these accounts prompt an urgent consideration of whether the protections which are intended to mitigate the detention experience for young suspects are implemented, and with what effect. I address the support of AAs and legal advisers in the following chapters, but set out beneath the most significant of the other potential protections, and review evidence of their implementation from the data.

No longer than is “strictly” necessary?

The need to avoid keeping a child in detention any longer than absolutely necessary, especially overnight, was frequently referred to by COs and other adults on observation. In this regard, and in the changing attitude towards authorisation of detention (see Chapter 3), the highlighting of overnight detentions (Skinns 2011a) seemed to be having some effect: “in custody the massive thing is - must not keep juveniles all night” (CO43). Indeed there were instances of officers deciding to bail a young suspect, where it was apparent that no progress could be made, to avoid extending detention (eg YS28, YS37).¹¹⁰ However there were still many cases where children were detained for extremely long periods (see Appendix B, Tables B.2-4).

Inkeeping with earlier all-ages examinations (Kemp et al. 2012), arrests late in the evening or in the early hours were a factor in a significant number of those longer detention periods (12 of the 18 episodes over 10 hours). Previous literature has focused on difficulties securing AAs in such circumstances, and this was certainly a problem identified in this study, with some schemes often not providing an “out of hours”

¹¹⁰ Although calling into question the “necessity” of their detention in the first instance s37 PACE.

service at all (see Chapter 5 for fuller discussion). However, delay in these circumstances tended to arise more from the understanding that interviewing a child at night was neither desirable nor fair (see also in Kemp and Hodgson 2016). Even where an AA was available at night they might be called down for rights and sent away (as occurred for YS10), but more generally would be asked to attend in the morning, and the young suspect “bedded down” for the night. Whilst in terms of enabling effective participation a reluctance to interview at night is to be applauded, where a CO was unwilling or unable to bail a young suspect, this acknowledgement of vulnerability could have the unfortunate effect of prolonging detention, often without AA support. It appears that more careful consideration of arrest-timing, where possible, could be crucial in this regard.

In a number of cases investigative delay was a driver of extended detention periods. This was particularly associated with multi-handed (group) arrests, eg YS18-20 and YS23-25. Young suspects are often arrested together and this finding highlights the importance of COs examining carefully the necessity grounds for detention in multi-handed cases. Resourcing issues were often raised in respect of investigative delay, particularly in F2. In this regard neither the oversight of the COs, nor the Inspector’s role in reviewing detention were effective measures in preventing detention of children being unduly prolonged. The impact of detention reviews and the effect of solicitor delay on overall detention times are discussed in Chapter 6.

Those young suspects experiencing prolonged detention included a significant proportion of those who had additional vulnerabilities, particularly dispositional vulnerabilities and ‘looked after’ status (see Appendix B, Tables B.3-4). Identifiable factors in this regard included structural challenges, especially finding appropriate accommodation on release and administrative difficulties arising from children living in placements out of their home area. What was notable on observation was the very positive input that a social worker or carer attending as AA with particular knowledge of the child in question could have, in terms of securing bail or an appropriate placement (as in the case of YS26 and 27), or finding secure accommodation after charge (PACE s38(6)) (YS13).¹¹¹

There were also indications of cultural attitudes within custody teams that meant that those with more adverse childhood experiences, or greater experience of the

¹¹¹ Two of the three young suspects remanded after charge were looked after (YS13 and YS20), with only YS13 being found secure accommodation. All three had significant dispositional vulnerabilities.

custody suite, might not be treated with the same urgency as other young suspects. It was suggested by some that the harsh experience of the custody suite had less effect on them: “They get better looked after here than at home” (CO34). As one legal adviser noted: “There is probably a hardening to frequent attendees – by the custody sergeant and probably by me as well. Certain people are more used to being here and the impact is not so great.”. This was borne out in a reduced sense of urgency displayed by some COs in releasing young suspects who had significant experience of custody.

The evidence also reveals a concerning picture of very lengthy detentions for young people arrested for breach of bail or wanted on warrant, who are specifically required to be detained by the police and produced to the next available court.¹¹² Staff and young participants gave accounts of detention for whole weekends waiting to be produced to court. Again, those longer detentions often involved young people in residential care; the breaches frequently relating to a breakdown in a particular placement or where the young person went missing from a placement bail address because they were spending time with family.

Despite the discourse of minimising detention times, and the reduction in child arrests, the ‘snapshot’ produced by this study supports the growing evidence of lengthening detention times for young suspects. The data suggests that the requirements of PACE, the APP and the UNCRC, to ensure that detention times are kept to the bare minimum, are not being met for many child suspects. In addition, those detained for the longest periods are often those with additional and intersecting vulnerabilities. This study uncovers structural factors, including resourcing issues, which are driving this extension, but there is the suggestion that cultural factors may also be implicated.

Not in a “cell”

It is unsurprising, given the difficulties young people described in coping with confinement, that there is a prohibition against their detention in an adult police cell (Code C 8.8). What is surprising, and very disappointing, is the extent to which this study reveals that the protection is routinely overlooked in implementation. Despite the requirement, all but one young participant (Kyle) recounted being detained in a room which they described in terms conforming internally to a standard adult police cell. The accounts that the majority provided of the hard bench, the blue mattress, open toilet and door with a hatch and spyhole suggest that they were held in accommodation that was,

¹¹² Bail Act 1976 s7, Magistrates’ Court Act 1980 s13.

or was very similar to, an adult cell - something confirmed on observation. Placing a young person in an adult cell was, in all three force areas, an unremarkable event, and not generally recorded on the custody record (inkeeping with HMIC 2015).

How does this come about? First and most straightforwardly there is a physical resourcing issue. In the six suites that I visited, there were very limited alternatives to adult cell accommodation. In each suite there were designated “Juvenile Detention Rooms” (‘JDR’s) (or in one block a “vulnerable” section (F2/3)). However, those rooms were, without exception, internally essentially identical to the adult cells in the custody block (in terms of dimension, lighting, internal ‘furniture’). Compare for example the pictures below. Figure 4.1 shows a JDR, whilst figure 4.2 shows an adult cell (see below). Although slightly differently configured, the facilities and overall space are indistinguishable. On observation, the only physical difference, where there was any, between accommodation for young (or vulnerable) suspects and adult police cells related to the nature of the door. In one suite (F2/3) “vulnerable” cells had a glass panel (approximately 25% of the door’s width running floor to ceiling), in two other suites “juvenile” cells had neither a hatch nor a glass panel (F3/5 and F3/6). A CO explained that this latter adjustment made the room “not a cell” because of the need to open the door, therefore, to see or speak to the detainee. In other suites the difference between a JDR and a cell was limited to its designation, or signage, as a JDR. One young participant described with approval being in a cell with an entirely glass door, the opacity of which could be adjusted from outside (Tom). However, otherwise the oppressive nature of the ‘cell’ in young participant accounts related to its scale, and the harshness of its ‘furniture’ - the nature of the door largely went unremarked.

Figure 4.1: Images of a JDR (taken on observation) showing view from door, close up of bench, toilet (to the left of the door on entry), inside of door.



Figure 4.2 Images of an adult cell (taken on observation) showing view from door, close up of bench, washing facilities (to the left of door on entry), inside of door.



In four of the suites visited there was effectively no alternative roomier secure accommodation for a young suspect who could not cope with the enclosed space of a cell or JDR. In two suites (F1/1 and F3/6) there was a secure holding or waiting room in sight of the custody desk. This was, in each case, significantly larger than a cell and had a sizeable window, looking onto the booking-in area. In both suites these were used sometimes for child suspects, as a form of respite, generally for short time periods: “half an hour to an hour” (CO10). They were not routinely used for a whole detention episode. That such a lack of more child-friendly accommodation has become commonplace is perhaps unsurprising. In part this is enabled by the permissive language of Code C. The clear prohibition on the use of an adult cell is fundamentally undermined by the ‘practicability’ exemption. In addition, as with other protections, Code C provides no positive statement of what suitable “juvenile” accommodation might be, enabling a semantic nod to compliance by the renaming of an adult cell a “juvenile detention room”.

This deficit is also facilitated by the apparent indifference of HMIC, and some ICVs. HMIC inspections routinely appear to condone the use of JDRs which are internally identical to adult cells. For example in the three forces observed, the inspection reports immediately preceding or postdating my observations contain no recommendations relating to the provision of roomier or more sympathetic juvenile accommodation. This institutional indifference is manifest in the APP¹¹³ which notes that new facilities are “usually built to the Lambeth design, which is unisex and suitable for children and young people”. The Lambeth design cell is 7m squared by area (sufficient for a 2.5 x 2.8m cell). Independent Custody Visitors that I interviewed were generally aware of the limited non-cell accommodation but did not express distinct concern, identifying resource and operational constraints on officers as justifications, although one did note that “some of the ICVs think that the cells are too harsh for younger people” (ICV3).

Secondly, custody staff showed limited commitment to alternative accommodation. Perhaps in acknowledgement of the very minimal adjustments to JDRs, COs did not always place young suspects in JDRs or alternative accommodation where this was available. Sometimes this was done out of welfare concerns, for

¹¹³ APP(CYP) 4.

example in order to place the young suspect in the quietest section of the suite. In some suites, in particular, the JDR was positioned close to the booking in desk (eg F1/2).

Although ostensibly to enable closer supervision, the resulting high noise levels within the JDR meant that such JDRs were infrequently used during observations.

Additionally, some staff explained that they had rejected alternative accommodation to avoid young suspects being unnecessarily exposed to older detainees. In F2 for example staff were concerned that the partially perspex doors in the vulnerable section enabled a young suspect to see and be seen by vulnerable adults in facing cells. Similarly, in F3 staff did not favour long stints in the secure waiting room because of their visibility to those in the booking-in area. Some staff also rejected the idea of young suspects sitting out on benches in public areas (as an alternative to secure accommodation) for this reason.

More commonly there appeared to be institutional motivations which held staff back from adopting more child-friendly approaches. Suspicion of the motives of FAAs, arising from the very adversarial approach of some staff, led them commonly to reject the option of child suspects waiting in an interview room or similar with a family member (an issue raised in previous research Gendle and Woodhams 2005). In F3 CO27 explained, “Generally speaking we don’t let parents sit in the cell with them because parents put cigarettes in crisp packets”. Likewise, in F2 CA11 explained: “We would only put a YP in a consultation room for a long time with one of the [scheme] AAs, not generally with a family AA”. At other times operational concerns overrode welfare issues, and young co-suspects were placed in cells that ensured the greatest distance from each other to protect against collusion, regardless of whether they were accommodated in JDRs or not.

Finally, there is very limited scope for suspects and their families to challenge the conditions in which they are held. No information about the requirement for alternative accommodation is contained in the notice provided at booking-in and FAAs have little opportunity to see the room in which their child is detained. Only FAA7 had seen the accommodation in which her child (then a 13 year old) was detained. She was appalled, “They put him in a proper adult man’s cell – I seen it myself as I was passing by. I’ve seen them taking [him] out of it and I thought it was totally, completely unbelievable...”. As discussed in Chapter 5, even when they are aware, the capacity and will for FAAs to raise the issue is seriously hampered.

Separation from adult detainees

In the present study, the requirement that a young suspect must not be placed in a cell with a “detained adult” (Code C 8.8) was always adhered to.¹¹⁴ However, young participant accounts of the noise in the cells from other detainees cast doubt on the extent to which the requirement in the APP¹¹⁵ that young suspect accommodation be in a “separate area” from adult provision is regularly achieved in a meaningful way. In some fieldwork sites JDRs were in separate sections of the block (F2), or efforts had obviously been made to segregate JDRs from adult accommodation, either by a lockable gridded gate (F1/1 and F3/4) or solid door (F3/5). In practice, however, the doors or gates seemed rarely to be shut, being considered generally ineffective in shielding young suspects from seeing or hearing adult detainees. This again is disappointing since those few young participants who had experienced such segregation spoke of its positive effects.

In summary the protections enshrined in Code C with regard to the physical facilities for the detention of young suspects are rendered virtually meaningless. From the young person’s perspective what they experience almost invariably is an adult cell. Alternative accommodation is minimally adjusted from adult provision, and protections are often under-utilised through a combination of structural and institutional reasons. What is plain from the accounts of young participants is just how unsuitable such conditions are for detaining children and young people, and how difficult it is for them to relax or to sleep during long periods of detention. As I discuss in Chapter 7, the fairness of requiring a young person to answer questions in interview after many hours in such conditions is doubtful.

Children First?

As identified above, custody staff are under a range of obligations which require them to treat young suspects as children in the first instance, modifying their care to take special account of their youth. To what extent, within the constraints of the custody process, are staff seeking to meet those requirements in terms of their individual treatment of young suspects?

Despite the overwhelmingly negative experiences recounted above, young participants did detail some instances of significant efforts made by staff to mitigate the

¹¹⁴ With the exception of Luke’s account of being placed in a holding cell with an adult (see Ch3).

¹¹⁵ APP(CYP) 4.

harshness of the detention experience. Although few, the instances of kindness referred to reveal that sympathetic treatment by custody staff can drastically improve a child's experience of custody, and their responses to it. Luke, for example, who had described being extremely verbally abusive and difficult in police custody, recounted at length how he had been calmed by the kindness of a CA who had told him his first name and had gone out of his way to get him food that he would eat. Kate too described "giggling" with a CA who had told her of her own life "how she used to be a right little tearaway". She reflected "it makes you see sometimes, dunnit, that maybe yeah, you have done wrong but you can still change."

More frequent cell "visits"

The requirement for more frequent cell visits (Code C NFG 9B) promises greater support for child suspects' welfare needs and the fostering of this more sympathetic engagement. Duly, in all 3 forces observed "juveniles" were consistently visited half-hourly, rather than the hourly visits that tend to be standard for adult prisoners.¹¹⁶ However, I was very surprised at how those visits were generally conducted. To the uninitiated the notion of a "visit" suggests at the very least an interaction in the same room as a young detainee. I anticipated efforts to engage with young suspects, to provide reassurance and support of the sort described above. Undoubtedly this does sometimes occur. In addition to young participant observations above a number of CAs suggested that they did treat children differently to adult detainees: "I spend more time in cells with juveniles than I do with an adult" (CA2), "I do try to get to know them. If they're in school, what their interests are – to make the process not as scary as it seems" (CA18). However, I was disturbed to discover on observation that generally a "visit", including for a young suspect, simply involves the officer looking through a spyhole or lifting the hatch in the door to check that the detainee is breathing, accompanied by a perfunctory enquiry "You OK? Need a drink?" (eg F3 observation CA39). Young participants confirmed this very minimal interaction, generally recalling checks being conducted through the "spyhole" (Aaron), "the little slider thing" (Yemi), "they open the flap and close it" (Carter). Jake described the effect of such a "visit": "I could only see their eyes".

In many instances the protection was reduced, effectively, to a tick-box exercise: the check can be evidenced if required at trial, and the physical safety of the young

¹¹⁶ Although in F3 all detainees were on half-hourly visits.

person is confirmed, but their welfare is not really addressed. Ritualistic or presentational implementation of custody requirements has been noted previously (see for example Adams 2000). Indeed for some young suspects visit rounds exacerbated their frustrations. Hudson explained, “it sounds like they’re coming to the door and ‘cause you can hear the keys, innit yea, and you think, ‘Yes ‘I’m getting out, I’m getting out’. And all they do is that little flap, just move the flap and then just go...that is the worst thing”. For others the noise of the hatch being opened disturbs their sleep, “It’s well annoying because it’s dead loud” (Sadie).

Again resourcing was certainly a significant issue restricting wider adoption of more sympathetic approaches, with a number of staff talking about the lack of time for more tailored care, “We don’t really treat them much differently (to adults) – we don’t have the time to sit with them.” (CA11), “there’s absolutely no time any more to talk to anyone. Staffing levels are down and they fill us up more.” (CA42). The adversarial nature of the process was also implicated, with a significant number of young participants suggesting that they would reject the offer to talk to staff in any event: “cos they’ve arrested me” (Michael), or more generally because of their confrontational relationship with the police, “I prefer not to, I don’t really like get on wiv police” (Aidan).

Like some COs (discussed in Chapter 3), a number of CAs approached young suspects very much as perpetrators first, using language which reveals a striking lack of sympathy, illustrating the adversarial nature of the relationship. They spoke of “nasty children who seem to have escaped all help and gone off the rails” (CA13), who were “absolutely foul” (CA3 and CA4) or “right clever little gits” (CA27). This institutional hardening to young suspects, particularly regular attendees (as discussed above), clearly had the capacity to undermine the approaches of more sympathetic staff. CA41 recounted, “If they’re awake I’ll speak to them and ask them if they want a drink. People will say ‘What are you doing talking to them?’.”

Young participants often did not feel in the right state of mind to engage with staff. Harper described feeling in the cell that “if somebody comes like and speaks to me now, like, I’m just gonna go mad at them.”. Luke objected to the invasion of privacy a visit entailed, “it’s just like someone coming in your room when you don’t want ‘em to. You’re like, ‘Get out’ and they’ve gotta listen to you.”. Several custody staff stated that they would be more likely to approach sympathetically a child who is “upset and tearful” (CA11), or “If they’re sat in a cell – timid – then I talk to them” (CA29). As

CA31 explained, for those who are behaving problematically or “sulking... sometimes it’s better not talk to talk to them because it gets them all irate.”. As identified above young suspects’ reluctance to show fear or weakness means that this is, whilst an understandable approach, not a reliable way of identifying young suspects in need of reassurance.

Providing distractions

Whilst there is no juvenile-specific requirement to provide distractions for young suspects, their need for support in passing the time in the cell was painfully obvious to me on observation. Officers and staff in all observation areas acknowledged the difficulty that young detainees had coping with boredom and that this could trigger problematic responses: “boredom is the issue for juveniles – creates the ‘behaviour’” (CO33). It was equally acknowledged, as CO27 put it, that “happy people are quiet people”. However, although several COs were consistent in offering, even recommending, books, I saw little effort made generally to provide age-appropriate support in this regard to young suspects. For example, in each of the observation sites there were book and magazine selections, but staff acknowledged, often without particular concern, that the range of material for children was very limited: “There is no reading material specifically for youngsters – it’s just donated or what officers leave behind” (CO27). Several staff made reference to the availability of a pen and paper for drawing, but this was not routinely offered, rather it was available “if they know the process” (CO38) - although, as discussed above, incommunicado rights were never given verbally on booking-in.

Young participant accounts supported this picture. Whilst reading was not for everyone, a significant number of young participants said that they found reading helped to pass the time in custody, or that they would like to have read a book or magazine if one had been offered. However, some, including regular attendees, said they had never been offered a book or were unaware of their availability, others reported being told nothing was available, or only being offered Code C or a bible. Tom described how he had enjoyed drawing with a pen he had been given to fill in a form “it was just something else to do where I could use my imagination”, although the pen had been quickly taken back again when the form was collected. Only one young participant, Elijah, was aware of the right to a pen and paper (Code C 5.6)), but when he asked it had been refused, ““you could stab yourself with it”, he was told.

The lack of prominence given to supporting emotional welfare was striking, given that many young suspects are in custody in excess of ten hours. Young suspects in this regard were very clearly not treated as children first. Given the ease with which such support could be provided I was initially surprised by this finding. Police and professional accounts offer some reasons, broadly connected to a lack of resources. CA5, for example, suggested “there’s not always time” to explain the range of reading material available and they would not want to “insult” a young person by offering a book which was “too big a novel or something too small”. The need for a risk assessment was also cited, for providing “colouring pens or the like” (L&D3). Risk of damage to property was also apparently raised as an issue. Elijah complained that when he had asked for younger books he was told, “we can’t give you kiddie books in case you vandalise them”.

However, I got the impression that more widespread emphasis on addressing this need was constrained by cultural considerations. Firstly, some CAs appeared to resent being required to tend to young suspects’ non-essential needs in this way, considering such calls on their time presumptuous. For example, when YS11 requested a magazine on being taken a drink the CA responded, “He’ll be putting in his milk order next!”. Whilst several staff, who plainly took a more humane approach, expressed an appreciation that to adjust the detention experience in this way may be frowned upon by other staff more wedded to a deterrence approach: “I go in and do my Mum thing – I can relate to them. They must be so scared. I try to do everything in my powers – give them something to read – a crossword or something. I know they’ve done wrong but we’re not here to judge. I sound a bit wet don’t I?” (CA10).

Adapting for Girls

The requirement that a girl be under the care of a female officer (s31 CYPA) has the potential to be a powerful emotional support in the significantly male environment of the custody suite, but the data suggests that this too may not be functioning effectively. Although there were often female officers and staff in the custody teams on observation, I was not aware of the specific assignment of female staff members to girl suspects, nor of tailored visiting. As with cell visits, this adaptation seemed to have been reduced to the minimum required, in this case the CO asking during booking-in if a girl would like to speak to a female officer. This question, at least, seems to have been asked relatively

frequently. It was asked in 3 of the 4 bookings-in for young female suspects that I observed. Although of the other four girl suspects whose detention I tracked, only once was the offer to speak to a female officer recorded on the custody record. None of the eight girl suspects took up the offer (or at least if they did this was not apparent or recorded). In respect of two girls (YS18 and 20) what was noteworthy was that the question came later into the booking in process as part of the risk assessment, when offering sanitary protection. For example, YS20 was told, “You can talk to a female member of staff – if you need a sanitary towel or anything like that just let us know, OK?”.

There was also one striking case where a girl suspect (YS27) showed a significant sensitivity to gender issues. During booking-in she asked of the desk itself “Is there a boy side and a girl side?” and then when requesting the duty solicitor she asked, “Can you try to get a female – I’m not great with men”. However when she declined to speak to a female officer no further effort was made by the male CO to enable her to engage with the protection (although he did try, but fail, to arrange a female solicitor). Her experience is typical of the intractable problem at the heart of implementation of adjustments in the custody suite. The young people who are most in need of the adjustment are often least likely to be able to engage it, whilst at the same time the CO who can address the issue has no particular insight into the importance of the protection or any incentive to pursue it.

Of the eight girl participants, several did not recall being asked if they wanted to speak to a female officer. Of those who did, none had spoken specifically to a female officer, but several possible reasons for low uptake emerged. Firstly, the problematic connection of a female supporter with sanitary protection was laid bare. Sadie was quick to say that she had refused, and explained “it’s just embarrassing you don’t wanna talk about that do you”. The protection seems to be significantly undermined by unthinking routinisation in its delivery. Secondly, the familiar issue of the adversarial nature of the relationship between the police and young people was raised. Avery explained: “It don’t make a difference cos as far as I was concerned they were all authority they also do the same job. So it’s them against me. So it ain’t really gonna help”. Thirdly, Avery also seemed to suggest that the provision may not always have been available. Indeed, whilst on observation teams were generally of mixed gender this was not always the case. Officers in F3 observed: “There is not always a female [CA] on duty. You can call one up but in the middle of the night it can be difficult to get

someone down.” (CO23). This could be particularly problematic where a girl had to be prevented physically from self-harming: “then you have to send a male officer in to untangle the shirt and bra” (CO23).

Adjusting Care to Support Dispositional Vulnerabilities

The young people engaged in this study bore out the APP’s concerns, showing high levels of adverse life experiences, and commonly diagnoses of ADHD, ASC and other developmental disorders. However despite the exhortation in the APP to “carefully consider these when planning how to support, observe and care for children”¹¹⁷ very few adjustments were made by COs in response to positive disclosures of dispositional vulnerabilities during risk assessment. Almost invariably young people with additional vulnerabilities experienced the cell unadjusted, with their conditions triggering simply a different level of surveillance: regular rousing, detention in a CCTV cell, constant monitoring by CCTV, or being on “constant observation” with an officer sitting in the open doorway of the cell. The focus of the RA is squarely on physical risk to life and limb, and the consequential risk (to the force and the individual officer) of such an eventuality, rather than risk to emotional well-being (or, as I discuss in Chapter 7, fitness for interview).

Beyond increased surveillance and the sparing use of a secure waiting area, I did not observe any COs suggesting particular adjustment to a young person’s detention conditions as a result of the RA. Sol8, who specialises in representing young people with dispositional vulnerabilities, could only recall a single instance of a client being provided with an adjustment – the retention of a comfort item. On observation no questions were asked those disclosing an ASC, for example, about any sensory issues they may have, or other information which might support their care. One officer with a family member who has an ASC observed, “I despair of how we (the police) deal with special needs” (IO2). Young participant accounts provide a similar picture. Although several participants praised the approach of particular officers, especially if they allowed them into the exercise yard or to have a cigarette, there was little evidence of specific consideration of any vulnerabilities disclosed.

Considering the conditions, and average length of detention, for child suspects this lack of adjustment is really shocking. However, one can trace a range of factors

¹¹⁷ APP(CYP) 3.1.

driving it. Training for officers on mental health and related issues, although varying by area, was generally extremely limited, and often conducted through NCAL packages (digital click-through programmes) (CO26). In response to my queries about particular vulnerabilities staff typically observed, “there’s not a lot we can do with our powers” (CA10). Whilst in the circumstances this rings rather hollow, there is some basis for their position. In all suites, both older and more modern PFI suites, there was limited alternative accommodation available, and the time pressure on all officers does mean that deeper consideration, or more complex risk assessment to enable a young suspect to retain personal items, for example, is unlikely to occur.

There are of course HCPs available to all suites. Sometimes a disclosure would trigger a CO to put a young suspect down to see the nurse, although this was not routinely the case for non-acute complaints, and there could be a very long wait to be seen. There was, also, the suggestion that frequent attenders were less likely to be referred, as FNP4 explained, “There’s a certain group of children who are here regularly – they are quite used to the way things are and unless they have particular complaints we don’t get to see them.”. Even where L&D services were in place, with the expectation that all young suspects would be seen, this did not always occur: “we try our best to get through them but it’s highly pressurised in here and acutely unwell people need to come above them in the list” (L&D6).

However, there was also a range of factors limiting the effectiveness of HCPs. Firstly, they too were restricted to an extent by a lack of expertise. Many are experienced in A and E nursing, but, as I discuss in more detail in Chapter 7, they are very rarely child and adolescent specialists, nor expert in developmental disorders or learning disability. Secondly, consideration of adjusting detention to account for vulnerabilities was not considered core to their role, even for L&D specialists. HCP approaches tended to reflect the COs’ focus on physical risk: “we’re primarily here to make sure they’re fit and safe” (FNP6), “it’s about blame culture – we’re here to prevent deaths in custody” (FNP5). L&D5 encapsulated the general approach of HCPs: “developmental issues – autism, aspergers...family issues – we’re not equipped to deal with that in this sort of place”. HCPs sometimes provided medication, such as Ritalin for those with ADHD, but generally only after a 6 hour delay following arrival to avoid dangers of overdosing.

HCPs were perhaps most effective when used as a calming device by COs, or to provide reassurance. However this tended to be on a reactive basis often in response to

apparent deterioration, or threatened self-harm, in the cell. Sandor, for example, who had produced a medical letter to custody staff about receiving therapy for anxiety, described himself as having “got lucky” even though he was placed initially with no additional support in an adult cell and without seeing the nurse. He explained, “... I was in there for about 30 to 45 minutes and in that time I started talking to myself and therefore they sent the nurse in...we were just talking and at some point I forgot that I was in a police station”. Several other young participants spoke positively about chatting to nurses, even if only for the time out of the cell that this enabled. However, again, the adversarial context intruded and several young suspects described distrusting and refusing to see HCPs, particularly because: “even though they’re independent they’re still attached to the police” (Avery). This was an issue that I noted on observation and was raised by a number of COs as well. As with cell visits, several young people simply did not want to talk to a stranger, “I just say fuck off, don’t wanna talk to you” (Luke).

Self-harm

Of particular concern was the response in custody to threats of, or attempts to, self harm. Several HCPs described young suspects struggling to cope with extreme distress, resulting in “a lot of panic attacks” (FNP5) and attempts to self-harm. Resorting to self-harm in response to situations that feel intolerable has been noted in previous research with young adult offenders in custody (Inch, Rowlands, and Soliman 1995) and was a phenomenon that I observed myself in respect of several young suspects, particularly those with additional vulnerabilities. Officers too described young suspects having difficulties coping: “If they’re here 5-6 hours they can cope – after that they start to do stupid things” (CO27).

The range of options for officers concerned about the likelihood of self-harm, or stepping in to prevent such behaviour, is very limited. As described above, HCPs could be used for calming, but only where available and where the young person is willing to engage. Otherwise prevention measures tend to be rather blunter. One common approach is simply to remove any clothing or bedding which might be used for that purpose. Whilst this may be effective in neutralising physical risk it can be extremely

traumatic, and automatic resort to this approach is not recommended.¹¹⁸ Avery described what happened when she had tied her jumper around her neck in the cell:

I wouldn't let go. Took my jumper off me and then cos I was cold I went and hid under like, underneath the blanket and underneath the mattress. They took all that away and then they said that they're gonna like strip me down, I just like be in a cell with nothing on so I can't cause myself any harm.

Abigail similarly described being refused a blanket because she had not been compliant with such a search: “cos, I wouldn't let them touch me, or fucking take me other pants off or....”.

Often the only alternative approach is to place the suspect on constant watch, a device I saw used in respect of six young suspect detentions (YS18, 20, 24, 27 (via CCTV), 29 and 30). Apart from being extraordinarily resource intensive it is not necessarily effective. HCPs acknowledged that, whilst for some constant watch might be comforting, for others the experience itself could be “a bit threatening – a big person there watching you” (L&D3), could “escalate matters” (L&D4) or be “very intrusive and difficult to handle” (L&D7).

However, most concerning is the response by staff when these measures are ineffective, or where there is an acute threat of self-harm. For example I observed YS24 having to be physically restrained by a number of officers when his behaviour, eight hours into a custody episode, deteriorated suddenly from banging on the cell door and buzzing to tying his t-shirt around his neck. When officers tried to remove the t-shirt he became violent, shouting and struggling. A number of officers were involved and eventually managed to control him, initially face down on the floor, cuffed to the rear and with two sets of straps on his legs. The efforts of a nurse and a very sympathetic CO got him calmed and sitting up quite quickly, although his handcuffs were only removed and his t-shirt returned two hours later. This sort of episode, whilst not commonplace, is not particularly unusual. I tracked another young suspect physically restrained to prevent self harm on two separate occasions (as YS18 and YS30) and officers described to me having physically to restrain other young suspects in like circumstances. Several young participants, all girls, also described being restrained by multiple officers to prevent self harm. As with YS12 the numbers often engaged meant that this could be a mixed gender group which was also problematic, as Sadie noted, “I

¹¹⁸ APP (Control, restraint and searches) 6.2. See also obiter comments of Pitchford LJ in D (above) at [44].

don't like when it's men though – when they're grabbing me. Like women that's fine. But men I don't like it.”

Although the use of force in this way is distressing to watch, and arguably seriously dangerous, staff have little option. They are ill-equipped to respond in a child-centred fashion when faced with such behaviour, and their primary concern is inevitably risk of physical harm, both to themselves as well as to the young suspect. However, the child and their vulnerability is overlooked in the response, as CO9's description reveals:

You have to deal with the threat as opposed to the person or your perception. You deal with what you're faced with. My personal experience, you're almost dealing with a caged animal – in a secure environment that becomes their domain. When you open the door what they are going to do is governed by them – you need to be mindful of that when you go in.

As the process unfolds it becomes increasingly apparent, as episodes of this sort underline, that for children, but particularly those with significant vulnerabilities, the custody suite is simply not an appropriate place. Not only are the physical facilities unsuited to address their needs, but the staff and professionals have neither the expertise nor the resources to support them fully. In addition the adversarial context and institutional concerns of staff are at odds with a welfare focused approach, and the situation is made the more problematic by the distrust and distress of the young suspects in their care. Whilst this was acknowledged by some COs, HCPs in particular were vocal about the unsuitability of the custody environment:

In my view children shouldn't be in custody. I don't think it's the right place for them...There should be a dedicated room not in custody but in the police station, where social services come down. Bringing a child in and putting them in a cell is not healthy. I wouldn't like to see my kids brought in here. (L&D5)

Exercising Rights and Entitlements

In addition to these protections, the young suspect's engagement of their rights and entitlements in custody should operate as an important factor in improving their detention experience. Indeed the APP emphasizes the importance of staff ensuring that children and young people are aware of their rights as a mechanism for safeguarding and protecting them.¹¹⁹ As discussed in Chapter 3 young participants showed a superficial knowledge of their continuing rights, but very little appreciation of their

¹¹⁹ APP(CYP) 3.3.

wider rights and entitlements. I address here the extent to which young people were able to engage those rights and entitlements, and the effectiveness of those provisions in improving their experience and enhancing their ability to participate effectively in the process.

The right to have someone informed – “intimation” (Code C 3.1(a)(ii))¹²⁰

Young participants were almost without exception aware that they could have parents or carers informed of their detention, although they tended not to consider this a “right” as such. Undeniably for some young participants, knowing that someone who cared about them would be told of their arrest and whereabouts was a source of comfort and one that they often readily engaged. The converse was also true. A delay in informing parents, or providing them incorrect information, could be distressing for young participants and their FAAs, and several young participants referred to their anxiety when intimation was delayed to facilitate a search of the home address (s18 PACE): “your Mum starts getting worried. You start getting a bit panicky” (Rezar) (see also Kemp and Hodgson 2016).

Intimation for some young participants prompted a mix of emotions. Although reassuring for some, it also tended to trigger thoughts of parental reactions, and the consequences of them being informed, particularly amongst the younger group of participants: “I don’t even care about getting arrested. I’m just caring about what my mum is going to say.” (Rezar). Staff remarked on the frequency with which young suspects were unwilling to give parental details, suggesting that this was to avoid being “told off”. Young participants’ accounts however suggest more nuanced approaches as well. Some young people were concerned about the burden their arrest imposed, on their Mums in particular, who might have to leave other children and wait many hours in the station. Others remarked on the effect their arrest would have on their parents, “it’s just I don’t want my Mum seeing stuff like that” (Kyle). Some objected to the undermining of their own autonomy: “when I get into any situations I like to do them myself like...I don’t like bothering other people with anything.” (Hussain).

The right to consult the Codes of Practice (Code C 3.1(a)(iii))

Although, as I recount in Chapter 3, the right to read the “rulebook” was routinely offered, I did not see any young suspect exercise the right. Few young participants said

¹²⁰ I address the right to legal advice in Ch6.

they had taken the Codes, and fewer had read them. VAA2 suggested that young suspects requested the Codes “just to be awkward”, and indeed Logan described asking for them because he wanted to deface them. But two young participants who had taken the Codes expressed a genuine desire to understand more about the rules governing their detention: “to know like more in depth....whether they’re just giving half of your privileges” (Hudson). However, having read some of the Codes, they both reached the same conclusion, namely that their experience of custody did not correspond with what the rules suggested should happen. Rezar observed, “When you’re reading it, you’re thinking, ‘The amount of police officers I’ve seen breaking these types of rules’.” Similarly Hudson concluded, “it’s a totally different story, innit like, ‘cause I’ve been there, yeah.” Unfortunately, the provision of the Codes seemed to have worked simply as a source of resentment, rather than empowerment: “You see them type of things and you think, ‘I would love to arrest a police officer one day.’ That’s it really.” (Rezar). Neither had secured further entitlements as a result.

Keeping in touch

The right not to be held incommunicado, particularly the right to make a phonecall (Code C 5.6),¹²¹ and the right to speak to the AA “at any time” (Code C 3.18), are capable of dramatically improving the young suspect’s experience in detention. Contact with someone close to a young suspect could be transformative. Michael, who is asthmatic, spoke emotionally about talking to his Mum through the cell intercom. It made him feel “calm and relaxed” and slowed his breathing: “It makes me imagine she’s there with me.”. For others, the agency which such rights enabled was really important. A phonecall allowed Jayden to contact his FAA, to reassure himself that they were on their way. Similarly, Kate really appreciated being able to speak to her Mum, to break the news of her arrest and ease the worry for them both: “My mum is not well personally. She’s disabled. I said to her, “Please don’t come. You don’t need the stress.” In the context of the strain a custodial episode might place on a young person’s relationship with their family this could be very beneficial.

Given the lack of reference to these rights on observation (see Chapter 3), I was unsurprised to hear from many young participants that they had no understanding of them: “I thought that was just CSI and that” (Riley). For some young people the right to

¹²¹ Additional to the right to have someone informed of their arrest (Code C Note 5E). It can only be delayed or denied on the written authority of an Inspector (or more senior officer) (Code C 5.6, Annex B).

make contact with family members was “sometimes” granted (Dexter), especially if they were in for a long period of time “like two days...so I got to speak to my Mum on the phone” (Alex). Some others were aware of the right, but unclear how to exercise it: “But they’ve never said how I could do it, during when I was in the cell or anything like that” (Hussain). However, a number of young participants described asking to make a phonecall and being refused, including very young participants: “sometimes they say you can’t call her” (Kaiden). Will recalled challenging a CA, having read the notice, and being fobbed off, “I said to him look mate I’m allowed a call. It says in the rules I’m allowed, legally allowed to make a call mate... And he was like, no you’re not...you tell us who to call and then we ring ‘em.’”. Logan recounted with frustration being told, ““Oh, we can’t. We’re too busy.’ That’s always the answer.”. CA38 confirmed that resourcing was certainly an issue in F3: “If they ask they can have one (a phonecall) when it’s quiet. We can’t do it when it’s busy.”

There is a further question about the privacy of the call itself, where it is allowed. The phonecall to which a suspect is entitled under Code C 5 is not private, indeed suspects should be told that their call may be “listened to and given in evidence” (Code C 5.7). However the right to speak to an AA “at any time” is a right to speak “privately”. There is a grey area where young suspects speak to family members who may subsequently attend as AAs. Generally the approach of staff was adversarial in stance, to “monitor the call” (CO38), often requiring the young person to talk to parents on speakerphone at the desk, and insisting that they speak in English: “we need to be able to hear what they’re saying” (CA25). Young suspects’ rights to private support from AAs are plainly not fully realised in this way, although it was not clear to me that staff were necessarily aware either of a child’s right to private consultation, or that their incommunicado rights are additional to intimation and AA contact requirements.

Similarly, the possibility of adjusting the custody experience by allowing family visitors, (discretionary under Code C 5.5), was not something that it seems was considered, or accommodated, in custody suites that I observed. As addressed above, where a family member came down as an appropriate adult they might, subject to risk assessment, be allowed to sit out with a young suspect, but separate visits for emotional support were not considered: “generally juvenile or otherwise they don’t get visits – not even at Christmas” (CO23).

The exercise yard and showers

Perhaps most prominent amongst the wider entitlements is the right to exercise “if practicable” (Code C 8.7). Although limitations on the offer of exercise have been noted elsewhere (Skinns 2011b) even for young people who would be likely to benefit particularly from the provision, the exercise yard is not routinely offered. An ICV confirmed with regard to juvenile detainees: “you say to them, ‘do you know if you want to have a walk around an exercise yard there is one? If you want to stretch your legs.’ And invariably they haven’t been told that.” (ICV2). Although some young participants knew about the option of exercise, fewer had been in an exercise yard, and a significant number had no idea that the yard was available. In interviews a direct question ‘Did you go into the exercise yard?’ often evoked strong responses; many would have really welcomed the opportunity for fresh air, and were angered that they had not been made aware of the option, “They’re fucking bastards” (Malik). A similar picture emerged in respect of shower facilities, of which a number of young participants were not aware. For example, Luke who had been in custody a number of times was confident, “No, no, there’s no showers in the police station”, and ICV2 had similarly found detainees tended to give him a “blank look” to questions about showers. The resourcing issues are more acute in this regard, given the requirement to supervise, and staff in all areas confirmed that a shower was not offered routinely, and only granted on request and if staff were available, “if they ask they get one within reason.” (CA38).

Reflections on the Dynamics of Police-Suspect Relations

The review above reveals a detention process which is negligibly adjusted to account for youth and vulnerability, and where young suspects are infrequently able to engage the full range of entitlements and rights. Often, it seems, staff responses are constrained by resource issues, particularly a lack of training, adequate time or physical facilities, or their decision-making is dominated by concerns to address physical and institutional risks at the expense of welfare concerns. However, there are a number of features of the relationship between members of custody teams and suspects which have an overarching effect on the detention experience for young suspects.

Power relations

There are clear indications that the complex power relations between young suspects and staff have a significant effect on the provision of support and the accessing of entitlements in custody. A number of officers made plain that a refusal to afford a

young suspect a comfort or a requested entitlement did not always arise as a result of “practicability” issues. Some officers took the approach that entitlements, particularly phonecalls, and exercise or shower facilities, were a measure for those who were “not coping well” (CA8, CA24), or for children experiencing a particularly long detention period, such as over a weekend, rather than as an entitlement to be considered, and acceded to where practicable, in respect of any young suspect. Some other officers took a more extreme approach, using access to comforts and entitlements as a form of management tool, rewarding good behaviour by granting requests and refusing entitlements where behaviour was considered unacceptable. CO41 explained, “Like a parent I work with a reward system. You’ve done as you’re told, as I asked you to, then you can have X. Now when they come in, they treat me decent and don’t cause issues, they’re fine. If you let people get away with murder you make a rod for your own back.”

However, it is easy for even a relatively compliant young suspect to behave in a way considered unacceptable to some custody staff, particularly a young person who may be struggling to cope in the cell, or who seeks to assert their rights or entitlements. Locked in a cell the detainee is in the helpless position of having to ask for everything: what the time is, for drinking water, even toilet paper. This places the burden on custody staff to tend to what may be repeated requests. Often such requests are made, or followed up, using the buzzer, which as Skinns has noted can be a particular source of “resentment and friction” (Skinns 2011b, 92). Indeed the natural immaturity of young suspects, particularly their unfamiliarity with the system, uncertainty and difficulty coping with boredom, means that they may buzz more frequently than adults.¹²²

On observation some staff were very patient in answering calls, acknowledging the challenges for young suspects: “they want to know what’s happening now. They don’t feel in control – don’t quite understand what’s happening” (CO38), “Juvenile time perception is different to mine – no watch, nothing to do. They lose a sense of time.” (CO41). But others took exception to young suspects, particularly repeat attenders, who were persistent in asserting their rights. CA32, for example, spoke of regular detainees who would “demand phonecalls. They’re always being arrested – but they insist on it. They’ll do anything they can to get out of the cell. They can be very very demanding – others can be model prisoners.”. Like CO41, CA8 explained how he would adopt a

¹²² Clinical research also suggests that prevalent dispositional vulnerabilities, such as ADHD, may prompt more frequent buzzer usage (Young et al. 2013).

coercive approach to the granting of rights in such cases: “If they’re trouble, asking for drinks all the time – I’ll say yeah, I’ll do it when I can. But if they’re not trouble then I sort it out.” A number of young participants described this sort of response: “some of them will just ignore you” (Sadie).

As I acknowledge above this could be a resourcing issue. On fieldwork staff were often very busy, but not invariably. My fieldnotes in F3 recorded: “The answer to the buzzer often involves ‘We’re very busy here’ or ‘just dealing with xx’ – this is not always the case in fact.” I also observed that sometimes young suspects’ buzzers would be left to ring and ring unanswered, turned down or switched off for a limited period if buzzing was considered to be “repeated or abusive” (CA1) (see for similar Skinns 2011b). A number of young participants complained that their buzzer had been switched off, including when they had been buzzing to ask to speak to parents or for medication (Zoe). Not only did this deny them the opportunity to engage their rights, but it tended to exacerbate difficulties coping, and was experienced as punitive. For some it could be frightening as well, “imagine if I’m ill or have a heart attack or something...you turn a bit panicky” (Rezar). As FAA7 observed, “I don’t think they should do that to kids...especially when kids have got medical problems”.

Such inconsistent responses, or refusals of requests, tended to antagonize young participants, some of whom felt that staff were deliberately disrespectful. Malik complained, “They don’t offer you nothing in there man. What they tell you lot and what they do to us is two different things.” Failure to answer could also result in an escalation of disruptive behaviour: “I’ll have to bang on the door and I keep banging and I keep banging and I keep banging and keep banging and keep banging until a police officer comes.” (Kaiden). Or the young suspect may resort to self-harm. Aaron described headbutting and punching the walls in frustration.

However the impact on young suspects’ understanding and engagement of their rights is profound. Young participants expressed a deep sense of disempowerment. Unsurprisingly many young participants in this study were skeptical about exercising their rights, having learnt that rights are only patchily, or even conditionally, honoured, according to the whim of staff. Aidan, for example, stated that he had “never really asked for the things off the piece of paper (the notice)” because he thought that some of the staff would be “idiots about it” and refuse his request. Hussain explained, “so there’s no point in ringing the bell, they’re just gonna waste your time”. This resignation and lack of belief in their ability to exercise rights reflects observations

made by Choongh that detainees (of all ages) in his study displayed “extreme scepticism about the utility of rights” and his participants, as some of mine, often rejected the view that rights could be unilaterally exercised in face of “absolute” police power (Choongh 1997, 177; see also Grisso 1981; APPGC 2014a).

Far from enabling effective participation, these inconsistent responses to rights requests tended to foster a sense of helplessness. A number of young participants took the view that there was no point in complaining about harsh or inconsistent treatment: “you can’t do nowt about it” (Cole), “you just have to deal with it” (Aidan), “I just left it cause I know like what they’re like” (Will). In particular a formal complaint was considered to be pointless, since the police would always believe officers over suspects (see for similar Haydon, McAlister, and Scraton 2012; Lyon et al. 2000). Such disempowerment echoes young people’s experiences within the wider youth justice system (Hazel et al. 2003; APPGC 2014b; Harvey 2007).

Low visibility

The low visibility of the custody suite, and thus the lack of repercussions for those who overstep the mark, whether suspect or staff, also has an effect on the treatment of detainees. The low visibility of police work generally is well-documented in the literature (see for example Goldstein 1960), but oversight of conditions in the custody suite in particular is very limited, especially for young suspects. The treatment of young suspects is less likely than that of adults to be scrutinised by a court. The welcome focus on diversion of young suspects out of the criminal justice system (Crown Prosecution Service 2019) has the negative effect that their treatment in detention is unlikely to be considered in a criminal court. Even where they are prosecuted, judges and lawyers operating within the adversarial system are focused on the circumstances of the allegation, not on the conditions of detention, save in those few cases where such conditions may found an argument to exclude the evidence from the interview at trial (McAra 2010). CCTV footage of the custody suite will rarely be examined. In addition, as identified above, young suspects are unlikely themselves to make a formal complaint and rarely will they have the financial support to pursue a civil claim.

Young suspects are for the most part alone in the custody suite. The capacity of AAs and legal advisers to prevent abuse by means of their presence, and their ability to identify and rectify concerns about conditions more generally, is limited (as I discuss in Chapters 5 and 6). Additionally, the efficacy of independent oversight is also

questionable. Recent research into ICVs concluded that they were “likely to be ineffective” and “made no impact on how the police ran custody” (Kendall 2018, 118). My own discussions with ICVs tend to support that view, given their lack of impact in respect of the range of implementation failures of which they were aware. At the same time over-arching scrutiny by HMIC is hampered by limited custody data collection in many force areas (HMIC 2015). Although at the time of writing matters are improving there was, during fieldwork, very little collection of data about the use of force or constant watch, for example, and some apparent resistance to it. In F3 for example CO25 exclaimed: “If I submitted a form for every time we hussed someone back to their cell or every time someone takes their t-shirt off!” as if this would be an impossible task.

This low visibility is plainly of serious concern. Not only does it enable the widespread failures in implementation observed. But the present research suggests that more abusive treatment may also be going unchecked. Several young participants reported staff being verbally or physically abusive to them. At its most serious Avery complained of an officer who had hit her head repeatedly against a cell wall causing a cut across her forehead (see also Robert’s description of a retaliatory assault in Chapter 3). Such accounts are deeply shocking. However, low visibility works in other ways as well. Several young people told me that they felt they could, in effect, behave as they liked in custody because there was no comeback, as identified in Chapter 3. Staff as well were aware of, and resented this lack of oversight. CO33 commented “they don’t see at court what they were like – they never get to know”.

Adversarial approaches - deterrence

As identified throughout this chapter, the adversarial context of the young suspect’s detention is constantly felt, both from the young suspect and officer perspective. All too frequently young suspects brought into custody are approached as having offended, “they’re here for a reason” (CA3, CA42) rather than as children first. There was little sense of a difference of approach between those charged with the care of the young suspect (COs and CAs) and those in a more adversarial relationship with the young person, namely the investigating officers. However, where sympathy was expressed for young detainees, or difficulties in their lives acknowledged, this tended to focus on poor parenting or discipline at home: children who have been “pulled up” not “brought up” (CA10), “degenerate” families (CA16) with parents who “don’t give a damn”, or where

the mother and grandmother are “on the game” (CA13), products of those parts of society that have been described as “police property” (Lee 1981; Reiner 2010). These observations often fed into corresponding statements about the benefit of an episode in custody in response to that lack of discipline at home, that it might “do the trick” (CA10) in terms of preventing offending. CO34 articulated the thinking: “I like to think some good can come – I think sometimes it’s in their best interests – they might not have enjoyed it but it can set them on the right path.” CA21 likewise observed: “This is probably not the best place to be but I think it is good to have this here to show them what is done when you’ve done something wrong.” (see also Choongh 1997; Evans 1993). This attitude also drew on the view of some staff that the courts were too lenient, undermining the work of the police and the youth justice system more generally. CO12 commented, “The only real penalty is a period in a cell – it’s like the naughty step.” CO43 displayed similar thinking,

I agree it should be a last resort, but I think (detaining in the custody suite) is a power we need and should have.... They get lots of chances before prosecution – even before a referral. There’s a real contrast with the rest of the youth justice system – I don’t mind remotely being the big bad wolf in it all.

Some other adults engaged in the custody suite also expressed the same approach. ICV3 commented, for example, that young people were there to “learn a lesson” and as such “It isn’t a hotel and we don’t want to give young, old or vulnerable the wrong impression – the wrong reason as to why they’re there in the first place.”

However, this deterrent approach operates in a fashion inimical to a welfare approach. It produces an embedded sense of “less eligibility”, the principle that for detention to have a deterrent effect the treatment of the prisoner must not be superior to the minimum standard outside (Rusche and Kirchheimer 1939). There was a sense that efforts to adjust the process would undermine its vital effect, even that the process at present is too “warm and fluffy” (CO12), or that young suspects are “molly-coddled” (CA23). Several of the more humane custody staff made reference to being accused of, or feeling as if they were, too “soft” with detainees (CA40, CA41).

A number of young participants commented on the punitive nature of police detention:

Evan: Basically, police just think it’s fun and games. So, like, ‘cause it’s innocent until proven guilty?
MB: Yeah.

Evan: No it's not. It's completely not. 'Cause you get accused of somethin', straight away you've done it. You've done it, and you get punished for it.

This view is also widely reflected in the literature (Hazel et al. 2003; Choongh 1997; Kemp and Hodgson 2016; Lyon et al. 2000). Several young participants seemed to have accepted that this punitive element to their detention dictated its conditions: "it's not meant to be nice in there" (Tom), and two young participants (Jake and Sandor) suggested that their experiences had indeed had some deterrent effect. However, the harsh conditions more commonly simply prompted resentment on the part of young suspects, rather than preventing future arrests. For a number, the conditions were indicative of the officers' disrespect and lack of concern for them, "It's just like they don't care, they're not bothered." (Logan). We saw in the case of young suspects' defiant responses (above) that quite apart from triggering desistance, treatment experienced as excessive and undeserved could be iatrogenic, as Carter's opening reflections make plain.

Adversarial approaches - more punitive responses

It seems that this adversarial approach prompted in some staff yet more punitive responses to non-compliance. One option engaged by some staff was to threaten a problematic young suspect. Sometimes the threat was to delay their release: "some of them will be like 'You're just gonna be staying in for longer if you don't calm down'." (Nathan). Such a threat may be effective, but young suspects tended to conclude that their period in detention was therefore deliberately manipulated for punitive purposes by the custody staff. A number of suspects suggested that staff deliberately "long it out" (Jamal) to punish them: "It's a bit like blackmail innit? I mean you've gotta do this and you've gotta do that or we ain't lettin' you out....That's basically what it is. Cos they will leave you in there for hours on end just doing nothing, they will leave you in there." (Will).

The other threat particularly complained of by young participants was that of a criminal damage charge. Undeniably there are occasions where young suspects cause considerable damage to their cell. YS24, for example, was said to have broken the CCTV camera in his cell. However, in some situations the use of this threat seemed extraordinarily heavy-handed, and emblematic of the failure by staff to take a welfare approach to young suspects. For example, YS17, a 17 year old boy in residential care with markers for self harm, had been in custody for approximately 20 hours when he

was spotted “scratching the wall” in his cell. The staff response was to warn him for criminal damage. The custody record shows that moments later he was discovered to have been sharpening a plastic spoon, which he had pressed in half to make the shape of a knife. Young participant accounts, and evidence provided to HMIC (2015) reveal how ineffective such an approach can be in terms of calming an anguished young suspect, and the resentment that can result.

These more punitive responses are undoubtedly enabled by a general hardening of the attitudes of custody staff to the plight of the people in their cells. Seeing detainees in a state of extreme distress is not uncommon in the custody suite. CO23 commented to me: “I think all cops get some sort of PTSD – I don’t think they really realise. If I talk to someone in a pub I know that I have an entirely different outlook.... Sometimes I wonder why I have no empathy.”. I observed this for myself. My fieldnotes for F2 have the following entry: “8.10pm – A man screaming at the top of his voice – several times – really raw and disturbing to listen to. No one seems to notice. A sergeant comments to no-one in particular ‘I hope if I start screaming like that someone will take notice of me’. No action was taken.”.

Conclusions

The picture of detention revealed here is bleak. The vast majority of young participants recounted experiences in the cell which were very lengthy and deeply painful, often characterised by near intolerable boredom, uncertainty or anger. Occasionally such episodes were extremely distressing and traumatic. Some young participants described feeling helpless and resigned, whilst others recounted or displayed more defiant behaviour often leading to harsh and coercive responses. Their accounts, and the observation data, reveal that the protections which they should enjoy are rarely implemented, and where they are in place, they are generally ineffective. Facilities for detaining children are, from their perspective, virtually indistinguishable from adult cells, and the treatment of young detainees by the majority of custody staff is minimally adjusted to take account of their youth and any additional vulnerabilities they may have. Although there are more positive accounts, most young participants described very limited efforts to provide distraction or support for them during the waiting process. Importantly, few young participants were equipped with sufficient understanding of their wider entitlements to be able to engage them, particularly with regard to contact

with family and exercise, and often experienced refusal or inconsistent responses where they did make requests.

A range of factors feeds into this concerning picture. Echoing the analysis in Chapter 3, the issue of resourcing, in respect of training, staff numbers and physical facilities, plays a significant part. So too do institutional concerns, particularly the management of risk to the organization, and individual officers, in preventing adverse incidents in custody. There are individual factors at play as well, arising from the particular vulnerabilities of the young suspects being detained. However, what this chapter brings into sharp focus is the challenge that the adversarial context presents for a welfare approach, particularly where coupled with the huge power differential between officer and child suspect, and played out in the low visibility setting of the custody block. The sense that young suspects are unconvicted and detained simply for the purpose of obtaining evidence is too often drowned out by extra-PACE concerns to discipline and deter. At the same time distrust and animosity frequently prevent young suspects from engaging with more supportive approaches. As we saw in Chapter 3, “crime control” inclinations on the part of custody staff overwhelm “due process” approaches (Packer 1964), with negative effects both for suspects’ welfare and for their future participation in the important stages of the process that lie ahead.

That unconvicted children are often experiencing a deeply punitive form of detention is highly problematic. The lack of dignity and respect that young participants felt had been accorded to them in detention played a significant role in their attitudes on release. Like Carter, a significant number of young participants held negative views of the police which they connected to unfair or disrespectful treatment in detention. Tom described his loss of trust,

it’s the sort of thing where if I needed them I wouldn’t even bother...I just wouldn’t wanna call ‘em, just because I don’t think they’re that nice people. Since I was in there for so long and they were useless when I was there, I just don’t really think they’re that trustworthy.

Such responses are worrying, and I pick up the themes of procedural justice and police legitimacy in Chapters 7 and 8. However, this thesis must turn now to the later stages of the police custody process. The material presented in this chapter poses fundamental questions about whether it can be fair for young people who have undergone such detention to be required to make significant legal decisions, and

contend with a police interview. The principal support for them in that process is the AA, whose role and effectiveness I examine in detail in the next chapter.

Chapter 5

The Appropriate Adult

Jake, 13 years old at the time of his arrest, describes being at the booking-in desk:

Yeah then I was put in the cell I had to wait in there. I don't know how long I was waiting in there and then someone come and told me that my Mum was here.... it took them about half an hour to come and get me... it was just like joy because I hadn't seen my Mum all day and... I thought I would never see her til like the morning or something.

His Mum was standing at the desk with the custody officer ('CO') when he first saw her:

Well she was quite cross because er the policeman told her that err the class B drugs were found on me ... she was like '[Jake] why did you have this stuff on you?' And err I was like I didn't and she was like yeah you did because the policeman just told me and I was like no I didn't.

Jake's Mum (FAA2) acting as his appropriate adult ('AA'), describes her experience:

It was awful, it was absolutely awful. I'm absolutely petrified because, one, I've never been in a police station in my life basically what I feel now after coming out, reading everything that should have happened, I feel like I really let Jake down with not knowing.... And I was like, 'So what is he here for?' And he [the CO] says, 'Well, I need you to sign a few things first,' and I was like okay.... So [Jake] comes out crying, he [the CO] didn't even ask him if he's all right or anythinghe says to me at that point, 'Yeah, he was found with cannabis on him.' ... So as I sort of catch [Jake], I'm looking at him with real disgust and he looks at me and he looks away, and then I thought well, no, I'm not being quiet.... I said, 'The officer has just said that you were found...' He said, 'They weren't mine, they were found in the shed.' So as he's speaking an officer's looking at him like this and he's just like this and you could just tell he didn't want to speak and he didn't want to say anything. He wasn't allowed to speak to me, that was for sure....

She recounts sitting on the bench with [Jake] and then going out to make a phonecall:

I'm literally 2 minutes and then I'm back on the buzzer ringing for about 20 minutes literally. I get let through ...and I'm like, 'Where's Jake? Where's my son? I said to you is that okay for me to leave him here for two minutes and you said 'yeah'. Where is he?' 'He's gone back to his cell.' ... So I'm like, 'What? Why? I don't understand what's going on. What is he being charged with?' 'You'll have to go now, you're not allowed to wait here.' I said, 'Can I not wait in the waiting room?' 'No, there's a McDonald's up there, go up there.' I said, 'I'm not going anywhere, I'm waiting here.'

This chapter examines the role of the appropriate adult ('AA'), understood to be the "principal safeguard" (Brown 1997, 187), a "crucial" protection (CJJI 2011, 13) for young suspects. In *HC*¹²³ Moses LJ endorsed a description of the AA as the "gateway to a young person's access to justice", essential so that the young person can "effectively make his voice heard whilst in police detention or in police interview" (at [63]). The experiences of young participants related in chapters 3 and 4 underline how critical this safeguard can be. But of course, where such a role is so significant, there is always the danger that the presence of an ineffective AA may "bestow a degree of respectability" on, and thus legitimise, unfair processes (Medford et al. 2003; Pierpoint 2000; Pearse and Gudjonsson 1996).

The vignette above, relating Jake and his Mum's experiences in police custody, introduces some of the key issues to be addressed in this chapter. Through Jake's eyes we experience the relief and "joy" for a child of seeing a loved one in police custody, but also the tempering of that supportive presence as a result of his mother's inevitable anger at the allegation. Jake's Mum, however, is intimidated, even frightened herself. Struggling with the conflicting emotions of anxiety and anger, she feels overwhelmed by the alien situation and the hectoring approach of the CO. Her account reveals the fundamental tensions at the heart of the role; firstly, that a hugely demanding role is expected to be played, in most cases, by an untrained family member in fraught and unfamiliar circumstances; secondly, that her ability to perform the role is governed entirely by the CO whose very conduct she is meant to monitor and challenge.

I explore these tensions and consider the nature and effectiveness of the AA safeguard for young suspects, not just in the interview, where previous commentators have tended to focus, but across the wider detention experience. Importantly, the analysis for the first time is informed by the perspectives of a sizeable group of young people with experience of the safeguard, and the reflections of a range of adults who have supported children as their AA. The chapter opens with a consideration of the role as envisaged by policy, and a review of the literature in respect of AAs acting for young suspects. Having identified the gaps in that knowledge and the tensions within the role, as identified by commentators, I turn to the empirical data to address these issues. I review the central elements of the role: the AA as "supporter", as guardian of "due

¹²³ *HC (A Child), R v Secretary of State for the Home Department & Anor* [2013] EWHC 982 (Admin).

process” and as facilitator of “communication” in light of participants’ accounts and the observation data. I then explore three particular challenges to the effective operation of the safeguard: firstly the issue of delay and its ramifications, secondly the control exerted by the CO and finally the compendious and contradictory nature of the role.

The Role

What does the role entail? Section 38(4)(a) of the CDA simply states that the purpose of the AA is to “safeguard the interests of children and young persons detained or questioned by the police”. At the time of fieldwork neither PACE nor Code C, however, provided a general description of the AA’s role.¹²⁴ The role was expanded upon in various guidance documents, each providing a slightly different formulation.¹²⁵ The guidance prepared by the Home Office in conjunction with the National Appropriate Adults Network (“NAAN”)¹²⁶ (“the HO/NAAN Guidance”) was most widely used (not least because the APP required its distribution to all AAs).¹²⁷ It stressed that the AA was not intended to be present “simply as an observer” and detailed that the AA’s role was to “assist the detainee to ensure that they understand what is happening at the police station during the interview and investigative stages”. The guidance then emphasised three particular aspects of that role. These were to “support, advise and assist the detainee”, to “ensure that the police act fairly and respect the rights of the detainee” and to “help communication between the detainee, the police and others”. For ease of reference I refer to these as the “supporter”, “due process” and “communication” roles respectively.

Under the new definition in Code C 1.7A the role has not changed substantively. The definition restates these three aspects of the role, each slightly amended. The “supporter role” is now related specifically to when the suspect is “given or asked to provide information or participate in any procedure”. The “due process” role requires the AA to inform an Inspector, or officer of higher rank, of any concerns, whilst the “communication” role is now limited to communication “with the police”. However the

¹²⁴ Updated Code C (07/18) now includes a definition of the role at paragraph 1.7A.

¹²⁵ See YJB Case Management Guidance 2014 section 3, 1.3 (accessible at <https://www.gov.uk/government/collections/case-management-guidance> last accessed 20/04/19.) cf. APP (Mental Health) 10.1. There is no further description with particular relevance to a child suspect in the APP(CYP).

¹²⁶ NAAN are a national membership body supporting and representing organisations delivering appropriate adult services.

¹²⁷ APP (CYP) 9.3. NAAN have now produced an updated version available at https://www.appropriateadult.org.uk/images/pdf/2018_quick_guide.pdf, last accessed 21/04/19. See AppD for a copy of the version current at the time of fieldwork.

new definition encapsulates the requirement to support understanding as a separate fourth element, with a particular focus on the suspect's rights.

The procedural demands on the AA have not changed. The AA must be present: when the young suspect is told his or her rights (or the rights must be repeated in the AA's presence on their arrival) (Code C 3.17), for intimate or strip searches (Code C Annex A 5 and 11(c)), in interview (Code C 11.15),¹²⁸ and for charge (Code C 16.1), or where an out of court disposal is to be imposed.¹²⁹ Save in interview, what exactly the AA is intended to do when present the Code does not stipulate. Importantly, in contrast to legal advisers, the AA does not enjoy legal privilege (Code C NFG 1E).¹³⁰ Code C makes plain that acting as an AA does not destroy an individual's civic duty to "help police officers to prevent crime and discover offences", and to submit to questioning in this regard, even if unwilling (NFG 1K). That lack of privilege is confirmed in the recent case of *R v Ward*¹³¹, where admissions made to an AA by an adult suspect who was "very shaken" and "in a bad way of anxiety" were held to be admissible (at para [5]).

The role should be fulfilled by a parent or guardian (or a representative of a local authority where the child is in care) in the first instance, referred to as familial AAs ('FAA'). Failing that the AA may be a "social worker" of the local authority or, as a last resort, any "responsible adult aged 18 or over" who is not a police officer or employed by the police in any way (Code C 1.7) (see Littlechild 1998b). Local authorities have a duty to provide AA services for young suspects whose family members cannot act (s38 CDA). This may be covered in-house, but is often fulfilled using external "schemes" manned by trained lay adults, either paid AAs ('PAA') or volunteers ('VAA'). However, an individual cannot act as AA if they are suspected of involvement in the offence, are the victim or a witness of the allegation, involved in its investigation or have previously received admissions about the allegations from the young person (Code C NFG 1B).

¹²⁸ Although there is provision for strip searches and interview to occur in the absence of the AA where urgently required (see Code C Annex 11(c) and Code C 11.18 respectively).

¹²⁹ See (Bevan 2017, 114ff) for the full scope of these requirements.

¹³⁰ Although the limits of this position are not entirely clear, see the case of *B* [2008] EWHC 1017 (Fam) and (Bath 2014).

¹³¹ [2018] EWCA Crim 1464.

The Existing Literature

The support provided by AAs for young suspects has been touched on in all of the whole-process custody studies referred to above, however the AA protection and the experience of it by child suspects were not, in any, the specific focus of the study. Three large scale studies (Evans 1993; Medford et al. 2003; Moston and Engelberg 1993), which analysed tape-recorded interviews with young suspects, have considered the contributions of AAs during questioning, but all are now of some age. More recent studies, touching on AA input in young suspect interviews, have tended to be on a smaller scale (Kemp and Hodgson 2016), or in a different jurisdiction (Quinn and Jackson 2007, in respect of Northern Ireland; Thomson, Galt, and Darjee 2007, in respect of Scotland). Most recently Dehaghani (2017b) has explored the conceptualisation of the vulnerability of young suspects by COs as part of a study considering the identification and definition of the vulnerability of adult suspects, and Dehaghani and Newman (2019) have considered whether the role could be fulfilled by a lawyer.

The operation of AA schemes generally has been the subject of a number of reviews (Nemitz and Bean 1994; Revolving Doors Agency 1996; Signy 1997), more recently commissioned by the Home Office (Home Office 1995; Pritchard 2006; Perks 2010; and Bath et al. 2015 (re vulnerable adults only)). These latter reviews have generally drawn from surveys conducted with scheme operators and police forces, rather than eliciting information from the users themselves. Pierpoint has specifically considered the use of volunteer AAs for young suspects, focusing on the perspectives of volunteer AAs themselves, their training, organisation and understanding of the role (Pierpoint 2004; 2008). Whilst two thematic inspections also provide additional exploration of the protection: the CJI (2011) report on AA provision and the detention of children after charge; and HMIC's (2015) report on the Welfare of Vulnerable People in Police Custody.

Gaps in the literature

There are three significant gaps in this body of literature. Firstly, there has been very little research with young people exploring their experiences of AA support. What there is limited in its scale: HMIC (2015) interviewed 9 young people and the CJI's thematic inspection (2011) is stated to have involved focus groups with young people "where available", but no further details are provided, whilst Kemp and Hodgson's study

(2016) elicited views from 5 young people in a focus group.¹³² In particular we have limited evidence of what children understood about the role, and how they engaged with and experienced AA support.

Secondly, there is very little evidence about how AAs for young suspects fulfill their wider role outside the interview (Nemitz and Bean 2001), especially how they support children throughout their time in custody, and ensure due process. Finally we do not have evidence from this jurisdiction¹³³ of how FAAs and untrained volunteers cope with the role: how their suitability is assessed, what they understand about their role, and the extent to which they are enabled to support the young suspect.

Concerns and issues identified within the literature

The literature suggests that the AA protection for young suspects is problematic for a number of reasons. Since their formal introduction, there have been concerns about delays in securing the attendance of AAs, both familial (Littlechild 1998a; Pierpoint 2006; Newburn and Hayman 2002), and non-familial (Quinn and Jackson 2007; Brown et al 1992; Phillips 1998; Nemitz and Bean 1998; Pierpoint 2008). In 1992 Brown et al found that young suspects spent approximately 60 per cent of their time in custody waiting for the AA to arrive.¹³⁴ More recently HMIC (2015) identified from custody-record analysis an average wait for AAs for young suspects of 5 and a half hours, whilst Bateman (2017) found an average delay between arrest and AA arrival of more than 9 hours.

Reasons for delays included the arrest of a young suspect late at night (HMIC 2015; Pierpoint 2008), and other work commitments on the part of volunteer AAs (Nemitz and Bean 1998; Signy 1997; Pierpoint 2000). However significant delays appear to arise also because of callouts being delayed for the obtaining of further evidence (Pierpoint 2008), and to coincide with points in the custody process (Skinns 2011b), particularly interview (CJJI 2011; HMIC 2015).¹³⁵ Indeed none of the young

¹³² There has also been limited exploration of vulnerable adult suspects' views of their experiences with AAs (Jessiman and Cameron 2017; Leggett, Goodman, and Dinani 2007; Gendle and Woodhams 2005). The latter being the largest involving 15 semi-structured interviews.

¹³³ There were five interviews with "lay" AAs in Quinn and Jackson's NI study (Quinn and Jackson 2007)

¹³⁴ This predates the CDA statutory obligation on YOTs to make provision for AA attendance (Pierpoint 2000).

¹³⁵ This may be unsurprising since co-ordination of the AA's arrival with interview readiness featured in YJB guidance 2000, although it had been removed by 2004.

participants in HMIC's research (2015) could recall the AA being present save immediately prior to interview.

The literature provides no clear picture of the effects of these delays. Some studies have suggested that such delays result in longer overall detention times for young suspects (CJJI 2011; Kemp et al. 2012; Skinns 2011b), although a direct causal link has not been clearly established (Skinns 2010). Dixon (1990) suggested that delays in AA attendance might induce false confessions, although Phillips and Brown (1998) found no evidence to support this contention. Plainly, as the CJJI (2011) suggested, operating within a more limited timescale as a result of delayed arrival is likely to make fulfilling the role more challenging.

The compendious nature of the AA role has also long been identified as problematic in (Pierpoint 2004; Bartlett and Sandland 2003; Pierpoint 2011; Quinn and Jackson 2007). It has variously been described as "ambiguous and contradictory" (Pierpoint 2008, 399), "complex and demanding" and "full of contradictions" (Cummins 2011, 308). There have been repeated calls for clarity in terms of the scope and focus of the role (Brookman and Pierpoint 2003; Pierpoint 2004; 2011; Evans 1993; Palmer 1996; White 2002). In particular there is a tension between the welfare aspects of the role, and the AA's duties to ensure due process (Nemitz and Bean 2001); what Cummins describes as a crossing of the "welfare and justice axis" (2011, 308). Research to date, whilst identifying this tension, has not explored how this plays out for young suspects. Pierpoint's research with volunteer AAs (2011) suggests that their welfare-oriented behaviours might detract from their due process role, whilst by contrast volunteer AAs in Jessiman and Cameron's study (2017) (looking at AA support for adults with learning difficulties) viewed their role primarily as ensuring due process. Concerns have also been raised that the AA has become simply another part of the custody process, an administrative role focusing "on complying with PACE 1984 rather than safeguarding and promoting the welfare of children and young people" (CJJI 2011, 7) (see also Medford et al. 2003; Cummins 2007a).

The fact that AAs do not enjoy legal professional privilege has been raised as a source of difficulty generally in respect of the conduct of AAs (Nemitz and Bean 2001; Dehaghani and Newman 2019).¹³⁶ What we do not know is the extent to which young

¹³⁶ Although the position is clearer since *Hedley J in B* clarified "the presence of an AA at a conversation which would otherwise attract legal privilege does not destroy that privilege", it remains doubtful whether this would prevent voluntary disclosure on the part of the AA (Bath 2014).

suspects, or their FAAs in particular, appreciate that lack of privilege, or confidentiality, and the extent to which lack of privilege affects how they are able to engage AA support.

The suitability and effectiveness of FAAs

In light of the complexity of the role it is perhaps concerning that the majority of young suspects are supported by FAAs (Bucke and Brown 1997; Phillips 1998), even following the enactment of the CDA (Kemp and Hodgson 2016). How the CO approaches the selection of the AA for a young person has not, however, been explored in any depth. The courts have been required to consider the question of whether a FAA may lack the intellectual capacity and stability to support the young suspect, although their response, whilst generally setting a low threshold, has not been consistent (see *R v. Morse and Others*¹³⁷ and *R v. W.*¹³⁸). Commentators have raised concerns more generally about family members' lack of training and knowledge of the role itself, and their awareness of the custody process and criminal justice system (Bath et al. 2015; HMIC 2015; Williams 2000). Indeed research in the US with 170 English-speaking parent-child pairs identified that "a sizeable subset of parents may not have the requisite practical understanding of police practices and youth rights within the context of interrogation to protect children's legal interests as the law presumes." (Woolard, Cleary, Harvell and Chen 2008, 696). There is no reason to consider that parents in England and Wales are any better informed.

FAA difficulties may have been compounded by the limited guidance available for suspects and AAs in Code C (Littlechild 1995) and the lack of information provided to them about the role and the rights of the young suspect (HMIC 2015). The permissive approach taken by the courts to the obligation to inform (see *H and M v DPP*)¹³⁹ is unlikely to have improved matters. It has however been suggested that the role is "too complex for cursory explanation" by a CO in a busy custody suite (Williams 2000) in any event.

How does this manifest itself in FAA performance? Brown et al (1997) identified that family members could be unduly compliant in the face of police requests, and were intimidated and confused by the experience. Conversely, Kemp and Hodgson (2016) identified that some parents may pursue goals which are inconsistent with the

¹³⁷ (1991) Crim L.R. 195.

¹³⁸ (1994) Crim L.R. 1301.

¹³⁹ (1998) Crim LR 653.

child's best legal interests. But exactly how FAAs understand and engage with this complex role has not been explored in any detail.

More strikingly concerns have been repeatedly raised about the negative behaviours of FAAs, being unsupportive or actively pressurising young detainees to admit guilt, especially where there is a background of family conflict (Littlechild 1998b). Bucke and Brown (1997) found that a significant proportion of family members showed distress or hostility towards the suspect (see also similar observations in Nemitz and Bean 1998; Evans 1993); a response that Quinn and Jackson (2007, 245) observed officers found "useful" for their purposes. A sense of this hostility emerges from accounts provided by young people in Hazel et al's study of experiences of the YJS (2003). However, the very limited evidence that we have from young people themselves tends to focus more firmly on feeling inhibited from speaking openly in front of family members in interview (HMIC 2015), echoing similar observations made by vulnerable adults (Jessiman and Cameron 2017). The courts, again, have provided a confusing picture. In *Blake*¹⁴⁰ a father who showed "no empathy" was held to be unsuitable as AA, whilst in *Palmer (Acton Crown Court)*,¹⁴¹ the court focused on the importance of the AA having "authority" over the young person. The ability of a FAA in particular to provide reassurance is glimpsed in some research studies, more often as a general acknowledgment, as in (Bath et al. 2015), or as the observation of officers (Quinn and Jackson 2007). We have very little information from young people themselves about this aspect of support.

The suitability and effectiveness of non-familial AAs ('NFAA's')

The performance of NFAAs has also raised concerns. Pierpoint (2000) posits that scheme AAs, by virtue of their likely age and social status, may hold unduly positive attitudes towards the police which may reduce their effectiveness in pursuing their role robustly, although HMIC inspectors (2015) certainly observed scheme AAs challenging unprofessional conduct. Pierpoint (2000), was also concerned that scheme AAs may take a paternalistic approach to young suspects, whilst Littlechild (1998b) has suggested that they may discriminate against young BAME suspects. Young people spoken to as part of inspections were "ambivalent" about NFAAs and consistently felt family had played a more significant part in interview (CJJI 2011, 34).

¹⁴⁰ 1989 1 WLR 432.

¹⁴¹ Unreported, 17/01/91.

Commentators have also expressed concerns about the effectiveness of social workers acting as AAs (Hodgson 1997; White 2002). These focus on potential conflicts of interest where the young person and the social worker have a prior relationship (Quinn and Jackson 2007), especially where this involved the social worker holding a position of authority over the young person (White 2002). In addition, there are concerns about the potential for conflict between the social worker's therapeutic and pastoral role (making them liable to encourage admissions) and the legal best interests of the suspect (Quirk 2017; Quinn and Jackson 2007; Pearse and Gudjonsson 1997). In particular, commentators have noted that social workers might have conflicting duties of confidentiality and disclosure (Littlechild 1995), or be biased towards the police (Bucke and Brown 1997). Additionally, concerns about the lack of training received by social worker AAs have persisted (Bucke and Brown 1997; White 2002; Quinn and Jackson 2007).

Scope of the empirical research

For the first time in research in this jurisdiction, this study has involved speaking to a substantial number of young people about their experience of AA support (n=39), with some describing AA assistance in respect of a number of different custody episodes. In addition, I spoke to 22 AAs, across the observations and separate adult interviews. This includes 11 semi-structured interviews with people who have acted as AAs (see Appendix C, Table C.4 for details). In observation areas there was a good variation of AA provision, where FAAs (or representatives of the child's accommodation provider) could not act (see Appendix D), enabling me to hold discussions with 11 further AAs acting in different capacities (See Appendix C, Table C.3 for details). These discussions tended to last 20-40 minutes, and generally took place in a separate room.

As a qualitative study, this research is unable to identify the frequency of different types of support. Many young participants had numerous custody experiences and clear information as to who supported on each occasion was not always available. Nonetheless, as shown in Table 5.1 beneath, the majority of young participants in this study had been supported by family members, most often a parent or carer (inkeeping with previous research findings Bucke and Brown 1997; Phillips 1998; Kemp and Hodgson 2016). Only seven of the 39 young participants who spoke of their AA experiences had been supported exclusively by NFAAs.

Table 5.1 Young participant AA experiences

	Experience of FAA and SW/YOT/VAA/PAA	Exclusively experienced FAA	Exclusively experienced SW/YOT/VAA/PAA	No info/not applicable
No. of young participants	14	18	7	2 ¹⁴²

I examine the functioning of the AA support in practice focusing on the division identified above: the “supporter”, “due process” and “communication” aspects of the role. Assisting understanding is addressed in regard to each aspect, inkeeping with the guidance in place at the time of the fieldwork, rather than separately, as in the new definition. I address each aspect of the role in terms of FAA and NFAAs in turn. As will become apparent, different issues raise different difficulties depending on the relationship between the young suspect and the AA.

The Supporter Role: Reassurance

The palpable anxiety and distress that marked the accounts of young participants in Chapter 4 shows that there is significant scope for reassurance from the AA role, something previous research has only glimpsed (Bath et al. 2015; Quinn and Jackson 2007). I therefore address the “supporter” role in terms of reassurance first, before turning, separately, to the AA’s duty to “advise and assist” more generally.

Reassurance – FAAs

For some young participants the presence of a parent did not reassure at all. As Azade explained of her mother, “basically we don’t have a relationship like that”. CA41 observed that, in some instances, parent and child may “not even make eye contact”. But strikingly just over half of the young participants who had had an AA described feeling reassurance from having a family member or other familiar adult with them. This was particularly the case for younger participants, for whom presence alone was comforting. Tyler, arrested at 12, explained of his Mum “she helps me and she makes me feel safe”. Likewise Michael, who was 13 on arrest, explained: “Just to have my

¹⁴² One interview (Robert) was concluded (feeling unwell) before the topic could be discussed. Avery had been in custody over 30 times, but all at the age of 17 and before the raise in the upper age limit of a “juvenile”, so she had not, as a young person, used an AA.

Mum there – it means a lot to me”. But 17 and 18 year olds also described feeling supported by family members, even those not describing first time experiences. For one young suspect the strength of the familial bond appeared to override what might be more current difficulties: YS19, who was 17, told the CO he was “in care but I want my mum to come down”. But such reassurance was not restricted to family members. Harper described a foster carer acting as AA as a, “safe haven...by her being there it kind of kept me calm”.

The nature of the support described varied. For some, the FAA was able to help with distress and anxiety, to “calm” them (eg Michael). Other young participants focused on the protective role of the parent and their capacity to make them feel safe, whilst for others the support related to someone that they could “rely on” (Luke) in the hostile and shifting world of custody. Officers and professionals also acknowledged this important reassurance role. Sol11 observed: “some clients really, really calm down once their parents are there ... their parents are going, you know, ‘Don’t worry, it’s OK I still love you.’ That sort of conversation can make them go ‘phew’.” (see for similar in a court setting Wigzell, Kirby, and Jacobson 2015). FAAs too described how important this role was for them. FAA1 and 2 were tearful in describing their anxiety to be able to support their child in custody. FAA4 thought that if she could not be there with her child she would “be going round the twist”.

For many young people their parents’ inability to explain the process did not appear to entirely undermine their capacity to reassure, as we saw above in the opening vignette. For these young people the relief of familiar support after the traumatic experience of the cell seemed to override concerns about the criminal justice process. Nonetheless, as observed by HMIC (2015), where a FAA could also provide explanation of the process or advocate for the young person this was particularly appreciated. Aidan preferred his Mum as AA, “she knows what she’s doing as well, you know what I mean, like she’s a bit smart.” Whilst Mums were more frequently referred to in terms of reassurance, male family members were often favoured in this regard where they had familiarity arising from their own experiences with the criminal justice system. Luke explained, “All my brothers have been to prison...all my brothers I listen to, I take advice from them, so obviously they don’t want me going down the same road as them.”. As Sol6 identified, the key to the reassurance derived from this advice lay in the young person’s trust in the person delivering it: “The juvenile is overwhelmed and

where the AA is a parent, sister or brother – the juvenile trusts the person more readily. Often the juvenile maybe doesn't trust the AA if they are unknown to them.”.

The strength of this reassurance reveals starkly the contradictory nature of the denial of legal privilege - that for a young suspect detained in a harsh, adversarial setting, the only adult who appears to be “on their side” is not someone in whom they can safely confide. Granted, investigating officers may rarely exploit the lack of privilege where parents are involved. However young participants described a range of familiar adults in the role, including brothers, uncles, grandparents and family friends, who could be treated differently. The data also reveals that this unfairness is compounded by no warning being given to the young person of this position. No suspect, or AA, was told of the lack of privilege on observation, nor does it feature in the notice provided to suspects. In this case the failure is not a potential breach of the Codes, since they contain no requirement to inform. The unfairness is fixed at an institutional level. Unsurprisingly, only one young participant (Harper) displayed any understanding of the potential duties to disclose information that the AA might be under, whilst no FAA was aware of the position. Illuminated in this way the confirmation of the principle in the recent case of *Ward*¹⁴³ is deeply troubling.

Whilst parental anger features heavily in previous literature (eg Brown 1997), interestingly this was not a significant feature of young participants' accounts. This may result from their loyalty towards family members, or their preoccupation in interview with communicating their greater antipathy towards officers. Equally, the lack of reference may arise from the inevitable fact of parental displeasure, as Hussain reflected: “to be honest it's all expected, to be honest I don't really mind”. Indeed, those few who did raise the issue tended to be accepting of it. Parental anger at least demonstrates that the person cares about the young suspect, a gesture otherwise rarely experienced by children in custody, as we saw in Chapter 4.

Notably, those few, like Jake, who referred to familial anger in custody tended to relate that parents were cross when they were initially produced: “when you go come out your cell, they are always angry, looking at you. You're just there, like, ‘Oh’.” (Rezar). As I observed, what often occurs is that the child is brought to meet the AA at the desk and the CO immediately details the grounds of arrest and begins to repeat the rights before the child and the AA have had a chance to talk together. This can be

¹⁴³ [2018] EWCA Crim 1464.

challenging for both parties. Emotions run high. Jake described how his mother's anger at being told the allegation led him to feel that he had to "defend himself" against the allegations in front of the CO. This not only has legal implications for the young person, but lends a tone to the AA/child relationship at that point which can be challenging, particularly where, as Rezar recounts, there may be only "that little minute of time with them" before the interview process begins. Such difficulties could plainly be mitigated to a degree by the CO providing the AA, and the young suspect, an opportunity to talk privately before the formal repetition of grounds and rights at the desk. That this does not generally occur may simply reflect a lack of thought, but it may reflect the police's view that a suitable level of parental anger can be "useful" (Quinn and Jackson 2007, 245).

More commonly young participants described feeling a burden to family members attending as AAs, whether because their parent was unwell (eg Kate), had to look after younger siblings (eg Jo), or was coming from work (eg Jayden). Several young people described the positive effects of such emotion as a catalyst for desistance: "the last time, when I saw her come in, I thought, 'Nah, this can't happen again. I can't let this happen again'." (Elijah). However, the heartfelt concern that many expressed clearly weighed on them in custody and was another challenge to cope with. Young people described feeling a "disappointment" (Tyler), "like a dickhead" (Malik), that it was "embarrassing" that the FAA had to "waste" their time attending (Harper) (for similar in a Canadian context see Broeking 2003). Sometimes, conscious of this tension, young participants worried in the cell about whether their parent would come at all, which added to the general uncertainty of their detention, or they experienced the FAA's inability to attend as a form of rejection (Cole). Indeed the pressures of the process weighed on both parties. FAA3 described being challenged "Why didn't you come for me?" when she could not attend due to childcare issues.

Parental distress in custody was particularly hard for young people to deal with. Michael said that seeing his mother cry "makes you feel you wanna break down", whilst Alex described reacting to his mother's tears more problematically by "annoying the police officer" for the "rest of the day". For some, particularly suspects in the younger age-group, these difficulties did not outweigh the benefits of having a parent present. But Sandor (aged 18), for example, whose mother's tears had made him cry, felt that "it would have been way easier and much, much, better, if I didn't have to deal with her being there".

Reassurance - non-familials AAs

By contrast, very few young participants described experiencing emotional support from NFAAs. Those who did tended to be referring to AAs with whom they already had some relationship, either as a long-standing social worker (“they’re basically my Mum and Dad” (Evan)), or as a staff member in a residential home. RHAA 1 and 2 certainly felt that, since they worked with their residents on a daily basis, they were able to provide familiarity and reassurance. I saw this played out with YS36 who was anxious to make contact with carers at her placement on arrest and had an obvious rapport with the staff member who attended.

However, such relationships could also introduce conflicts of interest (White 2002; Williams 2000) and thereby undermine the AA’s capacity to reassure and the young participant’s willingness to engage emotionally. As CA34 observed, “If social services come down I think they can be a little afraid – maybe they’ll take me away”. Abigail, for example, found AAs from her residential home “sometimes helpful, sometimes not”. Such ambivalence may be unsurprising, especially given the relationship of control that such an AA may have with a young resident, and the relative frequency of some children in residential care being arrested for disturbances within the home (Howard League 2017). A similar position arose in respect of YOT workers. For example in F3 YOTAA explained that he acted as AA for those children who were “known” to the YOT through criminal justice disposals, “they’re our kids and we know them better than anyone”. This undeniably led to a degree of familiarity, and indeed YOTAA was well-liked by some young participants from F3. However, even so, YOTAA appreciated that they saw him primarily in his role working with them as “young offenders”. His capacity to provide unconditional emotional support is fundamentally challenged by his position. The data with regard to FAAs underlines the importance of an AA being able to reassure. With NFAAs we see that independence (White 2002; Williams 2000) is also critically important.¹⁴⁴

Young participant accounts, however, reveal a range of obstacles for building rapport where there is no previous relationship. Firstly, making a connection could be challenging where the AA is of a different gender, ethnicity, generation, educational background or class. Matching attributes, given AA availability and custody timescales,

¹⁴⁴ This is not an issue which has been considered in detail by the Courts. In *R v Blackburn* [2005] EWCA Crim 1349 the Court of Appeal rejected a warden from the young defendant’s secure unit as a suitable AA, but the issue of conflict arising from the particular AA’s role was not determinative.

is rarely possible, but young participants were voluble about the barriers this may present: “I just remember her being old and I just didn’t pay much attention to her... a complete stranger, I just don’t want her” (Cole). Zayn, a BAME young participant recalled, “...they brought someone, some next white guy I don’t even know who he was, I’m not going to feel comfortable around him, he felt like a police officer himself.”.

Secondly, lowering one’s guard could be difficult in police custody, whatever the skills or attributes of the AA. Zayn explained the AA might act “like they really care” but his reaction was “just do your job man – not in the mood. They try to make it something it isn’t”. Yemi’s position was equally understandable, “I’m the type of person to just keep myself to myself really, especially somebody that I’ve never seen before. Then I wouldn’t really want to tell them about my emotions.”. For some young participants their focus remained on getting out, and the NFAA’s role in that process was their most important attribute: “He just sort of was there. He did his thing, he got me out of there – that’s what I’m happy about to be honest with you. I couldn’t give a fuck if he did his job correct or anything. He got me out.” (Malik). Such connection may be made even more difficult by the vulnerability of the young person to be supported. As identified in Chapter 1, previous trauma, neglect and bereavement are prevalent issues. Officers and solicitors described NFAAs being “abused” (CO26) and told to “fuck off” (Sol6) by young suspects. However, the fact that previous trauma may sometimes contribute to problematic behaviour is not always understood. Some AAs appreciated that challenging behaviour of this sort may just be a “coping mechanism” (VAA4), but others considered some young suspects to be “just angry” (PAA1).

Thirdly, delayed arrival could add to these pressures: “you need to be able to get that rapport built in 5 to 6 minutes of meeting somebody” (ProfAA). Solicitors and COs could often identify one particular scheme AA working locally who was very good, but too often, the evidence suggests, such rapport could not be established in the time allowed. In the circumstances this may not be very surprising.

Even where rapport could be achieved, trust issues may remain, particularly because of the adversarial context. NFAA approaches to this challenge differ. For example, VAA2 always stresses “I’m a volunteer – totally independent”, whilst YOTAA demonstrated commitment by organising for the young suspect to make a phonecall to a friend or relative. But such efforts may not allay fears. Harper was generally sceptical, “How do I know they’re not gonna kind of go back and tell the

officers or kind of go against me?”. She was particularly conscious of social workers’ safeguarding duties, “if you disclose it to somebody else they’re obliged to say something”, reflecting concerns about confidentiality expressed by vulnerable adults (Jessiman and Cameron 2017). Scheme AAs explained that building trust could be particularly difficult, ironically, if they were acting in the young suspect’s best interests and overriding their refusal of legal advice.

Where this connection could not be established, young participants reported that NFAAs “can’t do much” (Jamal), they “just sit there...you don’t want one” (Cole), reflecting findings in (CJJI 2011). At best chatting to the AA generally might help to “get your mind off” the present difficulties (Jo), and had the potential benefit of “being just something to do, chatted to him for as long as I could so I didn’t have to go back in the cell.” (Tom). But, more concerningly, some complained about the burden of having to cope with a plethora of personal questions from unknown AAs for no perceived benefit. For some this was “just like family stuff that he (the AA) didn’t really need to know” (Tom). But the questions could be really onerous, particularly considering the number of the other questions asked of young suspects, especially during RA. I felt exhausted myself as PAA5, for example, recounted the areas she would cover with a young suspect: home life, education, employment, mental and physical health, alcohol, drugs, self-harm, anger management issues, hospital appointments, CAMHS contact, and social worker contact, in addition to issues of self-esteem, empathy for the victim, and explanation for the offending, addressed after the interview. As PAA1 acknowledged, much of this information is simply “for the record...it goes into my report”, but does not trigger further referrals or support. One can appreciate Harper’s view of this sort of questioning: “now that’s another person knowing your business...that’s another person that you’ve gotta talk to”, or the adverse response of some young participants, exhausted by repeated questionings (eg Aaron).

The Supporter Role: Advice and Assistance

Advice and assistance – FAAs

As discussed above, in addition to providing emotional reassurance, the AA’s supporter role also extends to providing advice and assistance, particularly in understanding and exercising their rights. The uncertainty and confusion expressed by young participants in Chapters 3 and 4 underlines the importance of this aspect of the role. The challenge of engaging with a complex and demanding process is substantial, and real assistance is

required to redress the power imbalance in police custody, both between child and officer and between child and legal adviser. In particular, whilst the AA is not present to give legal advice, they could play a vital role in advising and assisting a young suspect in their decision-making in custody, particularly with regard to whether to follow, and how to understand, legal advice.¹⁴⁵ I focus here on this aspect of the role, addressing wider issues of due process beneath.

How effective are FAAs in supporting young suspects' understanding of the process and decision-making in custody? A few young participants clearly felt that their parent supported them well in this regard. Aidan for example explained: "she helps me through it, you know what I mean? Like before we go into an interview she tells me what to do... and things like that, she helps me a lot, my mum.". This tended to arise where the parent was experienced in, or knowledgeable about, the criminal justice system, although inevitably the young suspect is not in a position to judge the quality of this advice.

However, there were significant difficulties with regard to FAAs advising in respect of how to approach legal advice. Approximately a third of young participants said that they had spoken to a solicitor in the presence of a family member. Such support could work well alongside legal advice: "we're a team" (Luke). However more commonly the FAA's presence in consultation did not make a positive difference to the child and some young participants were emphatic that decisions around answering questions were not for parents to be involved in, "sometimes there's things to sort out that are not for them" (Kaiden). Jo explained that such decisions are "just for me and the solicitor because I think no-one else should know about it".

This latter position appears to arise from two separate but related issues. The first is that a significant minority of young participants were reluctant to reveal offending behaviour in front of a family member (as I discuss in more detail beneath). Secondly, FAAs did not always understand or welcome the legal advice a young person might receive. In particular some parents could be "outraged about no comment advice" (Sol3). This could arise in part out of unfamiliarity with the system. Alex explained that at first his Mum "didn't really get the whole 'No Comment' thing" and he had had to explain, "Sometimes you just don't wanna give them (the police) information...". But more consistently the "outrage" arose from a paternalistic, welfare-orientation that the

¹⁴⁵ I address in Ch6 the AA's role in supporting the decision to request legal advice.

evidence suggests tends to dominate the approach of some FAAs. Solicitors in all areas raised concerns about the tension between their advice, pursuing the best legal interests of the suspect, and the tendency of the FAA, in particular, to want the child to admit, to “just tell the truth” (Sol2). Solicitors found that no comment advice could be hard to explain to a parent. Sol12 recounted that a parent might respond, “I’ve worked for 15 years with my son teaching him integrity and honesty and you’ve come in, in one fell swoop, and ruined that”. Solicitors detailed how this could lead to parents pressurising a child to respond to questioning against their legal interests. Carter was clear that he preferred a NFAA because “they can’t tell me what to do” in this way. Solicitors also suggested that this could cause animosity and loss of confidence between adviser and AA, and could result in parents making admissions on behalf of a child in interview, contrary to the child’s decision on legal advice to decline to answer questions.

Advice and assistance – NFAAs

Several young participants valued the advice of NFAAs. Jo appreciated AAs who were “trying to help you out”, “Sometimes they tell you, oh don’t do that, because it is not good for you, and that”. But many more young participants felt that NFAAs had not supported them in terms of advice. The data reveals quite clearly that the lack of legal privilege is a major factor in this ineffectiveness. It operates in two particular ways. Firstly NFAAs are, as a result, trained to avoid discussing the details of the allegation with the young suspect. Although AAs are not present to give legal advice, this means that a young suspect who refuses legal advice may have no adult with whom they can talk over the allegation and consider their options. Secondly, because of the lack of privilege, legal advisers said that, almost without exception, they would avoid having NFAAs (particularly social worker AAs) in their consultation with the child. As a result the AA is unable to support communication between suspect and adviser, and cannot effectively check the child’s understanding, or support their decision-making in respect of any advice given. Trained AAs explained that they would try to check understanding of advice by asking “Have you understood what the solicitor said to you? Are you happy with the advice?” (ProfAA, VAA1). Such questions, whilst well-intentioned, are unlikely to be a reliable identifier of incomprehension. Nor, NFAAs suggested (eg YOTAA, PAA1), do the police always allow time for them to speak with the young suspect after legal consultation and before interview. As a result many are not in a position to mitigate the effects of a young suspect’s decisional immaturity, nor can they

balance the power differential between young suspect and legal adviser. Additionally, there are indications in the data that NFAAs who do give advice are not immune to the paternalistic approach commonly adopted by FAAs (Pierpoint 2000). As RHAA2 explained, “I tell them the easiest way to do this is to be honest”.

The Due Process Role

The due process role - FAAs

The AA, in the wording of the HO/NAAN Guidance, is also expected to “ensure that the police act fairly and respect the rights of the detainee”. Like the “supporter” role, the data suggests that there are a number of challenges to fulfilling this “due process” aspect of the role. Of course, in the first instance, if the AA is not aware that their role encompasses this aspect then there is little prospect of it being effectively fulfilled. For trained AAs this will be an essential part of training, but for the FAA the due process aspect may not be entirely clear. As discussed below, the CO or custody staff may have provided no indication, or only printed guidance, to identify this task.

Secondly, the AA must be able to identify unfairness and a failure to respect the young person’s rights. Whilst a lay person might have a basic understanding of unfairness, as FAA4 explained, “if I thought it weren’t right, that wouldn’t be fair”, meaningful due process protection requires the AA to have some underlying appreciation of the basic details of the custody process and the young suspect’s rights in that regard. This is unlikely to be the case for FAAs. The data suggests, unsurprisingly, that through personal experience in custody, or previous occasions acting as an AA, a family member could develop a working understanding of the process. This was plainly helpful, and appreciated by young participants. Hussain for example was reassured by the expertise of his mother who had acted for older siblings: “I think she gets it”. However, reviewing the accounts given by young participants supported by those AAs who were “informed by experience” reveals that their understanding can be patchy and sometimes inaccurate.

More commonly, young participants identified that family members entirely lacked knowledge of the system and of suspect rights – a position acknowledged by FAAs, such as Jake’s Mum (FAA2). This deficit could be fundamental. CO24 commented “Sometimes parents say they don’t know what a solicitor is”. FAA5’s response was fairly typical of the position suggested by many young participants,

I'd not been in that situation before so I just went along with everything, you know, what they did and they have to do and thought 'Do I need a solicitor?' I don't know. So, I'm not really clued up with it all, you know what I mean?

Of course, if the APP is followed correctly, the FAA should be provided with the HO/NAAN Guidance, and would hopefully be directed to read the Notice of Rights and Entitlements. As I discuss below, on observation the former did not always happen and the latter never occurred. However, even assuming that this does occur, and further that the AA has time to review the material, and it is in a language and format that they can understand, the evidence suggests that the AA may not be in a state of mind to access the information. FAAs described custody suites as "horrible" (FAA1), "daunting...frightening, a bit scary" (FAA5). A first experience could be quite overwhelming, as Jake's Mum relates in the opening vignette. Several young participants observed that in this intimidating atmosphere a confused FAA tends not to seek help, "they just don't talk about it" (Sadie).

Thirdly, and most importantly perhaps, where an AA has concerns they must feel confident to raise a challenge. Where the AA is a family member the power differential between them and the CO is marked, and highly unlikely to foster effective challenge by the FAA. For some parents there is a sense of trust in the police, an assumption that what they experience is how it should be: "Most parents wouldn't say boo to a goose – they think, 'Oh it's a police officer, I won't say anything, I'm sure it'll be alright'." (Sol12). FAA3, for example, described the custody officers who dealt with her as "really nice", even though in fact she later said she was concerned both that they had not given her son any food, and that he had "nearly cried" when they refused his request to sit out of his cell with her. In particular such a challenge goes against everyday instinct: "you've just gotta go along with 'em cos it's the police innit" (FAA5). Jake's Mum (FAA2) described her emotions on wanting to challenge the CO: "Like I said, the only thing I could ever think of when I'm in trouble is to call the police. I can't do that 'cause these are the police and I am more intimidated than I've ever been in my life." Raising an issue about proper police conduct with a police officer in a police station would require an unusual degree of confidence for a family member. Zayn's observation typifies the difficult situation a FAA faces, "My Mum's not really good at all that law stuff, so she just keeps quiet".

Where an AA does raise an issue, the manner of their doing so can also be a factor in dictating how effective it is. Reciprocity in terms of behaviour has been previously observed in police custody (Skinns, Wooff, and Sprawson 2017), and the data suggests that this extends to AAs as well. A polite request, it seemed, was more likely to be accommodated. CO13 commented in respect of YS10: “his father understands and is pretty supportive of us so we’re happy. Some of them are perfectly polite with us. It’s one of those things – how you treat people affects how they treat you back”. But not infrequently a FAA may raise an issue in a more confrontational manner, whether because of distress, distrust or dislike of the police, or because of their lack of skills. Those who described advocating forcefully for their child often suggested that their complaints had been ignored. FAA1 explained: “I’ve had one sergeant and I told him, basically, what I felt. Why I felt like it and he just stood there and went, ‘That’s your opinion’.” She reflected “they don’t like it because I don’t pussy foot around them.” FAA7, who had gone to some length to explain about her child’s medical condition, complained: “They don’t listen to you at all love...I said like ‘I’ve showed you the medical report, I’ve showed you everything and I’ve showed you medication. I’m not hiding anything and still this is the way you’re treating me kids’.” Sadie, for example, had no confidence in her mother’s power to ensure her good care: “Like say if you say, ‘oh, Mum I’ve not been fed’, your Mum can’t do nothing.”

Sometimes the police response could be more aggressive. FAA2, who had become quite distressed in custody, described the CO shouting at her when she asked why they were taking fingerprints and DNA. The experience was, she said, “really intimidating”. I did not see any FAAs acting in an antagonistic manner, but a number of officers referred to families who were perceived to be unnecessarily interventionist or combative in very negative terms: they were “feral” (IO2), “anti-police” (CO26) or “obstructive” (CO32). Such FAAs were clearly not perceived to be fulfilling a due process role. Rather they were viewed through an adversarial lens and treated with the same suspicion as might be accorded to the suspect they supported. Ultimately, as discussed below, a parent forcefully demanding due process rights could be silenced by simply being required to wait outside the suite, or (in extreme cases) being removed from their role as AA altogether. These experiences illustrate that having FAAs as guardians of due process presents challenges not only for the AA, in terms of identifying and raising a concern in the face of police authority, but also for officers.

The due process role - NFAAs

The picture in terms of knowledge is generally very different for NFAAs. Training, such as that delivered by ProfAA, generally includes ample information on the process and the young suspect's rights. However not all NFAAs that I encountered had been trained and there were some significant gaps in their knowledge. For example RHAA1 and 2 were not aware that they were entitled to information about the grounds of arrest and detention, to look at the custody record or to require a solicitor to attend if a young person declines advice. Even those who had been trained revealed some interesting deficits in understanding of the process and its protections. I was not convinced that YOTAA, for example, appreciated his right to require the attendance of a solicitor where the child refuses: "So I can't say look I'm not listening to what you're saying – I will get you a solicitor whether you like it or not. I don't think I've got that role."

Despite their knowledge and the confidence that may accompany their formalised capacity, NFAAs may also be acquiescent when they identify breaches, but for rather different reasons it appears. Pierpoint (2000) has raised concerns that NFAAs may hold positive attitudes towards the police which may disincline them to challenge police misconduct robustly, or may indeed be anti-suspect. My findings lend support to the former assertion, but no convincing evidence of anti-suspect sentiment. In contrast to HMIC's (2015) observations of volunteer AAs challenging unprofessional conduct, I did not see a single NFAA challenge custody staff about the treatment of a young suspect. Of course no challenge could be expected where due process is followed, but this was not always the case. For example, YS5, an 11 year old boy with an autism spectrum condition, was detained for nearly 11 hours. VAA1, who attended, observed to me, "I couldn't understand why it took so long" but raised no issues about delay with the CO.

There would appear to be two potential causes. Firstly in each area I noticed a familiarity between some of the NFAAs and the custody staff. Inevitably working alongside each other is bound to breed some collegiate relations. ProfAA explained that she had had to correct an officer who referred to her as his "colleague" in front of a suspect she was supporting. Whilst YOTAA recounted a day of child suspect interviews for which he had been "borrowed" by a local major investigation team. His reflection was not about the young suspects involved but about the support he was able to provide the police: "it worked for them having us". Secondly, there was a sense in which some NFAAs took an administrative, and pared down, approach to the role, not engaging

particularly with the young person and their rights and welfare (as raised by CJI 2011). CO41 observed of the local AA provision “the scheme sees the case not the child”, whilst CO26 felt that scheme AAs asked for the custody record simply “so they can tick a box. They never ask anything about it”. (For similar concerns in respect of ICVs see Kendall 2018).

The Communication Role

The communication role – FAAs

In a straightforward sense, it was apparent that the role of communication facilitator can work well for a young suspect where the AA is known to them. As FAA1 described: “there’ve been times when the officer’s said something to (my son) and he doesn’t understand it. So therefore I just step in and I interpret it my way....And then (he) understands it straight away.” Sol4 explained that, despite some parents being “very upset and excited”, on “the communication side they are obviously better”. However, this depends on the AA’s own ability to understand. Kyle described struggling to understand some of what officers were saying, and when I asked whether his Mum, acting as AA, was able to help him he laughed in response, retorting “I don’t think she understood it at all!”.

I discuss the AA’s engagement in interview in more detail in Chapter 7, however there are three particular issues which arise in respect of communication more generally which I address here. First, for FAAs who have a child with a significant communication difficulty the role can be very demanding. They may be experienced in supporting their child’s communication in everyday life. However, supporting communication in an adversarial setting can be much more demanding, requiring questioners to adjust their approach, in addition to supporting comprehension. I made a point of asking COs and solicitors whether they had experience of using an intermediary as an additional adjustment for a young suspect. None had such experience and COs generally responded with some surprise to the suggestion. No L&D specialist spoken to within the custody suite had proposed any additional support for a young suspect of this sort.

Secondly, a FAA’s ability to support communication may be considerably hampered by their own linguistic difficulties. Four young participants raised issues in respect of their FAA’s difficulties with understanding English. This can be addressed by the use of an interpreter, as Azade had experienced for her mother. Although the AA’s

ability then to support the child's communication in English with the officer or solicitor will inevitably be dramatically reduced. However, more concerning still is the suggestion that this assistance might be declined, as Sandor had, or not identified as required. Jo recounted, "I have to explain it to my mum because like she doesn't really understand that much...because of her English." He described how this had made his custody experience more difficult "because like what they tell me, and then my mum goes, 'Oh, tell me what they said.' And then I need to tell her, and then they are saying something else and I have to tell her again."

Thirdly, there were numerous instances of the presence of a family member in fact inhibiting communication with solicitors and officers. Young participants described their reluctance to talk about their involvement in offending in front of family. Their motivations were not limited to avoiding getting into trouble at home. Aidan, for example, described his shame:

cause I have done a lot of bad things, you know what I mean, and when you admit it in front of my Nan she like, she looks shocked, and like she's not happy with me... cause I want my Nan to be proud of me, you know what I mean, and I don't want her to be thinking what an idiot I am.

Whilst for Hussain there was a more instrumental aspect – he tried to avoid his Mum concluding that his friends were a bad influence and restricting their association.

For some, revealing everything in front of parents simply had to be endured: "Like she needs to know everything doesn't she" (Jackson). But others suggested that they might deliberately falsify their account as a result. Sadie, for example, distinguished between the presence of her solicitor, "you tell them the actual truth don't ya", and her parents: "Cos obviously you tell your Mum a different story don't ya.... 'Mum, I didn't do anything' (laughs).... And you're just gonna make yourself lie just cos your Mum's there – do you know what I mean?". Some young people try to avoid the issue entirely, either by giving a false name during arrest, which can necessitate detention and have ramifications for their case later on or, as CO1 noted, "You hear juveniles saying 'Don't contact Mum' or 'Can't I have YOT?'."

Defence solicitors widely acknowledged the difficulty of getting young suspects to talk in front of family members, and similar difficulties have been noted in court proceedings (Wigzell, Kirby, and Jacobson 2015). Sol12 found, as Sadie suggested, that "accounts usually differ" between that given in consultation alone and that in interview before parents, giving rise to the potential for professional embarrassment.

We see in these insights how damaging to their effective participation it can be, and harmful to their legal interests more generally, where the parents' relationship of control with the young suspect comes to the fore. As I discuss below, the police may consider it supportive of their objectives to engage parents' capacity for informal social control of the young person, but in reality it is likely to produce negative outcomes.

The communication role – NFAAs

Whilst the attendance of a NFAA does not engage this latter difficulty a different challenge may arise, namely the identification, and support, of more significant communication needs. In respect of identification, COs and staff variously expressed their confidence that, if not raised or identified during RA, the AA will spot any particular difficulty a young suspect may have. A NFAA who knows a young suspect in a professional capacity may indeed be aware of such a problem. However, this does not always mean officers will act on their information. RHAA1 expressed her frustration that in supporting as AA a young resident with Asperger's, although raised "at the very beginning" this "didn't seem to make a blind bit of difference" to their communication with him.

For a NFAA who does not know the young person, identification may be extremely difficult. Psychologists have noted the challenge for HCPs in identifying such conditions in custody (Gudjonsson, Hayes, and Rowlands 2000). On observation scheme AAs had no access to medical or social care records and they generally relied on a brief consultation with the young suspect immediately before interview (see for similar Kemp and Hodgson 2016).¹⁴⁶ The chances of an AA without information identifying such conditions will be limited, particularly since scheme AAs reported varying levels of training in communication with children, and in the presentation of common conditions (eg ADHD, LD, and ASC), including some reporting no specific training in these aspects at all (eg VAA3).

Turning to their capacity to support a significant communication difficulty, none of the scheme AAs that I encountered had a specialist background in mental health or learning disability, or supporting communication difficulties (although one was a GP). Likewise, ProfAA stated that her organisation did not have any AAs with such specialist skills. Where, as was often the case, the callout specified a young suspect with

¹⁴⁶ Although ProfAA stated that in some areas contractual arrangements allow scheme AAs to have access to LA records.

LD or an ASC, she would simply make sure that someone “good” and “experienced” was allotted. Clearly for those with significant communication needs, this protection is simply inadequate. Sol10, who specialises in representing young people with LD and ASCs, observed that such communication support is “an acquired skill. Perhaps you work in a special school or are a trained teacher – but in the absence of that, you know you shouldn’t be doing it because you haven’t got skills to do it.”

The picture which emerges is of a protection which is often ineffective, and could even be burdensome to the young suspect. There are challenges for both familial and NFAAs in respect of each of the three main aspects of the role. However, there are also several overarching issues implicated in this ineffectiveness.

Overarching Issues: Delay

The issue of delay emerged as the most prominent theme in discussions with adult participants about the AA protection. As ICV2 reflected: “It’s very rarely you see one (an AA)...(laughs)...they’re always waiting for an AA to arrive”. ProfAA, drawing on her experience co-ordinating AA attendance for various regions, observed with some resignation: “Children do spend an awful long time in custody without seeing anybody”.

This is not a quantitative study. Nonetheless young participant accounts of the time lapse between arrest and seeing their AA suggest that delays continue to be extensive for many young suspects, and are broadly in line with HMIC’s (2015) finding of an average waiting time of five and a half hours (See Appendix B, Tables B.2 & B.5). Some young participants, particularly the younger age-group, waited shorter time periods. Tyler (aged 12) thought his Mum had arrived after about 30 mins to one hour in custody, and Michael (aged 14) and Kaiden (aged 13) had had similar experiences, but this was not the case for all. Many young people, particularly 16 and 17 year olds, complained of longer waits, sometimes overnight. Zayn for example complained that he had asked to speak to his Mum on booking-in but it was 12 hours before he saw her, Jackson had first seen his AA 18 hours after booking-in.

This picture, broadly, was replicated on observation (see Table B.5). Times varied significantly, and between force areas, and it was not possible in every case to identify with accuracy how long a young suspect waited before seeing an appropriate adult. As with young participants, the shortest delay before a young suspect saw an AA could be very brief. Where the AA did not attend with (or immediately following) the

arrested individual (as occurred in several episodes), the shortest delay was only 40 minutes (for 11 year old YS5 and 16 year old YS11). However, this was not common, with approximately half of those young suspects for whom data is available waiting over 5 hours to see an AA, including some very much longer delays.

Problems securing AAs

To an extent resourcing issues and custody facilities are implicated in long AA delays. In F2 and F3 in particular COs complained of real problems securing a NFAA, particularly where a child was arrested in the evening (from 9 or 10pm) - it could take “hours and hours to get someone” (CO38). In F2 CO20 explained that “on occasions we are having to retain people overnight because we can’t get an AA”. (see similar in Kemp et al. 2012; Skinns 2011a). Additionally, COs in F2 and F3 described how booking procedures in the morning might mean that the AA did not then arrive until 10 or 10.30am. Scheme AAs themselves might also delay their attendance in the morning to avoid waiting outside whilst handover between shifts occurred (Prof AA1). In discussions with both COs and scheme AAs, overnight delays were often justified on the basis that the young person was unlikely to be interviewed in any event at that time, overlooking the AA’s significant role outside interview.

Even during working hours COs found that there were delays caused by the schemes, “sometimes they haven’t got anyone” (CO38), and there was a general feeling in F2 and F3 that there were not enough AAs to support the needs of the suite. The very fact that AAs were volunteers in some areas meant that some staff felt they could not complain. As ICV2 explained, it would not be “unusual” for someone to be in custody at midday but not see an AA until the evening: “they’re waiting for an AA to finish their work and have something to eat and come in at 8pm at night. Because they’re volunteers they can’t drop everything and run.” Jurisdictional issues could also cause delays, where local social services departments refused to arrange an AA because the young suspect was arrested out of their home area (eg YS45).¹⁴⁷

Securing an AA from a residential home setting was not without its frustrations either. RHAA1 and 2 described how the availability of staff members to act as AA could significantly delay the attendance of an AA from their residential home, including waiting overnight until fresh staff came on shift. FAAs could also be slow to attend. Sometimes this arose because AAs were at work, had to arrange childcare or there were

¹⁴⁷ Although refusal on this basis is prohibited in YJB Case Management Guidance 2014 section 3(1.3).

simply transportation issues. In geographically spread forces, such as F3, a child might be detained 30 or 40 miles from their home address with some parents reliant on public transport in rural areas. In addition purpose built custody suites (such as F1/1) could be well out of a town centre and difficult to get to without a car. In all areas officers complained that sometimes family members said they would come and then failed to show up.

AAs deliberately delayed

However, in very many cases it seems that COs and interviewing officers deliberately delayed the attendance of the AA for young suspects to coincide with stages in the process, particularly interview (as previously identified Skynns 2011b; CJI 2011; HMIC 2015). In F2 and F3 deliberate delay of the AA to coincide with interview was routine. The AA's attendance would be arranged when "we've got a timescale for interview" (CA43), or when "we're ready to deal with them" (CO24). CO27's observation, "we're not going to get an AA just down for rights", represented a fairly standard approach. In F1 there was more of a culture of calling the AA (whether family or scheme) down for rights and entitlements, but then sending them away. Although there were some staff in this area who would wait until officers were ready to interview and the AA was "needed" (CA2, CA3, CA4, CO1). To a degree scheme AAs seemed to be complicit in this. For example, VAA2 explained, "Normally I come down for rights and entitlements and interview all at once...If I know it's just for rights I wouldn't accept the call". Likewise PAA5 could see no sense in being called out for a young suspect late at night because they were not going to be interviewed. ProfAA confirmed this approach: "They aim to do it all in one hit. That's really because of budgetary constraints. LAs and YOTs don't want to pay for us to come down twice." Although there was, she said, increasing area variation with YOTs in some areas insisting on young suspects going no more than 2 hours at a time without seeing an AA.

Family members too might be informed speedily, but would often have their attendance delayed. FAA1 described being informed one night that her son had been arrested in F2. She was told to telephone at 8am the following morning, asked to come at 10am, but then waited two and a half hours in reception before seeing her son. RHAA1 too observed "sometimes 4-5 hours later they call and say 'Yeah, we're ready now'." These observations were borne out by young participants, a number of whom recalled seeing AAs only just before interview, and that if arrested at night they would

generally see their family member in the morning. Rezar explained, “Yeah, literally, when they say, ‘We’re interviewing you now.’ You walk out and you see your mum, or whoever. Then, they tell you, ‘Do you want five minutes to talk to them?’.”

What emerges is a striking picture of officers approaching the AA protection for young suspects as being focused on interview; that an AA was not “needed” before that time. There might be circumstances where an AA was called out to attend immediately, but these appeared to be more where a particular part of the process required their presence (“like when we’re going to bail them” (CA43)) or where protection of the process made it particularly desirable, for example if it was a “really serious case” (CO23). The idea that the AA protection is important to secure the welfare and rights of a young person at other times in the police station was not generally appreciated, or, if it was appreciated, deliberately not enabled. As CA34 observed: “Their role in our part of the process is negligible. In interview it’s a bit different”. Indeed so entrenched is this view in some areas, such as F2, that the task of coordinating AA attendance is no longer retained by the CO, but consigned to the officer in the case or the arresting officer. Unfortunately it seems that ICVs have little purchase on this approach to delay. Although one ICV had raised concerns (ICV2), their standard questionnaire does not touch on this issue. They typically ask staff whether an AA has been notified, rather than checking the timing of their attendance.

Effects of delay

Chapter 4 illustrated how difficult the early hours in custody can be for a young suspect, particularly those in detention for the first time, with many young suspects in desperate need of support and advice at that time, and for contact with someone not connected to the police. In light of young participants’ often traumatic accounts of their detention, it is very troubling that AAs, the central protection provided to children in custody, are regularly not seeing young suspects until five hours or longer into their detention experiences. Quite apart from the young suspect missing the personal reassurance of a familiar, or at least friendly, adult, the child has no support in terms of understanding, and engaging their rights and entitlements during this phase, and no assistance to decipher the notice provided at booking in. Worse still, the reading of the young person’s rights and entitlements may have been delayed entirely to await the AA’s attendance. Additionally, awaiting the arrival of the AA was, in itself, a source of

anxiety for some young suspects (eg Kate). For a very young suspect, the need for personal support in those early hours is frankly obvious, as L&D5 explained:

The youngest person I've seen was 11-12 yrs old. He was in a cell on his own. He'd broken up a polystyrene cup and was putting bits into his mouth. I think he's too young to be locked in a cell...The fact that the door's locked and he's got nobody at that age – it's not appropriate in my view. From the moment they get here an AA should be with them all the time. They shouldn't just turn up for rights and interview.

It is also plain that later arrival places significant pressure on tasks which may take some time: particularly rapport building, appreciating competence levels for interrogation and checking understanding. Young participants complained of the opportunity for only brief discussions with FAAs or no discussion at all (Megan), before being required for legal consultation and then interview, something confirmed on observation. In addition, where the young person then consulted alone with a solicitor, AAs found there was often no time before interview for a further consultation with the young person to check understanding (VAA4). For a scheme AA previously unknown to the young person, this can mean that no real rapport can be established. Delayed attendance also undermines the AA's opportunity to fulfill their due process role, for example in supporting a timely challenge to authorisation of detention, securing legal advice or making representations on review of detention.

In summary, delayed arrival can fundamentally undermine the AA's ability to support the young suspect in ways critical to enabling their effective participation in the process, particularly their decision-making in interview. Whilst the question of whether such delays can induce false confessions (Dixon 1990) would be very difficult to answer using qualitative data, in light of the myriad factors affecting such a course, the evidence certainly indicates routes by which delay may contribute to that outcome.

Was there evidence to support previous findings that AA delay may add to the total length of time a young person is in police custody (see for example Kemp et al. 2012; Phillips 1998)? This was certainly the impression that some young participants had, particularly where they could compare their experience with adult co-arrestees, or with their own subsequent arrests as an adult. Police also expressed concerns about the impact on overall detention periods, given the difficulties securing attendance. CO27 reflected for example, "I do think being a juvenile can keep people in custody an extra 4-5 hours". Likewise, solicitors provided examples of situations where delays

identifying an AA, or coordinating their attendance, had led to a young person being detained overnight (eg Sol3).

On observation there were occasional instances where the delayed arrival of an AA clearly extended detention. For example, 14 year old YS28 was detained for over 7 hours without an AA becoming available, before being bailed to return for interview when an AA could be arranged. There were also two instances where an AA, arriving late in the detention episode caused substantial delay when they changed the young suspect's initial decision in respect of legal advice (re YS15 and YS40, discussed in more detail in Chapter 6). Otherwise it was generally difficult to separate delays arising due to the timing of the AA's attendance from delays caused by investigative delay, coordination of the parties for interview, difficulties with bail addresses or the general reluctance to interview a young suspect in the evening (discussed in Chapter 4).

Overarching Issues: The Control of the Custody Officer

The second significant factor undermining the effectiveness of the AA is the control exerted by the CO. We have seen above that the CO can critically curtail the AA's capacity to fulfill their role by delaying their arrival, very often until just before interview. However, following arrival, the support that a young suspect can enjoy from the AA is also wholly managed, and often further significantly curtailed, by the CO. There are three ways in which this occurs.

Deciding who acts

The CO has ultimate control over who is able to fulfill this vital protection. Generally, COs approached the selection of the AA as required by Code C 1.7 and NFG 1B.

However, Code C, and the APP, provide no guidance as to how to address issues of capacity for the role, whether in terms of cognitive capacity, awareness of the role and processes, or attitude towards the police and the criminal justice system.

The cognitive capacity of an AA to fulfill the role has been raised as a concern (Kemp and Hodgson 2016), however it was not something which was systematically considered by COs. COs explained that a potential AA might be rejected for being drunk. Likewise I was told of two episodes where, by chance, it was spotted that a parent attending as AA had previously required an AA themselves (CO20, Sol11). However, otherwise the abilities of a FAA themselves to understand the process and communicate effectively were not generally a concern for the CO. Indeed I observed a FAA struggling to grasp information on charge being given to her son prompting him to

respond, “Mum I know what I’m doing, shut up.”. The CO observed to me after their departure “which one needs the AA – that’s what you need to ask yourself”. He had clearly identified that the AA was incapable of fulfilling the AA role satisfactorily, but did not act to engage further help. Such indifference is perhaps not surprising. There is little benefit to a CO in raising such an issue, given the low likelihood of scrutiny in court (see Chapter 3). Even if minded to, it could be very difficult for a CO to investigate the capacity of a FAA in brief exchanges in the custody suite. AAs may not wish, or be embarrassed, to reveal linguistic or cognitive problems. Nor, in contrast to Sol11 (above), are many solicitors likely to be concerned. As Sol2 put it, “Family appropriate adults are OK if they keep their mouths shut”. An AA confused into silence would be unlikely to be an issue.

Although I did not myself observe any acts of aggression or hostility by FAAs towards young suspects (as Quinn and Jackson 2007), nonetheless, this was identified as an issue by some custody officers. FAAs could be “livid” (CO41); whilst CA2 observed that “most of the time when parents come in you hear shouting”, reflecting previous research (Nemitz and Bean 1998; Evans 1993). However, COs’ approaches to hostility from FAAs were instructive. Some officers described how they would work to avoid such conflict, for example by trying to persuade an overwrought parent to step aside and allow someone less close to the suspect to be AA: “sometimes a step-parent is better” (CO6). But more commonly officers seemed to consider that parents being suitably angry with their child in custody was to be welcomed as long as it did not go too far: “It’s like having another police officer” as long as the parent “wants the best for them but respects the process and the system” (IO2) (see also Quinn and Jackson 2007). As CO9 explained, “The right amount of giving a juvenile a hard time is OK – as long as it supports the police. When it gets in the way it’s not good.” The presence of the FAA enables officers to harness the informal social control capacity of the parent for their own objectives.

By contrast COs did not show such a high threshold for antagonism towards themselves, or their objectives. CO7 described how he had declined to use a parent because of her antagonistic attitude towards the police, “she’s a teacher but her attitude is so anti-police I’ve declined to use her as AA...she’s biased so I can’t use her in my view”. CO21 expressed a similar view: “if the AA is antagonistic – I would deem them not appropriate and say so.” Such an approach reveals the fragility of the protection, and the ease with which a CO may undermine it. The FAA who is, for example,

“insistent that their children have been assaulted” (CO26), may be raising valid concerns. Plainly an antagonistic parent should not be allowed to frustrate the process, but it is problematic that the process allows a CO to remove a parent who may be simply, if forcefully, fulfilling their role.¹⁴⁸

There are also indications that COs may not be appropriately alive to conflicts that could arise where staff from residential homes attend as AAs in respect of incidents which take place within the home. The YJB Case Management Guidance 2014 forbids a staff member attending in such circumstances¹⁴⁹, but the accounts of young participants, RHAA1 and 2, and one observed case (YS30) suggest that this may not always be observed, and that, as long as they are not the individual complainant, staff members from residential homes appear to be routinely used as AAs in such circumstances.

Provision of information about the role

Limited provision of information by COs is also implicated in reducing the capacity of the AA to fulfill their role. The effectiveness of an AA in part depends on what the young suspect and the AA understand their role to consist of. Despite the requirement for the young suspect to be told that the AA’s duties “include giving advice and assistance and that they can consult privately with them at any time” (Code C 3.18),¹⁵⁰ I did not observe a single young suspect being told this in full by a CO (see similar in Brown et al 1992). Some young suspects whose booking in I observed, particularly those who had been arrested a number of times before, received no information at all about the role. Where the information was given it tended to be less than informative. For example YS4, in custody for the first time, was told the AA’s role was “basically to sit in a room with you”. The most helpful explanation of this provision that I observed was given to YS3, who was told of the AA’s role “she is here to make sure you understand things and if you have any issues you can speak to her privately”.

Unsurprisingly, young participants had very varied understandings of the support they could expect from an AA. Some young participants could articulate the AA’s due process role, fewer identified the “supporter” and communication roles. These better informed young participants tended to be those who had at some stage been supported by a trained volunteer. No young participant, whatever their experience, had a

¹⁴⁸ Although see in the updated Code C the need for authorisation from a senior officer to remove an AA from interview (Code C 11.17A).

¹⁴⁹ Section 3, 1.3.

¹⁵⁰ Now expanded in the updated Code C 1.7A and 3.15.

grasp of all three aspects of the role, and a number, particularly those who had been supported by FAAs exclusively, had no real idea at all about the AA's purpose (eg Sandor and Rezar).

Most significantly, no young participant was aware of their right to "consult privately" with their AA "at any time", nor was any young suspect that I observed informed of it. This is, to me, a striking finding, and a significant omission on the part of custody officers. That provision has the capacity to transform the experiences of young suspects in custody. To be able to speak privately, on demand, with someone trusted, even if only on the telephone, could be a huge relief, given the uncertainty and anxiety recounted by young participants in Chapter 4. Many young participants were clear that they would have welcomed the chance to speak to a FAA earlier in their detention experience.

Some COs were apparently unaware of the requirement, others noted that requests for contact would be hard to meet in the current circumstances, which is undeniably true especially where a scheme AA was required. ProfAA acknowledged that contracts with YOTs to provide AAs rarely allowed for such a facility. Like the requirement not to detain in a cell, it appears not to figure in the institutional consciousness. This entitlement is not included in the notice, nor referred to in the APP (although it is mentioned in the HO/NAAN Guidance). Even ProfAA, who trains AAs, whilst aware of the provision, observed following our discussion of it, "Quite an interesting point actually – remind me to put it in the training".

These failures may be mitigated if the AA is clearly informed of their role. However, despite the requirements in the APP in particular, and to a lesser extent in Code C, FAAs also tended to be provided with fairly limited information about the role. The explanation was often very brief, typically along the lines of informing the AA that they were present "to make sure the young person is cared for – so that they understand fully what is going on" (CO38). CAs were often the first to talk to young suspects' family members and they tended to provide minimal information. CA34's approach was fairly typical: "I just say because they're below a certain age we require someone to act as appropriate adult in interview. Unless they ask – keep it brief". For two FAAs this was the extent of the information they recalled receiving about the role throughout. (FAA1, FAA2).

Nor was the printed guidance invariably provided. In F1, for example, I was not aware of any printed guidance provided, whilst in F2 the AA was required to sign a

sheet which repeated the AA role in interview (as set out in Code C11.17). In F3 the HO/NAAN Guidance was more routinely given out to FAAs, although I did not see any officer explain the relevance of the document to an AA. FAA3, who had acted as AA in F3, explained, “when I got there they did give me all these papers to read.”. But she said that she had had no real appreciation of what they said and “just signed away”.

On observation COs never went beyond what was required in Code C in supporting the AA, and rarely achieved what was set out there. I saw no FAA being offered the custody log to look at, being invited to go through the notice with the young person, informed how to make a complaint or of the young suspect’s rights to speak to them at any time. The closest that I heard to any such support was CO19’s offer, “any doubt at all on any issues then come and let someone know”. Experienced FAAs might receive even less information. CO6 explained: “You can see on the custody record if they’ve been in before – so you can tailor the message”. NFAAs did not generally receive any information from COs about the role, despite the exhortations in the APP to offer the HO/NAAN Guidance. This too could be problematic. I encountered three NFAAs who were unaware of their right to request legal advice for the young suspect (RHAA1, RHAA2 and YOTAA).

Unsurprisingly, FAAs described very limited understandings of the role. Despite the general lack of information some FAAs felt able to engage with the role. FAA4, for example, felt confident that she would be able to complain “to the head sergeant” if she needed to. But others revealed how the combination of the wholly unfamiliar and ill-explained, with the extreme stress of the episode, meant that they felt completely lost, as we see in the opening vignette. Such limited information tended to result in passivity, as previously noted (Bucke and Brown 1997).

Access

Finally, simple access to the young suspect is also heavily controlled by the CO. Some FAAs, for example, were allowed to sit out with the young suspect, particularly after interview (see FAA4, Megan). But this was not everyone’s experience: “The only time you see your kids is if you go into interview...I can hear (my son) breaking his heart crying and they wouldn’t let him come out” (FAA7). Jo, for example, explained that he would like to stay out and chat but he gets put back in his cell. There is a degree to which this is a resourcing issue. In all blocks observed there was very limited space for AAs to wait within the custody suite, with or without the young suspect. Where there

was an anticipated delay, for example in taking advice from the CPS, AAs were routinely told to go home, wait in their car or at a nearby MacDonalds, as in the case of Jake's Mum, or in the public waiting section of the station.

Whilst some COs were concerned by this lack of facilities, and recognised the support an AA could provide, more commonly COs expressed suspicion of FAAs, particularly their perceived tendency to pass items to a young suspect (as discussed in Chapter 4). Institutional suspicion and risk aversion tended to override welfare concerns. However, the situation is little better for NFAAs. YOTAA explained that he was allowed to sit out with young suspects because of his security clearance. But the approach was more variable for scheme AAs, with some suggesting that they could only sit out with a young suspect if they were "very upset" (PAA5). Even AAs attending from a residential care home explained: "most of the time the young person goes back in the cell and we wait upstairs" (RHAA1).

Not only is ongoing support often, therefore, not available as the custody process progresses. But the AA's due process role is severely restricted by being removed from the custody suite. As a result, an AA for example is unlikely to be present to prevent an arresting officer deciding to conduct an informal interview with a young person. FAA7, for example, said of her son, "he was questioned so much without me there, I don't know what was said or what wasn't". Nor are they then "available" (Code C 15.3) to make representations at a review of detention.

Routinely the AA's presence was reduced simply to that which is required for compliance with PACE, and must be recorded on the custody record. On observation, almost without exception, AAs were only present for what might be described as the "set piece" elements of the process: repetition of rights and entitlements, strip search (where required), the taking of photographs/biometric data, interview and charge. However, there is a danger that even this presence, particularly without proper information about the role being provided, can become ineffectual and process-serving. FAAs, in particular, without the legal knowledge to scrutinise the process, tended to report being passive observers of these set-pieces. Indeed, for some the experience as a result was more profoundly negative. Several FAAs made reference to the role as humiliating. YS10's FAA described it as "demeaning"; FAA3 was "mortified to be there". I got a glimpse of how this might come about one evening whilst observing a parent standing mutely by as their child's photograph, prints and DNA were taken. I was struck by the extent to which, rather than being a protective presence, it seemed that

the AA was there to receive a very visual display of the control the police had over her child.

The evidence lends clear support to concerns raised previously that the AA role for young suspects has become process-driven, focused on compliance with PACE rather than on the welfare of young suspects (CJJI 2011; Cummins 2007a). Granted structural factors, such as physical facilities, as well as AA scheme contractual arrangements and working practices, play a part in this telescoping of the role. However, it is plain that CO control significantly shapes, and reduces, the AA's scope for effectiveness. AAs are generally kept out of the suite until required to legitimise the process. Once present they may be prevented from acting in the role if they are considered un conducive to the smooth operation of the process, but rarely if they lack the ability to perform the supportive role required. They, and the young suspect, are provided with very limited information about, and support to conduct, the role, and their opportunity for contact is heavily restricted.

Overarching Issues: A Compendious and Contradictory Role

Even with CO support for the AA and sufficient resources, there are other problems. Previous commentators have raised concerns about the complex and contradictory nature of the role (Pierpoint 2008; Cummins 2011). There are undeniably features, particularly the AA's role in interview (explored in Chapter 7), which are multi-faceted and require some understanding of the intricacies of processes and legal rights to fulfill effectively. However, this study reveals perhaps more strikingly that it is the compendious nature of the role which is particularly problematic. The three aspects of the role - the supporter, due process and communication roles - require particular attributes and skills which are highly unlikely to be found in a single individual. The FAA may be able to provide reassurance, but is likely to lack the knowledge to be able effectively to advise on, and monitor, the appropriateness of the process. A NFAA will rarely be able to establish a sufficient degree of rapport to reassure effectively, but is more likely to be able to identify failings in due process. Equally, whilst FAAs may be more attuned to the young suspect's difficulties, and more motivated to raise issues, their emotional state, and distrust on the part of the police, mean that their concerns may not be acted on. Conversely, whilst more likely to be listened to, the detachment of a NFAA, and their familiarity with custody routines in practice, and individual custody officers and staff in particular, may disincline them from raising an issue.

The composite nature of the role also makes it difficult to convey clearly; an issue previously raised by commentators (see for example Pierpoint 2004; 2011, Williams 2000). I observed just how difficult it can be. YS16's FAA, acting for the first time, received the fullest explanation of the role that I observed:

Quite simply you're here to make sure things are conducted fairly. To act as an observer - to observe the interview and to make sure it is fairly and properly conducted. Ensure that communication is understood and check that my colleague is conducting the interview fairly and properly. It's not your job to give legal advice or anything like that.

The AA looked daunted and signed the form without a word. This is not even a full recitation of the role of the AA (or wholly accurate). But one can see how challenging the role is to explain effectively in the busy setting of the custody suite (Williams 2000), and how difficult it might be for a new AA to take in.

However, the compendious nature of the AA protection also produces contradictions between the different aspects of role. In particular, the welfare-focused aspects of the supporter role may clash with the due process role. The evidence reveals that where an AA, particularly a FAA, identifies a due process concern, there is not infrequently the danger that their anxiety for the welfare of their child may prevent them pursuing those concerns. FAA1, for example, was candid that she had not understood the information provided by the officers concerning the out of court disposal her son received at the conclusion of a detention episode. However, her anxiety to achieve his release overrode her concerns and she had not raised any issues: "I just wanted to sign the paperwork and just get out cos you know, he's been in there 18 hours." Happily out of court disposals are now rarely delivered to young suspects immediately following an episode in police custody. But the evidence suggests that desperation to remove a child from custody is liable to undermine due process challenges in other regards as well, and indeed it may even be exploited by officers. Jake's Mum (FAA2) reported an exchange with the CO over signing documents:

I had said to him at the very last second, 'What is it that I'm actually signing though? Because I can't see what is it that you're asking me to sign.' He said, 'Well, you want to take your son home, don't you?' And so at that point obviously there's no ifs or buts, I just need to sign. I want to get him home.

We have seen above, in addition, how this welfare oriented, even paternalistic, approach can undermine the advisory aspect of the role, challenging the young suspect's capacity to follow legal advice, particularly where it is to make no comment in interview.

I observed an episode which suggests that this tension may not always be easy to resolve for scheme AAs either. During a fitness for interview assessment YS28, who had by that point been in custody over 20 hours, was asked whether he felt fit and ready for interview and whether he wanted to eat something beforehand. When he said he wanted to eat something, but hesitated to clarify what, the scheme AA intervened to say, "If you want something hot it will hold things up", at which point the young person indicated that he would go ahead with the interview without food. The AA's concern to hasten the process was understandable from a welfare perspective, but arguably jeopardised his due process rights in prompting him to proceed to interview when he may not have been fit for questioning.

Thus both familial and, to a lesser degree, NFAAs, are liable to prioritise welfare over due process concerns. This evidence provides striking illumination in the young suspect context of a tension previously identified as being at the heart of the AA role for vulnerable adults, that the role crosses the "justice and welfare axis" (Nemitz and Bean 2001; Cummins 2011). Legal advisers have the clear remit of protecting the legal best interests of a young suspect, appropriate to the "justice" context of the custody suite. By contrast the AA has a multi-faceted remit. It is entirely understandable if the FAA takes a paternalistic approach and chooses to prioritise the welfare aspect of the role. After all, this is not only the primary mode of their relationship with the young person, but also, unlike the complexities of custodial rights, it is a realm of operating with which they are familiar. However the ramifications for the young suspect's due process rights may be profound.

Conclusions

Perhaps the most striking feature of the evidence in respect of AAs is the degree to which many young participants of all ages were comforted and reassured by the presence of familiar adults, having someone who they trusted on their side. We should not be surprised, perhaps, by this revelation, given the desperate difficulties some young people had coping with detention and the uncertainties of the process, as described in chapter 4. However, this benefit is tempered by the emotional burden which parental presence can also produce. This was not raised particularly in terms of dealing with

immediate parental anger, which had been identified in previous studies (Nemitz and Bean 1998; Evans 1993), although this was present. But rather young people focused on the challenge of coping with parental distress and the feeling of being a burden to family members in the custody setting.

However most concerning was the effect of the FAA on some young suspects' participation in legal consultation and interview, and their engagement of their legal rights, in particular their right to silence. The FAA's informal social control function could have a very negative impact on the information provided by the young suspect both to legal advisers and in interview. Additionally, the welfare-oriented focus of the FAA on the wider best interests of the child could conflict with the narrower legal best interests of the child as suspect. This latter tension is arguably present throughout the YJS, especially given the low age of criminal responsibility in England and Wales, but bringing the parent into the critical legal processes within the custody suite engages that conflict in a particularly problematic way. In addition, as is plain from the opening vignette, a lack of knowledge about the custody process and the young person's rights, coupled with the power imbalance between the AA and the CO, can mean that FAAs could be ineffective in the vital tasks of ensuring that the young suspect understands and can engage their rights, and that due process is achieved.

Finally, the communication aspect of the role emerges as a source of real concern for two other reasons as well. Firstly, although often a FAA may be able to support the communication needs arising naturally, supporting more profound needs in the demanding setting of a custody suite may be beyond their capacity. Yet COs seemed to rely entirely on the AA to address all communication difficulties, however significant. Secondly, the accounts of young participants raised particular, although apparently not uncommon, difficulties around the capacity of a parent to support a child where their own understanding of English was compromised.

However, the evidence calls into question the effectiveness of NFAAs as well, but for different reasons. Very few young participants felt emotionally supported by NFAAs, raising in particular the challenge of connecting with a stranger who was very often of a different gender, ethnicity, and generation. Building rapport was made more difficult by the emotional state of the young suspect and by the lack of time available. Where young suspects did feel emotionally supported this tended to arise from a prior relationship outside custody, but this was often a relationship of control or one which introduced concerns around disclosure and confidentiality.

Lack of legal privilege meant that NFAAs were limited in their ability to provide advice and support generally. In particular they were, more often than not, unable to support communication, understanding of legal advice and decision-making during legal consultation because they were, for understandable reasons, generally excluded. Whilst those scheme AAs who were trained were arguably better equipped than FAAs for the due process role, their lack of effectiveness in this regard was also concerning. There were signs that familiarity with COs and other custody staff might disincline them to challenge breaches, whilst some COs identified a concerning tendency for scheme AAs to take an administrative approach to the role, ticking boxes rather than raising issues. Again, communication support was also a concern where NFAAs were involved. This was firstly because of the challenge of identifying such difficulties where contact with the young suspect may be brief, and no prior information available. Secondly, although social worker AAs may have particular skills, discussions with scheme AAs reveal their lack of specialist training in supporting more severe communication difficulties. The ramifications for ensuring fitness for interview are significant, as I explore in more detail in Chapter 7.

The accounts of young participants underline the importance of the three aspects of the AA role being fulfilled effectively for the young suspect. Yet, the evidence suggests that the role is rarely fulfilled in its entirety or without other tensions emerging. Indeed, there are clear indications that the inadequate or problematic performance of the AA role can exacerbate the challenges of the custody process, by extending detention periods, raising anxiety levels, undermining legal advice and hampering participation. As we see from the analysis of overarching factors, this arises as a result of a range of reasons: structural, cultural and conceptual.

Conceptual difficulties perhaps lie at the root of many of the problems with the AA function. The compendious nature of the role, and the contradictions within and between aspects of it, arise in large part because the AA function for young suspects seeks to address too many needs, and redress too many imbalances, in understanding, in power, and in capacity, with a single individual. The extending of legal privilege would, as some commentators have suggested (Dehaghani and Newman 2019), certainly address some of the challenges within the role, especially where NFAAs are concerned. It would also address the gross unfairness of offering a young suspect an adult to whom they can speak “privately” at any time, but who owes them no duty of confidentiality.

However, the more fundamental contradictions, particularly with regard to the welfare-justice tension, cannot be defused so easily. This study underlines the vital importance of emotional reassurance and welfare support, if children and young people must be detained for such lengthy periods in the harsh setting of the custody block. Young participant accounts reveal the huge value for many young people of contact with loved ones in that regard, and their close engagement with welfare needs. However the other tensions raised by the presence of FAAs suggest that this welfare role needs to be separated from the due process role, if both are to be pursued effectively. It may be that legal advisers, were they to be mandatorily required for young suspects, would be better placed to fulfill that due process role. Although, as I discuss in Chapter 6, and as commentators have also noted (Dehaghani and Newman 2019), there are resource challenges for the adoption of further duties by legal advisers.

Potential difficulties with the communication and comprehension aspect of the role, particularly where a young person has more profound difficulties, raise the prospect of separate specialist communication support being required in addition for some young suspects. It remains a striking anomaly within the criminal justice system as a whole that intermediaries are routinely afforded to young witnesses but rarely to young defendants (Cooper and Wurtzel 2013). This study suggests that the position may be even worse for young suspects, an issue that I discuss in more detail in Chapter 7.

However, whether split or otherwise, the effective fulfillment of the AA role is still limited by structural and cultural constraints. Resourcing, particularly in the delayed arrival of many AAs, is a significant factor. As ProfAA made plain, many LAs and YOTs do not have the funds to contract schemes to provide a more complete service. It may be little wonder that scheme AAs are taking a more administrative approach to their duties if their contractual arrangements only allow for minimal attendance at the station. Similarly, where physical facilities are limited, there may be little scope for COs to enable AAs to spend more time privately with the young suspect. There is little prospect that the resourcing climate will improve. Rather, as discussed in Chapter 3, the emphasis for reform must surely fall on a stricter consideration of whether custodial arrest is necessary in the first instance.

More challenging still, however, is the impact of the CO on the effectiveness of the AA. In almost every respect the CO controls the scope of the AA role. The CO dictates who is suitable to act, when the AA is asked to attend, when they might be

allowed into the custody area, what they know of the role (where the AA is not trained) and the access they have to the young person. The AA's ability to perform all aspects of the role is fundamentally constrained. The effectiveness of any challenge made by the AA, where concerns arise, is also controlled by the CO who may choose to respond, or not, to any issues raised.

The adversarial system is heavily implicated in this neutering of the protection. The evidence demonstrates vividly that there is a fundamental problem within an adversarial context with providing a vital protection for one party which is wholly controlled by the other party, particularly where the power differential between the parties is so extreme, and one is so vulnerable. As discussed in Chapter 4 the external oversight of custody processes for young suspects is itself inadequate, and we see in this chapter that ICVs in particular have little purchase on the operation of the AA safeguard. As a result, the crime control orientation of the CO is liable to predominate at the expense of the due process rights of the young suspect; the AA, particularly a FAA, is structurally stymied and unlikely to be able to redress the imbalance of the situation. The amendment of the role by the introduction of a new definition and a mechanism to raise issues with the Inspector (updated Code C 1.7A), whilst welcome, is, on the evidence in this study, unlikely to be effective in resolving the difficulties with the protection. I turn now to consider the other key support for young suspects, legal advice.

Chapter 6

Legal Advice and Decision-Making

Tyler, a young BAME participant, sits opposite me in his school uniform. He is small, looking younger than his 12 years. Tyler is telling me himself about his understanding, and the decisions that he made, when he was arrested and detained for an assault on another boy.

He said that he had legal advice, but that the decision had been made by his mother. He would not have known, he thought, what to say to the question about legal advice.

He explained that his view in custody had been that “if you say no comment to everything they keep you in for longer”, something which he had learned, he said, from watching “a lot of TV”. Making ‘no comment’, he said, meant “you don’t want to tell or you don’t know”.

He recounted, ‘I didn’t have to say no comment, I answered all the questions’, as if he were reporting having engaged well in class at school. He said that he decided to answer questions because he ‘just wanted to get it all over with, and just be truthful’.

This chapter addresses legal advice for children in police custody, and explores the ability of young suspects to make legal decisions in that setting. Tyler’s experience illustrates some of the challenges that a child faces in police custody: being required to decide whether to have a solicitor¹⁵¹, processing legal advice and using it to make key decisions in their own best legal interests. We see in the vignette above, Tyler’s age-consistent decision-making approach, driven by a limited grasp of the legal position, a focus on getting out of custody and a generally compliant attitude towards authority. This approach is born of, and better suited to, a welfare-oriented setting. Tyler’s

¹⁵¹ I use the term solicitor throughout this chapter for ease. However legal advice in police custody can also be provided by accredited, or probationary, police station representatives who are not qualified solicitors.

account, and those of other participants, illustrate how problematic it can be when these natural inclinations are tested in the adversarial and coercive setting of the custody suite.

Alongside the AA, a solicitor is a key protection for young suspects, but it must be requested, and research has identified low uptake amongst young suspects (Kemp, Pleasence, and Balmer 2011). The first section of the chapter, therefore, considers young participants' accounts of their reasons for accepting, or refusing, legal advice, and the effectiveness of provisions supporting that decision-making. I turn then to examine how young participants received legal advice, and the factors affecting their engagement with their solicitor. The next section considers to what extent young participants were able to engage with legal advice, and examines other pressures on their decision-making in custody, focusing on the question of whether to answer questions in interview. Finally, I consider the involvement of the solicitor in supporting a young suspect's broader rights and entitlements in custody.

Exercising the Right - Existing Literature

Access to legal advice is a “fundamental right”¹⁵² and a critical protection for the all suspects (Code C 6.1). An essential element of fair trial guarantees (Article 6(3)(c) ECHR) it extends back into the pre-charge detention period by virtue of what is now an established line of authority (*Murray v UK*,¹⁵³ *Salduz v Turkey*,¹⁵⁴ *Cadder v HM Advocate*¹⁵⁵). In conjunction with the right of silence, the right to legal advice was recommended by the Phillips Commission as a “counterweight” to the proposed increase of police powers subsequently enacted by the PACE (Quirk 2017, 87, RCCP 1981).¹⁵⁶ With the introduction of adverse inferences from silence in the Criminal Justice and Public Order Act 1994 (‘CJPOA’), the protection provided by a solicitor has assumed ever greater importance, especially for vulnerable suspects such as children.

Quantitative research into the uptake of legal advice by young suspects in England and Wales found that 43 per cent of children who went on to be charged did not request to see a solicitor, and that 10-13 year olds were the least likely age-group to request and

¹⁵² *Samuel* (1988) 2 All ER 135 at [144].

¹⁵³ (1996) 22 EHRR 29.

¹⁵⁴ (2009) 49 EHRR 19.

¹⁵⁵ (2010) UKSC 43 (SC).

¹⁵⁶ There had been a common law right to legal advice under the Judge's Rules, but it was rarely exercised and infrequently facilitated (Baldwin 1979).

receive legal advice (Kemp et al. 2011).¹⁵⁷ This low uptake is worrying for several reasons. Firstly, research suggests that children are more likely to make admissions when interviewed in the absence of legal representation (Medford et al. 2003), and are generally more likely to confess falsely (Kassin et al. 2010). Secondly, young suspects are less likely to appreciate the significance of making such admissions (Cauffman and Steinberg 2012). And thirdly, the emphasis on out of court disposals for children¹⁵⁸ means that obtaining an admission from a young suspect has greater significance for interviewing officers, potentially inclining them to resort to pressurising tactics, whilst there is less chance that the circumstances of the interview will be scrutinised by the courts.

The available literature, although much of it now of some age, proffers some potential reasons for low uptake. These include the minor nature of the allegation for which young suspects are likely to have been arrested. In Phillips and Brown's study (1998) the strongest single predictor of uptake of legal advice was offence type. Low juvenile uptake (in 33% of cases compared with 39% for adults) was found to be related to offence type with 'juveniles'¹⁵⁹ being more likely than adults to be arrested for less serious offences. The single young participant who had declined legal advice in Kemp and Hodgson's recent study conformed to this pattern, indicating that he "tended not to bother" for minor offences (Kemp and Hodgson 2016, 136).

Interaction with an AA who is a family member has also been identified as a potential reason for declining advice (Phillips 1998; Bucke and Brown 1997). Medford et al's quantitative study of 136 interviews with 'juveniles' found that the presence of an AA did not increase the likelihood that a solicitor would be present, although the converse was the case with adults; a finding which they described as requiring "explanation and further research" (2003, 262). Kemp et al (2011) suggested that the combination of a FAA and reassurances of swift release might also depress uptake.

Conducting police station observations, Kemp (2013) identified a perception among suspects that taking legal advice would cause delay, extending time in custody. Indeed, quantitative research supports this assertion. Controlling for other factors such as offence seriousness, Kemp et al's analysis (2012) revealed an average increase in detention time of two and a half hours for those requesting legal advice (see also

¹⁵⁷ Kemp et al.'s study analysed 30,921 custody records, including 5153 records of 10-17 year olds.

¹⁵⁸ s66ZA and 66ZB, Crime and Disorder Act 1998. See also (Crown Prosecution Service 2019).

¹⁵⁹ This research, and Medford et al was conducted before the raising of the upper age limit of a 'juvenile' from 16 to 17.

Skinns 2009a and Phillips 1998). The only research with suspects to address this question (Choongh 1997) revealed that many adult suspects were unwilling to extend their stay in custody to wait for legal advice.

Policy acknowledges that young suspects might find making a decision about legal advice difficult. The APP stresses the importance of ensuring that children and young people are aware of their right to legal representation, identifying this as a part of the police's duty to "safeguard and protect" young people.¹⁶⁰ It requires COs to be trained to enable them to ensure that young suspects and their AA "fully comprehend the possible benefits and importance of seeking legal advice". Additionally, in recognition of indications that the police may prefer suspects not to have legal advice (Sanders et al.1989, McConville et al. 1991), Code C specifically prohibits officers from doing or saying anything "with the intention of dissuading" a suspect from taking legal advice (Code C 6.4). Where a suspect declines legal advice, the officer "should point out that the right includes the right to speak with a solicitor on the telephone" (Code C 6.5). There is, however, no corresponding requirement within the Codes to make efforts to check comprehension of the right to legal advice and the importance of it.

Research has raised the possibility of the use of 'ploys' by the police to discourage take-up (Kemp 2010). The APPGC (2014b, 14) heard evidence from solicitors that suggested police had "actively encouraged children to cede their rights when in custody, telling the child that they would be released far more quickly if they did not ask for legal representation". Lawyers in Kemp and Hodgson's study (2016) also raised similar concerns. Although what may amount to a 'ploy' in these circumstances has long been the subject of discussion (see Bucke and Brown 1997).

The existing literature lacks child suspects' own accounts of how they make the decision regarding legal advice. It is vital from a policy perspective to understand how child suspects understand their entitlement to free and independent legal advice, and the purpose and significance of such advice. North American psychological research, for example, suggests that children may fundamentally fail to understand what "independent" legal advice may mean (Grisso 1997) and are not aware of legal professional privilege (Peterson-Badali and Abramovitch 1992).

¹⁶⁰ APP(CYP) 3.3.

Uptake of Legal Advice Within the Research Data

Despite the widespread appreciation of the existence of the right, almost half of young participants stated that they had never had a solicitor, or had declined legal advice on at least one occasion. The proportion of female participants who had waived representation at least once was slightly higher (5 out of 8) in keeping with previous findings (Bucke and Brown 1997). Young BAME suspects were also more likely to waive (8 out of 15) than white counterparts. A similar picture is indicated for younger participants: 7 out of 12 10-15 year olds had declined legal advice on at least one occasion. On observations, of the 43 young suspects who were interviewed (or for whom an interview was planned) only 16 did not take up the offer of legal advice. However, of those who did exercise the right, 8 initially refused and the solicitor was required by the AA, who in each of those cases was a NFAA. These numbers are small, particularly when looking at groups within the young participant sample, and are not representative. However, they give an indication that my data might broadly be considered to be in line with previous quantitative research in this area.

Awareness and Understanding of the Right

The vast majority of young participants recalled having been asked if they wanted legal advice at booking in. Not infrequently it was the only one of the “continuing rights” (Code C 3.1) which was recalled. Certainly during observations every rights and entitlements process that I observed included the offer of legal advice in some form. Although I observed a variety of different approaches in communicating the right to young suspects. These ranged from a formulation close to the language of Code C, referring to “free and independent legal advice”, to a simple enquiry as to whether the young suspect would like a “solicitor”.

The data indicates that using the terms ‘solicitor’ and ‘legal advice’ without clarification can cause difficulty, especially when used separately. VAA2 considered that “a sizeable minority don’t know what a solicitor is”, and certainly I observed young suspects who plainly did not understand what the word meant when used without explanation (eg young suspect YS43). Conversely, 16 year old Aidan, for example, regularly in police custody, did not understand the term ‘legal advice’ when used in isolation, despite, he confirmed later, having had a solicitor a number of times.

Even where a young participant had some notion of what a solicitor does, a number lacked an understanding of how legal advice could help them. For some young

participants the exact nature of the assistance was not important: “It’s just someone who knows what they’re doing innit?” (Will). However, for others this lack of appreciation had led to a refusal. Kyle, for example, waived legal advice, explaining, “I didn’t even know what really a solicitor is. I knew like they try and help you but I didn’t really know like the whole gist of it.” For some the notion was simply too alien to engage with, as Azade reported, “... at first I said no innit ‘cos I didn’t know what to say.” (see for similar in all-ages research Kemp and Balmer 2008; Kemp 2010).

The APP requires COs to ensure that a young suspect, and their AA, “fully comprehend the possible benefit and importance of seeking legal advice”.¹⁶¹ On observation it was noteworthy that the offer of legal advice was rarely accompanied by any explanation. Where such explanation was forthcoming it tended to be brief. For example, when YS43 (above) asked what a solicitor was, the CO responded “Gives you legal advice” (YS43 declined). Notably, where a young suspect’s responses indicated some hesitation or disinclination, the response from the CO tended not to be to provide further information but to mark them as having refused “for now” (see similar in Rock 2007; Sanders et al. 1989). The following exchange was fairly typical:

CO: You’re entitled to a solicitor - free and independent legal advice. Do you know what that is?
YS19: Yeah
CO: Do you know what they do? You understand about legal advice?
YS19: They just make everything longer
CO : I can’t comment on it. We’ll put you down ‘no’ for now and you can go through it again with your Mum.

The CO’s approach is, to an extent, understandable, because more detailed explanation may be better received with the AA’s support. The difficulty is that where the AA is delayed, as commonly occurs, a young suspect is less likely to want to incur further delay by requesting a solicitor at that stage. Alternatively, one might conclude that the CO welcomes the opportunity to record a waiver, the absence of a solicitor being seen as beneficial to colleagues seeking to obtain a confession in interview (McConville and Hodgson 1993, Hodgson 1994) (See below for discussion of implicit dissuasion).

During observations almost invariably the young suspect was told in some form that legal advice was free. CO42 felt that this was not always understood by young suspects, “Even though you labour the point – ‘its free and independent’ but they still

¹⁶¹ APP(CYP) 3.3.

think they have to pay.”. However I did not observe this issue arising, nor did any young participant raise it in interview. Reference to the independence of the solicitor was more frequently omitted by COs on observation. A number of young participants expressed concerns about impartiality, suggesting that this is capable of being a more significant omission. Their concerns tended to focus more on the impartiality of the ‘duty’ solicitor,¹⁶² echoing similar concerns expressed by adults (Kemp and Balmer 2008), rather than a solicitor nominated by the arrestee themselves. However, where a young person is in custody for the first time, or in a new area, taking legal advice almost inevitably means engaging the duty solicitor.

Harper encapsulates this impartiality concern. She explained that she would: “never get a solicitor from custody, like one of their solicitors”, because, “it’s just that they’re attached kind of thing, if you get what I mean. I just think they’re too like involved with the police.” She felt this way, she said, despite acknowledging that COs say that they are “free and independent”. For some young people, such as Nathan, this distrust had reduced with experience. But for others this scepticism could be lasting, and might be reinforced, or initiated, by parents and FAAs as well. Cole, for example, explained, “My mum's always told me never just get a lawyer from the police station, I don't know why”. Several felt that duty solicitors were simply not likely to be very good, “nothing special. If I was in for something big then I would phone the solicitor that I like.” (Jayden).

Making the Decision

A number of young participants, for a range of reasons, did not engage at all with the pros and cons of legal advice. For some other, bigger, issues took centre stage, drowning out concerns about the legal process. Harper described an early waiver of legal advice:

obviously I know my (bail) restrictions are gonna be I can't go back home, so I've got now no Mum, I've got like no family, where the hell am I staying tonight, kind of thing....I didn't actually care about the crime, I didn't care if I was to get charged, so I didn't really care about anything. I just cared about where I was gonna like be sleeping kind of thing.

I observed on several occasions how the question could also get overwhelmed by a young suspect’s very emotional reaction to arrest and booking in. YS43, for example,

¹⁶² A solicitor arranged by the police through the Criminal Defence Service.

was violent in the van and very uncooperative on booking-in. The patience of the CO began to evaporate as he started dealing with rights and entitlements. YS43 began to engage with the question of legal advice, responding “What’s that?”. But as his engagement with the CO deteriorated so did his application to the issue and he ultimately declined, without really considering the issue further. Perhaps most concerning were those who stated that they simply did not care. Elijah sometimes felt this way, recounting: “Like, as soon as I'm in there, I'm in there. I wish they would let me get on with my time and give me my punishment and then we get it done and they leave it. I don't really care 'bout the legal advice”. Legal advice was, as he described it, “just extra oxygen wasted”.

For those who did engage, the factors that they gave for accepting or declining are instructive. For a significant number of young participants getting a solicitor was essential. Identified benefits of having a solicitor included that “you can just ask them for advice on anything or whatever” (Hussain), and that they could provide information about the strength of the police’s case (Carter). For more experienced young suspects who felt they knew what they were going to say in interview, a solicitor could still be useful “just to clarify” whether their decision was right (Harper). Harper also raised the important feature that, if it “goes to court, then my solicitor’s been there from kind of the first process to the last. He kind of knows what went down kind of how it went.”. In line with the Legal Services Commission’s findings, there was considerable loyalty towards solicitors who were perceived to have done a good job on a previous occasion (Kemp and Balmer 2008).

There was, as already discussed, a strong sense of powerlessness amongst young participants, of being helpless in the “house” of the prosecution (Rezar). Some young participants demonstrated the ability to seize on the merest opportunities to express agency or resistance, and this was the case even in respect of legal advice. For example, Malik explained that in response to the CO’s offer of legal advice, “I told him, ‘Fuck you, cos mine’s already on his way bro’obviously I’ve got a good guy. He boxed me out.” He took pleasure in rejecting the offer of assistance, and the swagger in his description of his own solicitor was echoed by some other young participants.

Factors Associated with Declining Legal Advice

Delay

Some young participants would tolerate delay. Kate, for example, explained that she was happy to wait even when told explicitly by the CO that having a solicitor would cause delay, “I went, ‘No, I’ll sit in here and I’ll wait. I’m not saying nothing without my solicitor.’” But this was not the case for all. Indeed, far and away the most significant factor raised by those who refused legal advice was the delay which a solicitor was considered inevitably to cause: “I didn’t want one...I just wanted to get out” (Alex). Even a relatively modest perceived delay was capable of being a significant factor in waiver. Hudson’s reasoning: “... they take too long. It’s just an extra like hour, 45 minutes that I’m gonna be in there so.” was by no means unusual. To an adult, such a delay might seem a reasonable trade-off. However, the pains of detention, explored in chapter three, coupled with an age-consistent inability to defer gratification or assess long-term effects (Steinberg et al. 2018), mean that this is a highly predictable response. Sometimes delay was raised as the sole factor; often it was combined with one of the positions set out below.

Some young participants felt that the delay was not just confined to the time it took for the solicitor to arrive. Luke suggested that requiring a solicitor gave the police the opportunity to drag detention out, “Police don’t rush doing things. If you ask them for a solicitor they’ll do it an hour later.” I did observe efforts to require a solicitor to attend being delayed until officers were ready to interview. This appeared to be done as a matter of practicality rather than to prolong detention, although attempting to co-ordinate timings in this way inevitably raises the risk of delay.¹⁶³

Where, as discussed above, the decision about legal advice was deferred until the arrival of the AA, the issue of delay was even more acute. NFAAs, in particular, noted that young suspects who had spent some time in the cells were even more likely to waive legal advice to avoid any further delay. RHAA3 considered the system “flawed” in this regard: “If they’ve already been in for hours ... If they can’t cope with the surroundings and want to get out. If they are then asked if they want a solicitor then they will waive that right because they just want to get out.”. Some COs, when

¹⁶³ In some areas, eg F1, private provider of CAs are fined a significant sum by the force where there is a significant delay between booking-in and contact being made with the solicitor call centre where legal advice is requested. CAs themselves could be disciplined where their behaviour incurred too many fines.

delaying explaining rights and entitlements, will ask at least the question about legal advice on first booking-in, to avoid this effect (eg CO36).

Often a request for legal advice will not contribute significantly, if at all, to overall length of detention. Indeed, on observation COs would readily acknowledge that lengthy delays before interview generally arose because of issues with the investigation rather than the attendance of the solicitor (see also Kemp 2013). Although inevitably legal advice does sometimes delay the interview of an individual, and differing attitudes may arise from local variations in service (Skinns, Wooff, and Sprawson 2017). However, the view that having a solicitor will necessarily lengthen your detention is something that was widely (mis)understood, and frequently referenced by, young participants. As VAA2 noted, “It is an unfortunate fact but solicitors are frequently late. Anyone who has been arrested before knows this. Their favourite remark (about solicitors) is ‘I don’t want to wait’.”

But how do young people come to that (mis)conception? North American clinical research has suggested that misplaced attribution to lawyers of blame for delay can be triggered by immature thinking and judgement (Tobey, Grisso, and Schwartz 2000). This may be a feature, but young participants and adult informants offer more concrete sources of potential misinformation. Sol6 had gleaned from young clients that some believed they would be interviewed immediately if they did not request a solicitor. This will rarely in fact be the case, but given the lack of appreciation of the process described by young participants, is not an unlikely position. Kemp’s research (2013), however, uncovered evidence which suggested that this may be a position advanced explicitly by officers prior to arrival at the custody suite. And indeed there is some support for that proposition within this data too. Kate, recalled being told this explicitly, “Yeah, ‘cause they had said to me, ‘We can interview you now and you’ll be out in 20 minutes, but your solicitor is not here yet.’”

For some, solicitor-caused delay was something they felt they had learnt by experience: “because last time I got one, I was..(told) ‘the lawyer, he will be here shortly’, and then he took about two hours just to get here.” (Jo). A young person is unlikely to be able to discover the actual cause of a delay, so may understandably assume that the arrival of the solicitor, where that has been raised as an issue, was the reason. Although experience could prove the contrary position. Logan complained that he had declined legal advice on one occasion because he thought it would be quicker only to find this was not the case.

It appears that even those without prior experience of custody may hold the view that solicitors cause delay. YS19 was being booked-in for the first time when he observed above, “they just make everything longer”. Simon explained that “Talking to your friends and stuff” is a significant source of custody-related information for young people. Although this does not always mean that the advice favoured declining representation. For Yemi asking for a solicitor was just what people did, “Everyone says you always take a solicitor”. Indeed some young suspects had only asked for a solicitor because friends, with whom they had been arrested, were getting advice and had encouraged them to do the same (eg Cole). Some AAs stated that they would attempt to disabuse a young person of the notion of solicitor-induced delay: “I explain that it’s not going to delay – it’s generally the case that a solicitor does not hold matters up.” (PAA3). Solicitors too may try to address such misconceptions. Sol2 explained, “They think the reason they are in custody for so long is that they are waiting for their solicitor. We try to explain what the delays are caused by.”.

The seriousness of the allegation

A significant number of young participants explained that they made the decision based on a judgement about the seriousness of the allegation, on the premise that a trivial allegation does not justify the delay a solicitor will cause. Jo explained: “But if it is not a big deal, I won’t take a solicitor, but if it is a big deal, then yes.” (see for similar Kemp and Hodgson 2016). For some young participants, seriousness was assessed on the basis of the sentence they considered likely to be imposed for the instant offence, particularly where that might be custodial, rather than appreciating the potential cumulative effect on their record. As a result some took the view that solicitors were only for cases like armed robbery or which were going to the Crown Court. Simon explained his approach:

I know that I’m not gonna be done for it. Nothing’s gonna come of it. It’s gonna be either a fine or a slap on the wrist. I knew that, so there’s no point getting that whole...If you ask for a solicitor, you’ve gotta wait for one to come available - back to your cell.

There are a number of problems associated with this approach. Firstly, as one might anticipate, young people are not always able to assess seriousness accurately, or appreciate other factors which an officer or prosecutor may take into account when considering how to proceed. Kyle, for example, described declining legal advice having

concluded: “I knew it was a serious thing but it’s not like I were gonna get locked up or anything.” The allegation transpired to relate to an assault in the street with a weapon which, depending on previous convictions, might easily have resulted in a custodial sentence. In addition research suggests, and my data tends to confirm, that officers do not routinely help by providing unrepresented suspects with any disclosure (Kemp and Hodgson 2016).

In making this assessment, there is inevitably the danger that a young person views the outcome of earlier experiences in custody as an indicator of how similar allegations might be dealt with in the future, without appreciating how the prosecution may respond to repeat or escalating offending. Azade, explained her reasoning: “Cos you see the first time I didn’t get one (a solicitor) and literally nothing happened. So obviously I was thinking, like my first one was way worse than this one.”. The second allegation that she was describing had, however, involved an assault with a weapon on a shop-assistant, arguably a matter for which prosecution may well follow.

Not having a solicitor for a minor matter was for some young people associated with making ‘no comment’ in interview. As Carter explained, “If it’s not that serious, I just go, ‘No comment,’ I don’t need a lawyer.” The difficulty that arises here is that a no comment response can rule out an out of court disposal, which can only be achieved where admissions are made. The result is that prosecution is more likely, especially for those with previous history or where the offending is not significant but unsuitable for no further action to be taken. VAA2 described just such a situation where she supported a young suspect who had made admissions on arrest to the offence, and signed the officer’s notebook. The officer had informed the AA that they would offer a caution if the young suspect repeated his admissions in interview. The young suspect, although informed of this position, declined legal advice and then made no comment in interview, removing the prospect of a caution entirely.

Being innocent

A number of young participants expressed the view that a solicitor was only required if you were guilty, or had something to hide. Jackson explained, “Because I didn’t have nothing on me so I didn’t need to worry about nothing really. I didn’t need one (a solicitor) – I didn’t need all that, to go through that extra time for like one.” Custody sergeants in each area acknowledged that this was an extremely common reason for declining: “they mainly say they don’t need one because they’re innocent.” (CO42).

Indeed belief by the innocent that the truth will prevail and that their innocence will inevitably be revealed to investigators and the court has been observed in research (Kassin 2005).

To take such an approach requires a good understanding of what behaviour is criminal. Previous research suggests that children and young people may lack understanding of common offences committed by young people (Bevan 2015). Jamal for example explained that he had declined legal advice, “I knew it was stolen – but I didn’t steal it so I didn’t care. I knew what I was gonna say.....”. He appears not to have appreciated that, although he may not be prosecuted for theft, he left himself open to a handling charge.

Young people in particular face a greater likelihood than adults of being prosecuted on the basis of secondary liability given that much young offending occurs in groups (Goldweber et al. 2011). Despite recent improvements in the law of joint enterprise (following *Jogee*¹⁶⁴), liability arising out of involvement as one of a group is not, unsurprisingly, widely understood by young people. I was struck on several occasions during the interviews by how little young participants understood secondary liability. Elijah described an occasion when he had declined legal advice,: “Like, when I was in trouble for bein' with my mates, I was thinkin', ‘Why do I need a solicitor for this?’ It's my mate's problem, not mine. All I'm bein' asked is why was I with him.” On observation I tracked the detention of three young suspects (YS45, 46 and 47) arrested for s18 OAPA arising out of an incident of group disorder in a street which resulted in a stabbing. The possibility of complex secondary liability issues arising was significant however, two (who incidentally required the services of an interpreter)¹⁶⁵ declined legal advice.

The lawyer is an important protection for the innocent as much as for the guilty. The integrity of pre-charge procedures is key to avoiding miscarriages of justice (Evans 1994), as the *Confait* case starkly attests. I was interested to understand if young participants appreciated the role that lawyers could play in protecting the innocent. Those who I challenged on this point tended to reject my counter-argument, as Riley illustrates,

MB: But what about if the police got the wrong end of the stick? Would it not be useful to have a solicitor?

¹⁶⁴ [2016] UKSC 8.

¹⁶⁵ A need which in the magistrates’ court would almost automatically have resulted in the grant of legal aid for representation (Legal Aid, Sentencing and Punishment of Offenders Act 2012 s17).

Riley: No. I wouldn't have been arsed 'cause you're not provin' it was me 'cause it wasn't me..... And even if it woulda got proved against me, I probably just woulda went on the run or somethin', 'cause I'm not getting arrested for somethin' I ain't done.

This answer clearly reveals Riley's natural immaturity of approach, an adolescent sense of invulnerability to risks, and an age-consistent inability to think about the consequences of that decision (Blakemore 2018; Cauffman and Steinberg 2012). These are understandable responses, but they reveal how problematic it can be for a young person in police custody to have to request legal advice.

Strength of the case

Some young people expressed the feeling that, if the case is weak, you should not ask for a solicitor. Harper explained, "If I think I'm going to get away with it then I'm like no, no, no, don't want a solicitor." As with the assessment of seriousness, judging the strength of the case is tricky. This may be ascertainable by a solicitor, but is more difficult for a young person, particularly without any formal disclosure. Jo, who took this view, explained that he judged the strength of the case on his own knowledge of the offence and by what (if anything) the officers said when they arrested him, whilst Harper assessed the strength of the case on the basis of how long it took them to arrest her.

Conversely there were some young participants who felt that a solicitor was not needed where they were making admissions: "it's just a waste of time, especially if I'm admitting to it anyway.... I don't think it's needed really." (Hudson), (see similar in Kemp and Hodgson 2016). Of course a young suspect who has been given very little information about the role of a solicitor is unlikely to appreciate the assistance a solicitor can render both in interview (whatever the position taken), and making representations in respect of cautioning, charge and bail.

Very frequently the combination of concern about delay, coupled with one of the case assessment positions outlined above, culminated in the reason formulated for the custody sergeant: "I don't need one" (see for similar Kemp 2010). A number of young participants expressed this view that they knew what to do and say without the help of a solicitor, and the delay that they would cause. As Jamal described, "just do without... I don't need one. They just long it out... They just say everything that you could say yourself really." Where called out at the request of an AA, solicitors also recounted young suspects challenging them saying, "I don't need you" (eg Sol2). Numerous

officers stated that this was the reason most commonly given when asked about the basis for refusal, and it was certainly prominent on observation. Indeed on more than one occasion I observed no reason being given by the suspect, but that the custody record was subsequently completed with “don’t need one” as the reason.

Fewer, generally very much younger participants, felt that if they got a solicitor it would make them look guilty, as Kaiden reveals:

But if I get a solicitor, does that not mean that I done something wrong?....Because the people that get solicitors - don't they think that they've done something bad for them actually to get a solicitor?..... Be dead guilty – that's what I think.

Sol6 noted this same concern, and felt that it arose from media representations:

In films and TV series the person says ‘I want my lawyer now’, after they've admitted something. Juveniles think if you ask for a lawyer you're admitting something – that you are guilty. They don't appreciate that the court takes no notice of that.

CO38 indicated similarly, “I think they feel it implies guilt.” Given the lack of awareness of the custody process expressed by the youngest participants, this is not surprising.

Ploys? Explicit and Implicit Dissuasion

The evidence of explicit efforts to dissuade young suspects from taking legal advice was limited. Like Kate (above), Megan related that she had been specifically told by officers that calling her solicitor “would take longer”. In contrast to Kate she confirmed that she had therefore declined legal advice. I did not myself observe any such explicit dissuasion. Indeed conversely, I observed one instance where a custody officer (CO2) required legal advice for a young suspect (YS1) against his wishes. The 14 year old suspect, in police custody for the first time, simply shook his head when offered a solicitor. CO2 responded, “They're trained in law, their job is to help people like you out. It's free of charge and they're nothing to do with the police. We're going to get you one anyway”. He explained afterwards, “I take the decision away from them when they are 14 or 15...most of us (COs) here would say they should have a solicitor whether they like it or not”. Was this observer effect? Uptake across the observations in that area was high, but this appeared to stem more from a blanket approach taken by scheme AAs to require a solicitor's attendance in that area.

Two young participants similarly explained that they had experienced a removal of choice in favour of a solicitor. (eg Kaiden, aged 12 at the time of his detention). However this more paternalistic approach was certainly not pursued by all COs or in all areas. CO17, for example, was clear that a lack of representation for a 13 or 14 year old would not concern him: “maybe I’m harsh but I don’t worry about that. There’s no blanket arrangement here where AAs coming out for juveniles will always require a solicitor to attend.”. Interestingly, on observation I saw scant appreciation by COs that the presence of a solicitor could be advantageous for the prosecution as well. The only volunteered reference to the benefits of legal advice came from CO41 who remarked that inexperienced officers may regard solicitors as a “nuisance”, but “the solicitor safeguards me too”.

What of less overt influences on decision-making (Bucke and Brown 1997)? The evidence in this study for ‘implicit dissuasion’, as I term it, is more compelling. Some professionals certainly felt that there is implicit influence exerted by custody staff, although, as Sol6 explained, “it’s very hard to quantify”. His particular concern was that the prospect of delay may be conveyed by tone of voice, or by less overt statements, “ ‘I’m going to deal with you **now**’, they might say” (emphasis in the original speech). However, I did observe other responses and behaviours which had the capacity to dissuade. Not all of these instances might be described as deliberate, a conclusion reached on similar evidence in (Dixon 1992), but all are capable, in my estimation, of discouraging a young person from engaging their right to legal advice.

It was striking how often a young suspect’s reasons for refusing, not infrequently “they just make everything longer” or most commonly “I don’t need one”, went unremarked or unchallenged, as we saw with YS19 above. Officers and AAs observed that it is “fairly standard” for a juvenile to say “it’ll take too long” to get a solicitor (CO43), without suggesting the need to disabuse them of that notion. The difficulty is that failure to engage at all with such a query is liable to leave a young suspect concluding that their assumption about delay, or that they do not need a solicitor, is correct.

What was noteworthy is the view expressed by more than one CO that they are not allowed to advise suspects to take legal advice, or even make any overtly positive observations about such support. For example, CO29 explained, “You can’t say they should have a solicitor – not in so many words. But you can say, ‘Do you know what a solicitor can do? They can advise you about your legal right...it’s a serious arrest.’.” Or

as CO41 related, “If the young person was here for rape, first time in the police station – I can’t advise. I’ll just repeat again – ‘It’s free and it’s independent.’”.

This idea that COs are necessarily restricted in this way by Code C does not seem sustainable considering the wording of the provisions. Granted, Code C prohibits anything said or done which might dissuade a suspect from taking legal advice (Code C 6.4 and NFG 6ZA), but it does not explicitly prohibit encouragement of uptake. Indeed arguably the APP’s emphasis on full explanation¹⁶⁶ rather contradicts this suggested prohibition. It is interesting that this is read by some COs as an embargo on counselling uptake, or even explaining the right further. This may be an artefact of the conflicted position of the CO. His or her role is to safeguard the welfare and rights of the suspect, but advising on legal advice perhaps feels counter to the efforts of colleagues who are investigating. The idea that they are hidebound by the language of Code C is somewhat undermined by the fact that, despite the requirement in Code C 6.5, I did not hear any CO advise a detainee who was refusing advice that they could speak to a solicitor on the telephone. The available evidence rather suggests instead that COs tend to interpret Code C in a way that conforms with their operational objectives – in this case interview in the absence of a solicitor where possible.

However, it is equally plain that care needs to be taken in what is said in such circumstances. I did not observe a CO engage with a query or statement about timing. However, in face to face discussions a number of COs suggested that they would impress upon a young suspect that asking for a solicitor would not cause delay. As CO29 explained: “They say it’ll be slower if I have a solicitor. I generally say it’s not going to speed things up or slow them down. We’ve got plenty of time to arrange one.” Others suggested that they might give a time estimate: “I generally say we can get one here in the hour.” (CO37). As we see above, even a delay of that magnitude could dissuade a young suspect, and solicitors were concerned that some COs provide no context, they “don’t say, well we won’t be ready to see you for three hours anyway so it doesn’t matter.” (Sol6). However any effort to identify the likely length of delay needs care, and might exacerbate concerns. CO41 for example explained that he might say, “I’ll be honest with you – you’re going to be here – don’t matter if you’re here a little bit longer”. One can appreciate how, although well meant, such a statement might disincline a young person to opt for a solicitor.

¹⁶⁶ APP(CYP) 3.3.

Tricky too are indications, by the CO or the AO, of the minor nature of the allegation which may nudge a young suspect, with or without the involvement of their AA, to decline representation. The suggestion that assurances of swift release or diversion might adversely affect take up (Kemp, Pleasence, and Balmer 2011) find some support in this data. For example, FAA5 observed that she had been told that her son's arrest would be dealt with by way of caution and this had been a significant factor in her decision not to challenge her son's refusal of a solicitor. Such an outcome, whilst it may be likely, can never be guaranteed, especially not before interview (including admissions) has occurred. Such a statement may well be made to reassure parent or child, but can, as we see, have an adverse effect on the uptake of legal advice.

In summary, whilst I uncovered limited evidence of explicit dissuasion, it appears that implicit dissuasion is more of a concern. Failures to tackle misconceptions, and to provide adequate explanation of the benefit of legal advice, are liable to encourage waiver. Although such explanations may not be straightforward, and dissuasion may occur inadvertently, there are suggestions that this may be deliberately pursued. The difficulty lies in part in the adversarial focus of the police station where, in the absence of any form of independent or quasi-judicial oversight, it is perhaps inevitable that the impartial role of the CO may sometimes be overborne by institutional objectives.

Protections Against Poor Decision-Making

Code C gives an AA the right to request a solicitor for a young suspect, even where the suspect him or herself has refused (Code C 6.5A). The provision acts as a potential brake to flawed decision-making on the part of a young person, and certainly the general view of scheme AAs and officers was that, where a solicitor attended on the request of an AA, young suspects rarely refused to see them. However, the effectiveness of this provision inevitably rests on the capacities and views of the AA, who needs to be aware of the right to override and be prepared to use it.

During observations this provision had the most positive effect on the uptake of legal advice where an AA scheme took a blanket approach to requiring a solicitor. Such an approach was taken in F1, and I observed two cases where legal advice was refused by the young suspect, but required by the attending AA, and two further cases where the young suspect was told the AA would require one in any event and they consequently opted for legal advice.

However, in areas where there was no such blanket approach, the operation of this safeguard was inconsistent. Firstly this appears to arise because not all AAs are aware of the provision. This was particularly the case for FAAs, and notably this was not a right that I saw routinely explained by custody officers. However, not all NFAAs may be aware of the provision either, particularly those like RHAA3 who attended as an AA regularly from a children's home setting. Nor indeed does training necessarily cover the provision either, as we saw with YOTAA in Chapter 5.

Secondly, even where familiar with the power, AAs are generally lay persons and may engage the same assumptions and poor decision-making as young suspects. For example, PAA4 explained:

If a juvenile is here for shoplifting/common assault and is going to get a simple caution or a YOT referral and a solicitor won't make any difference to the process then I respect his wish not to have a solicitor, but if it was possession with intent to supply, for example, I would require a solicitor.

Their assessment of seriousness may be more accurate, but this overlooks the potential importance of legal advice in minor matters and the seriousness of any conviction or out of court disposal for a young person's future prospects. This may particularly arise in the case of FAAs who may often not understand how a solicitor can help, as FAA5 demonstrated,

I don't really know to be honest because like I said I'd not been in that situation before so I just went along with everything, you know ...and thought 'Do I need a solicitor?' I don't know. So, I'm not really clued up with it all, you know what I mean, but I just said no.

I certainly observed several exchanges about legal advice between a FAA and a young suspect which displayed a similar lack of appreciation of the solicitor role and resulted in confirmation of the refusal of advice, including in the case of the violent disorder resulting in a stabbing (YS45-47), discussed above.

Thirdly, the timing of the attendance of the AA can, it appears, play a significant role in this decision-making. If, as will often be the case with a FAA, the protection is only being contemplated when they attend just before interview, the chances of a parent overriding a young suspect's decision to refuse advice is likely to be severely diminished where the young person has already been in custody a number of hours and the impending interview will have to be delayed. FAAs may themselves be distressed, or feel pressurised and anxious to ensure swift release of their young person, or themselves for other caring or employment duties. FAA4, for example, who thought

that solicitors could take “up to 3, 4 hours” to attend, decided not to require legal advice for her daughter:

like I said she'd be stuck in there til they come... So I didn't want that, I didn't wanna be sat around waiting ...she wanted to get it over and done with and just get interviewed and get out. She's right, which is what I want, straight out.

Kemp's research (2010) raised the prospect that FAAs may override previous requests by young suspects for legal advice. I did not see this occur directly, nor hear suggestion of it from young participants. Nonetheless, I did observe a troubling intervention by a parent. YS15 asked for a duty solicitor on booking in. On arrival his FAA objected to a duty solicitor, wanting a named solicitor. This caused difficulties, firstly because the nominated solicitor did not take legal aid work, and secondly the duty solicitor was already instructed. At the insistence of the FAA, the young suspect initially retracted his request for a solicitor entirely and it was only when an Inspector intervened that both agreed to speak to the duty solicitor. One might argue that the imperfections of a parent's understanding simply mirror the situation where an adult is in custody and makes a decision regarding legal advice. However, the overarching obligations of the youth justice system to safeguard children impose a higher burden on the state to protect a young person from flawed decision-making in this context.

There is the further difficulty that the protection undermines the agency of the young suspect, and there were indications that both scheme and FAAs may seek to enable a young suspect to make their own decisions. CO9 observed, “ ‘It's up to you', a parent will say, when a youth is saying he doesn't want one, and that it's a matter for him or her.” This is understandable, and on observation occurred fairly frequently, particularly for older children, or those who had significant experience in police custody.

Indeed, invoking the protection can have negative practical effects. VAA2, for example, explained that overriding a young suspect's wishes in respect of legal advice could be problematic when they were also trying to establish rapport with that young person. As CO38 explained of young suspects whose decisions have been overridden, “It winds them up because they feel the decision has been taken out of their hands. A lot of the time we want them in the driving seat.” Another was clear that he felt that a “juvenile should be able to maintain their decision.” (CO43).

Fostering agency in young suspects is undeniably important, and respecting a young person's views is a central part of the UNCRC protections (see Article 12). However, there are difficulties with this approach. Kaiden, for example, had had his refusal of advice overridden, and would have preferred to make up his own mind. But he was also one of the young participants who felt that having a solicitor would make him look guilty. This is a problematic position, but goes to the heart of the contradictions of the custody process for children. On the one hand efforts to foster agency for young people are to be applauded, but the stakes are high, and an AA taking this approach neuters the protections intended to be in place for a young person like Kaiden (see Sanders 2010, 242). What emerges clearly from the data is that whilst the protection can have a positive effect on the uptake of legal advice, given the varying understandings and inclinations of AAs it functions inconsistently, and can lead to unhelpful tensions within the suspect/AA relationship.

The other protection against poor decision-making, for adults and young suspects alike, is the requirement that the officers inform the suspect that the right to legal advice is 'ongoing'. This can be useful, especially where the young suspect is drunk on arrival, as Tom describes: "I didn't (want a solicitor) when I got there but then when I sobered up a bit I was like, 'Yeah, I do want one actually.'". However, there appear to be two particular barriers to the effectiveness of this protection. Firstly, young people may not feel comfortable about saying that they have changed their minds. As Sol6 observed, "I think they find that embarrassing. They don't like to say that they now want a solicitor when they refused one before." More challenging is simply the passage of time. As discussed above, young participants' accounts suggest that the longer a young person has been in the cell, the less likely they are to engage a protection perceived to add to the delay: "when you go into a cell all you want is just get out of there." (Hussain).

Engaging with the Solicitor – Existing Literature

I turn now to consider how those young suspects who do request legal advice experience that support. What barriers are there to engaging with legal advice and, conversely, what do young suspects value in a solicitor? To what extent are young suspects able to understand and make use of the advice they receive?

No research in this jurisdiction has previously considered in detail how young people engage with solicitors and understand legal advice in the context of the police

station. However, there have been studies in related areas. Plotnikoff and Woolfson (2002) conducted research with young people about their experiences at court and Hazel et al (2003) investigated the experiences of young people within the wider criminal justice system. The young participants in these studies were often confused about criminal justice processes, struggled to engage with justice system actors and displayed significant misunderstandings about legal concepts, but were often reluctant to raise their difficulties.

There has been more research in North America, generally conducted from a psychological perspective and in relation, more commonly, to trial rather than investigative procedures (see for discussion Lamb and Sim 2013; Scott and Steinberg 2010). This research has explored the capacity of children and young people to engage with legal representatives and to understand legal advice. The findings do not, however, make encouraging reading. Many young people (both convicted and otherwise) lacked adequate understanding of their legal rights and demonstrated misconceptions about important aspects of legal proceedings, whilst also tending to over-estimate their own knowledge (Grisso 1981, Peterson-Badali and Abramovitch 1992). While most young people seemed to understand the simple notion that lawyers are present as “helpers” (Peterson-Badali and Abramovitch 1992), many did not consider that someone would be available to speak for them personally (Grisso 1997). In particular understanding of the concept of adviser/client privilege was not well developed (Peterson-Badali and Abramovitch 1992), and many young people considered that privilege does not function with respect to parents or judges (Peterson-Badali et al. 1999). Research in the UK and North America has identified that repeat experience of the criminal justice system does not necessarily result in a greater understanding of legal concepts (Plotnikoff and Woolfson 2002, Saywitz, Jaenicke, and Camparo 1990). Indeed, apparent familiarity with legal terminology and processes can mask vulnerability, and social and emotional immaturity (Peterson-Badali, Abramovitch, and Duda 1997).

Exploration of how young people appraise legal support is more limited. North American research, again, suggests that young people’s satisfaction with their lawyers is related to their ratings of the lawyer’s “participation, objectivity, trustworthiness and treatment with dignity and respect” and not generally to outcome related variables (such as length or nature of any sentence) nor to the extent to which they feel they have a direct say (control over) the relationship (Peterson-Badali, Care,

and Broeking 2007, 391). This links with the procedural justice literature discussed in Chapter 8. Commentators also posit that young people's perceptions of their lawyers may be related to their knowledge and understanding of the role, the limitations of which I refer to above (Peterson-Badali et al. 2007). Additionally there is the suggestion that negative experiences of lawyers, particularly blaming them for delay, is often triggered by immature thinking and judgement (Tobey, Grisso, and Schwartz 2000).

In this jurisdiction Kemp's research with court users aged 17 and above provides some indication at least of the views of older service users. That study, based on structured interviews with users, identified two particular aspects of a 'good solicitor': first being able to give "good advice", which included qualities such as being "experienced", "knowledgeable", and "reputable", and secondly creating "a good relationship" with the client, which was considered to require skills in listening and explaining, being truthful and honest, as well as more personal skills such as being "friendly, understanding, sympathetic" (Kemp 2010, 84) (echoing findings by Sommerlad and Wall 1999). However, in contrast to the younger participants in the North American research, Kemp's interviewees included within the 'good solicitor' definition those who achieved good outcomes, who were reported to "get me off", "get me bail" or to "keep me out of prison" (Kemp 2010, 84).

Barriers to Engaging with the Solicitor

What then did the young participants in this study say about their interaction with legal advisers? What emerges most strikingly is the number of potential barriers which prevent young suspects providing full instructions and then receiving comprehensive, and comprehensible, advice in the police station. The most prevalent issue apparent from young participant accounts was one of trust. As with the decision to accept advice, young participants raised concerns in particular about the independence of the solicitor, regardless of what the CO had told them during the rights process, which restricted how they engaged in consultation. It is not difficult to see how a young person might be hyper-vigilant to issues of independence when in the hostile environment of the custody suite. As Aaron explained, "I don't trust no one in there...If you're part of the feds, you're part of the feds".

Some felt that duty solicitors deliberately sought to act against a young person at the police's behest. For example, Aidan felt duty solicitors were "sent" to "get information" out of him, whilst Carter explained that "they're just there to get you to

admit things so that the police can bring up evidence....They're trying to get me arrested and they want me to go jail or something." Conversely, Will was concerned that no comment advice was part of a strategy,

Like they just see, they just wanna know if you done it and the best way to do it is to go to court and go to trial. So I think they, I think they try and make you go to trial so then they can actually find out if... to prove you're guilty or not guilty.

Inkeeping with the North American studies above, young participants often also expressed either a lack of knowledge of legal professional privilege or, where they were aware of the principle, a general scepticism about its scope and applicability. Malik, for example, typically explained, "I know, whatever you say to them is private and confidential and whatever, but... Fuck 'em, still can't trust 'em man. I don't know, I can't." It is to a degree understandable that a young person may have little appreciation of legal privilege, since they do not typically have any other experiences in which they enjoy strict confidentiality. But it is very concerning if such a lack of understanding results in a refusal to engage with legal advice.

Young participants who did engage tended to describe mitigating the risks by restricting what they divulged to their solicitor. Nathan, for example, explained that he held back some information, "Just in case like... if they actually did go and tell." Such an approach could be catastrophic in terms of enabling the solicitor to give reliable advice. As with decisions to accept legal advice, young participants' decision-making in this regard tended to be guided by their own, often uninformed, assessment of their situation. For example, Jo was prepared to provide a full account to his solicitor because the allegation was a "big deal", conversely Hussain felt that it was alright to provide a full account precisely because the allegation was not that serious.

Often material that was withheld related to the involvement of others in the alleged offending. Concerns not to be a "grass" or a "snitch" were really prevalent in young participant accounts. This is unsurprising. Statistically young people are more likely than adults, if they offend, to do so with peers (Goldweber et al. 2011). But this elevates not only the importance legally for a full account from a young suspect, but also introduces a layer of difficulty to young people's decision-making in the police station, with which many older suspects do not have to contend. Concerns about "grassing" have long been noted in young people's issues around engagement with the police (see for example Loader 1996). Young participants in this study expressed their

position forcefully on this point: “I probably would tell ‘em (the solicitor) everything that I done. I wouldn’t mention anything anyone else did, ‘cos that’s just like the code, you know what I mean, you don’t do that to your mates.” (Aidan).

Although I had expected refusal to mention others’ behaviour in the police interview, I had not expected concern about revealing this even to legal representatives to be quite so marked. Luke explained that he felt if the solicitor understood that others were involved, he/she would “try and force” him into telling the police. He felt that a duty solicitor in particular would advise him “if you tell the police it was them and not you, then you’ll be able to get out. That’s what they want you to do, they want you to grass ‘em up.”

The difficulty is that such advice may sometimes be in the young person’s best legal interests. The challenge is for a young person to be able to understand how the adversarial system works. They need to appreciate what use can, and cannot, be made of the instructions they give their solicitor, and understand that they will receive advice, but that they can make their own decision about how to deal with the issue in interview. Such an understanding requires both a good adviser, but also trust and maturity on the part of the client. It is unsurprising that young people may struggle to appreciate their position and experience advice as pressure. However, this can be really detrimental. As Luke explained such misunderstanding can lead to further feelings of isolation: “You’re like well I’ve just asked you solicitor, and now you’re doing the complete opposite. You might as well be old Bill, you might as well be a policeman.”

Several young people described holding back information, or rejecting advice, on the basis of previous poor experiences with solicitors. Jo explained: “If I can see he is good, then yes, obviously I tell him what’s going on and everything. And like, if he is not, then I just tell him the thing he needs to know quick.” Of course, it can be extremely difficult for any client to assess the competence of their representative. But this may be more difficult for a young person who may not appreciate the unpredictable nature of an adversarial process, especially when going ‘no comment’ does not, as expected, succeed in averting prosecution. Aaron for example, explained that he would not tell the solicitor the whole story “ ‘cos the solicitor tries to get me in shit”. He had, he recounted, been advised on a previous occasion to go ‘no comment’ against his instinct but had been prosecuted nonetheless, and preferred now to make his own decisions. Young participant accounts repeatedly revealed them battling their own, understandable, misconceptions, by drawing on further, often ill-informed, assumptions.

Delay in the attendance of the solicitor also emerged as a further barrier to their being able to support a young suspect. Not only could this breed resentment towards the solicitor, whether the solicitor was at fault or not: “You bastard why did you come so late?” (Malik). But more problematically, the toll of waiting could overwhelm a young person’s capacity to engage. As Malik went on to explain, “They don’t give a fuck. I couldn’t be bothered telling them nothing. I just wanted to get out of there. I was just doing nothing but chatting shit.” As identified in chapter 4, a young person who has endured six or eight hours in a cell may well be in a wholly unsuitable frame of mind for engaging with a solicitor.

The simple burden of having to answer yet more questions could also lead to disengagement. By the time a solicitor speaks to a young suspect they will have answered questions as part of a risk assessment, where a NFAA is involved they will have fielded questions from them, and some will also have been seen and questioned by a healthcare professional as well. All those questions are focused on assisting the young person, but they may be experienced as oppressive. Aaron described how this can lead to shut-down with his solicitor: “It pisses me off, innit, ‘cause they all- every fuckin’ person asking me what happened. I’m just like, ‘Shut your fuckin’ mouth.’”

This particular difficulty may be exacerbated by Code C and police interpretations of it. Solicitors are entitled to review the custody record, however, the risk assessment, and medical information, is “not required to be shown or provided” to the solicitor or AA, unless withholding it may “put that person at risk” (Code C 3.8A). But often this material may include useful information to support communication and the solicitor’s assessment of their client’s fitness for interview. On observation, custody officers tended not to disclose such material. As the CO dealing with YS29 explained, “you’ve got to weigh it up – it’s personal info, we don’t reveal unless it’s necessary”, (despite the very public way in which it is often obtained). There was some indication that what was “necessary” might be narrowly construed. As CO26 viewed it, solicitors ask for the custody record to “put you on the back foot”. However, this adversarial approach means that the AA and legal representative may have to repeat questions about communication difficulties or the client’s mental state, questions which simply add to the burden on the child, and may contribute to the sort of shut-down described by Aaron.

Factors Supporting Good Relations

In order to draw out more positive aspects as well I made a point of asking each young participant who had been advised in the police station what made a ‘good solicitor’ in that setting. Their answers tended to confirm previous research with adults, and endorsed both the importance of the solicitor having strong inter-personal skills as well as being professional and providing clear advice. However, the interviews enabled more nuanced information to be obtained as to the particular aspects of these capacities.

Perhaps unsurprisingly given their youth and the isolation described in chapter 4, the single most prominent positive feature remarked on by young participants was a kind and understanding manner. Young participants particularly valued a solicitor who was not judgemental, someone who they felt they could talk to easily and without inhibition. Being able to show kindness and support even when a young person may be talking about offending behaviour was particularly appreciated: “like she was even um she was nice like even when I was telling her my story, I felt that I could be fully truthful to her” (Hussain). This accords with findings in (Peterson-Badali et al. 2007; Kemp 2010).

A number of young participants spoke approvingly about solicitors who managed to convey to them that they were not just “doing a job”, but who “actually seem like they wanna help you and they’re interestedsomeone that genuinely doesn’t want you to come back, and you can tell, yeah.” (Alex). By contrast, several young people spoke with genuine distress and anger about those who made clear that they were not interested. Riley described a solicitor who had spent their entire consultation, and apparently parts of the interview, on his phone, “So I reckon he didn’t give a shit, ‘cause he didn’t care. He didn’t say anything. He just didn’t say anything.”. The importance of being able to convey a caring attitude also underlines the need for solicitors to have adequate time with their young clients in custody (see Kemp and Hodgson 2016). As one solicitor explained in the scoping study: “It takes a long time to build rapport with a young person – I take as long as it takes, but time is always against you.”.

Unsurprisingly, given the trust concerns outlined above, trustworthiness was an important feature for young participants (as in Peterson-Badali et al. 2007). Legal advisers who reassured young people about their role, particularly their duty of confidentiality, were more likely to be trusted. In some cases this could be straightforwardly addressed. Nathan explained that a solicitor is good if “they’re on

your side all the way innit”, and to a degree this could be easily conveyed, “they tell you in the meeting none of this is going to be going back to the police innit – this like... what we’re saying stays between us.”. A number of young people explained that, once they found a solicitor they trusted, they would use them again and again (Simon). But young participants also revealed how fragile that trust could be. Abigail relayed an experience of a friend who felt betrayed by a solicitor who “says one thing to you... and says a different (thing) to the courts”.

For some this trust and ease was present because of some pre-existing relationship which was external to the immediate custody experience. Sadie had a good relationship with her solicitor, because she knew her personally “from outside. I know her daughter and that so we get on, do you know what I mean?”. For another young participant this trust was allied to the solicitor’s cultural affinity with him and his family. The young Irish traveller participant, explained “Yeah, I get on. She’s Irish.” However, no other BAME participant expressed a particular preference for a representative of their ethnicity, reflecting similar findings in Kemp’s research (2010).

For several young people the fact that the solicitor had known them for some time was important. This was particularly notable amongst those who described a period in residential care, for whom a longstanding relationship with a solicitor was a source of constancy and support. Evan explained that he had had the same solicitor since he was a very small child, “So, I’ve grown up with ‘em, yeah.” Similarly, Harper described, “Obviously it’s useful to build up a relationship over the years so he kinda knows me he knows my situation so he kind of knows what to say”. The lengthy relationship avoids the distressing need to explain one’s background history again and again.

Like the older participants in Kemp’s research (2010), young participants were also very positive about legal representatives who they felt were professional, who displayed confidence and that they “know what they’re doing” (Jayden). Whilst this is an important quality for any professional, young participants’ accounts revealed how critical this is in a situation which is for many confusing and alien. They set particular store by being given clear advice about what was going to happen. Malik contrasted the approach of two solicitors that he had been advised by; the first: “He goes, ‘Listen, this this that, this this that. Just go plead guilty and they’ll give you this. I thought, yeah man.”, and the second, “she wasn’t telling me what they’d give me. She just saying, we’ll see what they give you.” His conclusion in respect of the latter was, “she wasn’t even a solicitor man.”. Hussain expressed a similar lack of trust in a solicitor who could

not provide a firm prediction of outcome. He concluded, “he’s not even that smart so I didn’t really ask him too much after that.”

However, providing confident predictions about outcome can be difficult and risky, as Elijah’s response demonstrates: “When I got arrested for the gun charge, I said to her, I was like, ‘Am I goin’ prison?’ She was like, ‘No.’ I was like, ‘Cool.’ As soon as she said that, I was just like, ‘Aight, I got your word for it. Calm, I’m not goin’ prison.’” He related describing to her how he would feel if, as proved to be the case, her advice turned out to be incorrect, “So you lied to me, innit? So I’ll be pissed off at you, so I’ll go in prison and probably have a fight or to probably get stabbed a couple times or stab someone a couple times.”

A number of young participants spoke approvingly about solicitors who had fostered their own sense of agency. Practical, not sugar-coated, advice about “what’s going on” (Sadie) was welcomed, particularly where it enabled young people to exercise some control. This is understandable given the feelings of helplessness expressed by young people with regard to their experiences in the cells. For some this arose from feeling that they were able to make choices, as Luke explained: “Yeah I’ve got a really good solicitor, he’s brilliant like. He’ll listen to me and then like he’ll ask me what I wanna do.” For others, this was based on practical advice on interview technique which made the young person feel in control. Sandor, for example, recounted:

she (the solicitor) was really good. She told me everything I needed to know about everything, including the interview, what questions I’m going to be asked, what type of answers I should be saying and she told me at any time, if I need a break, we can stop the interview. I can take a break, talk to the lawyer about the question I was asked. It’s okay to say that I don’t want to answer that question.

Simon described the effect of this sort of advice, “it felt like we was in control, and it wasn’t the policeman in control of, you know, what was gonna happen.” Simple strategies to counteract the power imbalance were particularly welcomed, “He (the solicitor) was like, ‘If they ask you a silly question, just tap with the paper and just end the interview.’ I was alright then.” (Jo).

By contrast, some young people expressed anger at representatives who they felt provided them with no options, particularly where the advice was firmly to “go no comment”. Although judgements about solicitors tended not to be oriented towards outcome (in contrast to adult positions Kemp 2010), this frustration with no comment advice was more marked, understandably, when the no comment advice had not

prevented prosecution. Kaiden, for example, objected, “They all put you in a direction. Because one solicitor they told me to do this and I still got in trouble.”.

Understanding Legal Advice

Even where a young suspect has engaged a solicitor, and provided full instructions, there remain the challenges of being able to understand the advice that they then receive, and making decisions weighing that advice. In particular the assumption of the legislation, and the courts, is that a suspect has been able to make an informed choice about whether to answer questions or make no comment (Quirk 2017). This decision dominates legal advice in the police station, and was prominent in young participants’ discussion of legal advice that they received.

I should stress, that there is not the space in this thesis to investigate at length the challenges for a young suspect in understanding the caution in particular, nor do I seek to do so. Concerns about the comprehensibility of the modified caution, for example, have been raised repeatedly (for discussion see Quirk 2017) and addressed in separate, focused studies (for example Chaulk, Eastwood, and Snook 2014; Fenner, Gudjonsson, and Clare 2002; Sim and Lamb 2018). Nor does this study lend itself to such assessments, given its designedly wide scope and the fact that young participants were recalling advice received up to a year before. However, what the interviews enable is an investigation of some of the difficulties which arise for young people receiving and understanding legal advice in this regard in police custody. This is an area that has not been addressed empirically before in this jurisdiction.

One significant issue which emerges from the data is the ability of legal advisers to detect when young people have failed to understand the advice that they have delivered. The volume and complexity of the information which has to be conveyed to a young person is striking. Solicitors clearly appreciated this challenge and described a range of adjustments that they said that they made for young suspects, for example: more thorough explanation (Sol6), using “easy scenarios” to convey legal concepts (Sol2) and avoiding “delivering too much information” (Sol1). However, despite the demands of the task for both solicitors and young suspects, and given the prevalence of cognitive and communication deficits amongst young people in contact with the criminal justice system, the majority of solicitors and AAs displayed a surprising degree of confidence generally in young people’s abilities to understand and make use of legal advice. As Sol3 put it, “understanding problems are the exception rather than the rule”;

he considered difficulties to arise “not because they are a youth, but because they have ancillary medical problems.”. Similarly VAA3 observed, “I am not concerned about young people’s understandings of the caution.”. This contrasts with findings in Quirk’s research in which the majority of legal advisers spoken to considered that most suspects did not understand the caution even when they explained it to them (Quirk 2017). Indeed, contrary to previous clinical research into children’s legal competence (Grisso 1981), two solicitors suggested that children fared no worse than adults, or indeed might even do better in comprehending legal advice “because they are in the learning phase of their lives” (Sol6).

Nonetheless, the accounts of young participants raise doubts about the overall level of comprehension among young suspects. A number of young participants, particularly those who were 14 or below, and relatively inexperienced, were plain that they had not comprehended the advice they had been given. For example, Jake, aged 13 at the time of his detention explained, “I understand bits of it, but I didn’t **understand** like” (emphasis in the original speech). Even accounting for fading memories the general level of understanding amongst interviewees was poor.

Why is there such a gulf between solicitors’ assessments of comprehension and the reality? For some young participants their desperation to get out of custody meant that they would be unlikely to prolong the conference or interview by asking their solicitor to clarify their advice. As Sandor described, “I just wanted to get through everything as quickly and as smoothly as possible and just leave.” However, the most striking feature of young participants’ accounts in this regard was an apparently genuinely felt, but often misplaced, confidence in their own comprehension. Approximately a third of young participants were confident that they had been able to understand the advice that they had received about answering questions in interview. However, on probing their understanding this was not borne out. Again, conscious of the passage of time and memory decay, I focus only on specific misconceptions rather than where recollection was hazy. However, even on this measure a significant number of those who had been confident about advice on no comment displayed specific and significant misconceptions about the ramifications of taking that course, for example believing that it makes no difference at court if you are silent in interview (Cole), that making no comment in interview obliges you to give evidence at trial (Hussain), that no comment meant that the allegation would certainly result in prosecution (Megan) or would lead to them being called back into custody (Kaiden). These observations of

misplaced confidence fit with findings in previous research focused on the comprehension of the modified caution by adults (Chaulk, Eastwood, and Snook 2014; Fenner, Gudjonsson, and Clare 2002), and young suspects (Sim and Lamb 2018).

The reason for this misplaced confidence is hard to discern. For some this may be an extension of the general bravado with which they seem to have faced their custody experiences (discussed in Chapter 3 and see (Quinn and Jackson 2007) and (Plotnikoff and Woolfson 2002) for similar observations). But the practical effect is plain and worrying. Not only do these young participants' misconceptions fundamentally undermine their ability to make informed choices, but their misplaced confidence tends to make detection of those deficits by solicitors very difficult.

A related difficulty for understanding legal advice is that solicitors, as other professionals within the custody suite, commonly explained that they would check whether a client had previous experience of custody and would adjust the pace and depth of explanation accordingly. They operated on the assumption that, as Sol3 described it, "they've been here so many times they speak as adults do because clearly they know what's going on." Certainly there was evidence in the data of expertise gained from experience. Three young participants, all 17 or 18 years old and with regular experience of custody, demonstrated a good working understanding of the right to silence and the ramifications of making no comment. However, they were in the minority, and a significant proportion of those who had previous experience often expressed confidence in their own understanding, but had at best a partial, and often misconceived, appreciation of the ramifications of making no comment (inkeeping with Plotnikoff and Woolfson 2002; Saywitz, Jaenicke, and Camparo 1990). Such findings indicate plainly that it is dangerous to assume that previous experience or linguistic familiarity are a reliable guide to understanding.

I was also struck by the fact that where a young person volunteered an understanding of the ramifications of silence in interview, it was almost always unduly negative. There was a strong sense that an adverse inference, however that was conceived by the young participant, would almost inevitably be drawn (reflecting findings in Kemp and Hodgson 2016). Aaron, for example, explained that making no comment was "up to you innit", but he quickly continued, "it'll just go against you, say if it does go to court and you start explainin' yourself.". Similarly, the lack of appreciation of the interview as an opportunity for the young participant to give their account of the allegation was notable. Only one young person (Logan) volunteered this

viewpoint. Rather, a number of young participants suggested that what you said would be “used against you” when talking about their understanding of the purpose of interview. As Sandor explained: “everything they asked or anything like that, I just felt like it was against me”. What these understandings reveal is the fundamental challenge of conveying complex legal advice in a starkly adversarial setting, to young suspects whose natural psycho-social immaturity makes the processing of such material in that setting extraordinarily difficult.

Finally, also noticeable was the suggestion that in a number of cases little attempt had been made to provide advice at all, or blanket ‘no comment’ advice had been given. When asked about what advice she had received about answering questions in interview, Kate, for example, explained of the solicitor, “He didn't really explain it to me 'cause he went, ‘If it comes to trial, then I'll talk to ya.’ He said, ‘It won't come to trial. It's pointless.’”. Several young participants explained that the solicitor always advises no comment, “No matter what, every single time he (the solicitor) just says ‘no comment’.” (Will). This was also noted by officers, who on observation in each area complained of certain solicitors who always advised no comment.

On one view to direct a young client without providing any meaningful advice is to fundamentally undermine that young person’s right to participate effectively in the legal process. However, it is important to assess this approach in context. Young suspects are in the midst of an exhausting process, and facing the imminent demands of the police interview. To burden a young person with extremely complex advice which may not in fact be engaged may seem counter-productive. Equally, for a young person facing an allegation which is not suitable for caution, if the young person has any cognitive or communication difficulties, a sensible solicitor may well conclude that an adverse inference would not be drawn, and that no comment is indeed the best approach regardless of the client’s instructions. Thus these findings, whilst they may indicate in one sense a failure in terms of traditional legal advice, more urgently highlight the constraints on advising children in the custody setting.

Decision-Making

In addition to understanding the advice, the legislation assumes that the young person is able to make an “informed choice” about how to proceed (Quirk 2017, 67), namely using that information in a rational process of deciding according to one’s own best legal interests. A few young participants showed an impressive degree of appreciation

about their legal position and their options. Logan, for example, showed a good understanding of the benefits of using a prepared statement and when that might be appropriate. However, for a number of young participants it was clear that, given their experience of detention and their developmental immaturity, making rational decisions, based on relevant considerations, was a near impossible task. At best they engaged a form of bounded rationality (Simon 1967).

Decision-making difficulties took a number of forms. Some young participants seemed not to engage in the legal decision-making process in a meaningful way at all. Frequently young participants decided to make no comment in response to the toll of the process, without engaging in any real sense with the legal advice or weighing the ramifications of their choice. Young participants described deciding to make no comment because they were hungry or “too tired, too knackered with everything” (Rezar) even if this was against the advice of the solicitor. Delay could also prompt silence, either in order to get out more quickly “if you stick to no comment you just get it over and done with, don’t ya?” (Aidan) or because of frustration, “if they’ve took forever you just wanna go ‘no comment’.” (Logan). Some young participants used ‘no comment’ as a form of resistance strategy, having identified that “the only power you’ve got is when you go into the interview room” (Hussain) and that “they (the police) hate it when you go no comment” (Jayden). These young participants tended to be of BAME origin, although the numbers are so small that it is not possible reliably to draw firm conclusions from that aspect. Elisabeth Carter has observed this isolated moment of control (Carter 2011), and indeed the use of silence in interview as a form of resistance to institutional authority had been long observed (see Quirk 2017, Kurzon 1995).

Against the harshly punitive experience of the custody suite we should not be surprised by this prioritising of immediate situational concerns over longer term prospects. Reduced capacity for future orientation and heightened reward sensitivity are natural features of adolescent psycho-social development (Cauffman and Steinberg 2012). However, it should be a cause of significant concern that we expect young suspects to make legal decisions which may have a lasting effect on their life chances in such circumstances.

The accounts of those who did engage more meaningfully in the decision-making process reveal different challenges. In particular their reflections uncover a knot of tensions which arise from placing a child in an adversarial setting where there is a

range of authority figures, particularly where they may be in conflict. A number of young participants revealed an age-consistent deference to adults and authority which constrained their decision-making. Some felt obliged to comply with police demands in interview. One participant explained, “I just feel like if I say, ‘No comment,’ then I’d be holding them back, not working with them (the police), not being polite” (Sandor). His thoughts echo Tyler’s conscientiousness outlined in opening - “I answered all the questions.”. As one solicitor observed, “They’re incredibly honest – children – that’s the problem...I think they’re socialised into that position – teachers asking them questions.” (Sol1). Sandor’s desire to assist, for example, led him to make very extensive admissions, “I was as open as I could have been”, which went beyond the police’s allegations and aggravated his sentence.

The solicitor for some commanded authority, and it was common for young participants to describe feeling bound to follow legal advice (see similar finding in Johnston et al. 2016) and re plea decisions (Bottoms 1976; McConville 1994; Goriely 2001). Several young people described being “told” to go no comment (Jo), and feeling that they could not go against advice. Azade, for example, complained about being given no comment advice, “I wanted them to know my side didn’t I, but whatever the lawyer says, innit, so...”. Staff too noted this, “lots of them think they have to do exactly what the solicitor tells them” (CA28). Whilst in many cases following legal advice will be for the best, there is evidence in this study of poor quality legal advice, as there has been in previous research (for example, see Evans 1993).

The presence of a FAA sometimes added a third competing authority figure to the often conflicting demands of the police and the solicitor. Although several young participants welcomed the presence of a parent for decision-making, the support enjoyed tended to be more prescriptive than enabling. As explored in Chapter 5, this could be problematic particularly where a FAA pressurised a young suspect to “just tell the truth” (Sol2) in contradiction of the solicitor’s advice.

A further tension with which young participants had to grapple in making decisions arose from the involvement of their peers in the alleged offending. Maintaining loyalty to peers could severely strain young suspects’ ability to make decisions in their own legal best interests. Protecting friends and avoiding being trapped into being a “grass” were significant drivers of no comment interviews. Alex explained,

The amount of times I’ve gotten arrested for what my friends have done, and I’ll do a ‘No Comment’ because I know they could, if I was to speak in

an interview with them, I know they could get it out of me, because that's how clever they are.

Conversely, where they did answer questions several young people made reference to being asked in interview about the behaviour of others, sometimes even where they were not involved in the offence under investigation (Jo). Such loyalties brought significant additional pressures, and several young people described making admissions to an offence (Avery) or exaggerating their own involvement in an offence (Jamal, Jo) to protect friends.

Solicitors' Engagement with Broader Rights

Code C (NFG 6D) sets out that the solicitor's "only role" is to "protect and advance the legal rights of their client", and is framed squarely in terms of the interview. However, the potential for the solicitor to support the young suspect goes far beyond the interview. Yet on observation in each force area I was struck by how little engagement most solicitors appeared to have with securing the wider legal rights of the child in police custody: in challenging authorization of detention, the conditions of detention, or ensuring that the police fulfill their obligations with regard to bail and alternative accommodation for remanded detainees.

As with AAs, examining the circumstances of this lack of input reveals a complex interaction between police occupational cultures, solicitor working practices, and the challenge of providing suitable advice within the time constraints of a detention episode. In the first instance, although the solicitor might be notified very swiftly of the need for their attendance, they are generally only asked to attend the station when required for interview. As CO26 explained, "as soon as the officers are ready to go then generally we get the solicitor out – it takes 30 or 40 minutes". Sols 11 and 12 explained that they may have a phonecall with a detainee in advance, but this will not be confidential, and will be put through to the cell on a five minute timer. So there is no opportunity for instructions about rights to be taken at that early stage.

Once present, I observed solicitors waiting, often in frustration, for access to their client, both outside the suite waiting to be let in, or in the booking-in area. Sol8 complained that COs working at their computers are "desperately trying not to catch your eye. They say they're busy when you want to get a prisoner out of their cell or the like." In some stations solicitors are required to wait outside the immediate booking in area, sometimes in a separate waiting area, and so their access is even more limited. In

F3 officers observed that “The front desk bring them into the solicitor consultation room – they bring them down. We don’t see them – unless they are making representations about bail.” They are not therefore present in the suite for reviews of detention, for example (see beneath).

However, this intersects with solicitors’ working practices which also reduce the time they are available to support a young detainee in custody. To an extent this is a function of legal aid cuts, which now provide for a fixed fee, regardless of the time spent at the station: “I don’t stay for charge. In the old days I would, but now I don’t – fixed fee. We’re not paid to wait.” (Sol2). Sol10 observed similarly: “the cuts in legal aid don’t help because all the incentive is to get there and get away, because firms lose money on covering police station work.” As a result, although some may stay briefly after interview if the case is likely to be resolved very quickly, routinely solicitors would hold a short conference with a young detainee following interview and then leave directly. The assumption is that, once they have given general advice on likely outcome, and bail conditions, the AA will deal with any other issues: “I would have thought an AA would have to be present for an extension (of detention)” (Sol12) or “the AA is there to make sure they understand the charges” (Sol2). As we have seen in Chapter 5 this is a dangerous assumption, since the AA may also have left, or be a family member without the skills to deputise for the solicitor.

Even present, solicitor practices may present further difficulties. In all three areas AAs and officers complained of duty solicitors taking on numerous cases leading to lengthy delays. PAA4 complained about one duty solicitor who did this frequently, “On one occasion he had 9 cases – took them all on without asking for help. I asked why and he said he wouldn’t get paid if he passed any on to a colleague.” COs felt powerless to intervene, “you can be waiting 3-4 hours for duty solicitor to be available ...you can call the centre and ask for a second duty solicitor to come down but sometimes they refuse. You can’t make a solicitor release a case so sometimes there can be long delays.” (CO17). I observed this one evening in F2 where I noted: “Increasing difficulties with the duty solicitor – there are several cases which cannot be progressed because they are waiting for the duty solicitor – including a man on constant watch because he needs advice re an intimate sample.”

Although this time sensitivity is created by the custody sergeant and the solicitor’s practices, the pressure of the PACE clock ticking then falls adversely on the young suspect and their AA. FAA2 for example complained that her son’s solicitor had

been unwilling to explain the grounds for his detention, responding “ ‘Come on, we’ve really gotta go because the sergeant, he wants to get him out of here now. They’re waiting for us, we’ve gotta go.’ He wasn’t interested in any conversation. There was no answer I could have gotten from that solicitor at all.”. As noted above, the concern to get a young suspect out of custody can have an adverse impact on their due process rights.

Given this curtailment of the solicitor’s availability in custody, it is unsurprising that they do not engage in pursuing issues beyond the interview. In police custody effective challenge can be time sensitive. Several solicitors in interview raised concerns about authorisation of detention and lengthy detention. However, despite the fact that necessity grounds for young suspects rarely appeared to be made out, I was aware of only one occasion where the solicitor challenged the detention of a young suspect (YS5 - an 11 year old boy with an autism spectrum condition). Even this was rather half-hearted. The solicitor simply observed, “Why’s he here? This is very silly.”. However, to raise an issue about the basis for authorisation six or so hours after the young person was first detained, and when interview and release await, would arguably be counterproductive. The delaying of the solicitor’s arrival neuters their capacity to engage with that issue.

There is a similar effect on raising issues with regard to detention conditions. Such issues can only be raised if the solicitor is alerted to them. A solicitor under pressure to be ready for interview, or with cases waiting, is unlikely to scrutinise the custody log for information. Indeed, Sol10 described how a “culture” had grown up in F3 of police providing only the frontsheet of the custody record, “But it’s got none of the meat of the custody record, and solicitors and legal reps don’t even ask for it.” As Sol12 observed “we’re so concentrated on why you’ve been arrested, the interview process, and moving on from that, rather than their treatment.” It varies by area, but solicitors do not as a rule go into the cells themselves. Sol11 explained “they’re supposed to be put in a juvenile cell...not that I’ve actually been to the cell area to inspect.” Solicitors are then dependent on the young person to raise issues, but this is again unlikely in a rushed consultation. As Sol6 observed “juveniles get stunned being locked up” and do not raise issues about their conditions, “Unless you spend a little time with them – which we don’t have – we can be useless to help them.” By way of illustration I asked Sols11 and 12 about the frequency of young clients being detained on constant watch, but they could not say, explaining that they would not necessarily

know, “unless a client raised a concern”. This problem is compounded by the fact that, as we have seen, many young people are resigned and know so little about their rights and entitlements, about what appropriate treatment should be, that they are unlikely to raise an issue.

In relation to some moments, such as making representations at a review of detention, the solicitor must be “available” at the time (s40(12) PACE). Again if only present for the period of interview, or asked to wait separately from the suite, a solicitor is unlikely to be readily “available”. In F2 there was a stamp on the custody desk, to enable a solicitor’s interest in making representations at review to be noted in the paper custody record. I discovered it, abandoned and gathering dust on the desk, and I did not see it used in any custody record. Sol11 (who works in F2) suggested that COs would ask “whether we want to be involved in the normal reviews, and usually we aren’t”, although I did not hear exchanges of that sort on observation either. Unsurprisingly, therefore, I did not encounter representations being made for any review of detention that I tracked, although I did not observe reviews in every case, nor were any representations noted on custody records. Perhaps partly as a result, the reviews that I observed tended to be perfunctory and somewhat formulaic, repeating the three core rights and informing the detainee of their continued detention. I did not get the impression in any case that the Inspector was seriously weighing the question of further detention, nor did I encounter a young suspect being released as a result of a review (see (Skinns 2011b; Brown 1997) for similar observations about the inefficacy of review). Young participants seemed to view such reviews as (sometimes unwelcome) updates, when they “tell you you’re going to be there for longer” (Sadie), rather than opportunities to make representations.

In respect of those detainees who spent lengthy periods in custody this seemed to be a concerning oversight. For example YS20, a 14 year old girl, was in custody over 18 hours, arrested for common assault on a security guard. She requested legal advice, but the solicitor did not attend until approximately 16 hours had passed. Progress in the investigation was glacially slow and YS20 spent significant periods on constant watch. The (rather delayed) 9 hour review did not involve representations from the solicitor. The Inspector’s entry noted concerns about progress of the investigation, concluding: “but am assured lack of resources has led to this”. There was certainly scope for robust representations from an engaged solicitor at this point.

Caution

The evidence reveals some of the effects of this lack of engagement of the solicitor in the later stages as well. I had particular concerns around presence for caution. Although predominantly imposed outside the custody suite now, there were still some occasions, especially in F3, where cautions were delivered at the police station. Solicitors' views seemed to be that, although they may spend some time explaining the caution to the young detainee before they leave (Sol3), they were not required for the delivery of the caution itself, "that's never necessary" (Sol2). However the evidence of young participants suggests that this may be a misjudgement. Often young participants seemed not to have appreciated the full ramifications of a caution (consistent with findings in HMIC 2015), and more than one reported that they had subsequently been surprised to discover that they had a caution on their record of which they had had no knowledge (eg Yemi). I myself observed one instance of a Custody Officer actively seeking to dissuade a young suspect (YS41) from having legal advice. The young suspect was 13 years old of previous good character, plainly very anxious. When the young suspect, in discussion with his mother attending as AA, said that he would like a solicitor, the custody sergeant suggested that he did not need one because he was not going to be interviewed. My assessment was that this was done out of concern to prevent the young suspect from having to be detained in a cell whilst a solicitor was arranged. Nonetheless, what then occurred demonstrated why having a solicitor could be so important. The same officer noted that the young person had made no admissions to the offence and so the caution was not appropriate. As a result no further action was the outcome, but a solicitor would have been a vital protection had the young person encountered a less careful custody officer. Interestingly a solicitor spoken to as part of the scoping exercise expressed concern about the likelihood of occurrences of exactly this sort. Given the likely pressure on a young suspect offered a caution as an alternative to prosecution, having spent a lengthy period in the cells, this episode is extremely troubling.

Similarly, frequently solicitors were not present where their clients were bailed, routinely giving them advice about likely conditions before leaving, but not remaining to make representations in person. Again the data suggests that this may be a cause for concern, since several young participants/suspects had been given unrealistic bail conditions which were liable to result in their further involvement with the police. Kyle, for example, had a non-contact condition in respect of a boy who lived on his street; YS11 and 12 were detained for breach of a bail condition not to have contact with each

other in public, although they in fact lived in the same local authority accommodation. Absence where remand is a possibility is also revealed in the data as potentially problematic. As Sol11 observed, “many, if not most of them, don’t meet the remand criteria ... the remand criteria are not properly applied by the police to youths. They just go, blanket: ‘This is the remand criteria for adults everyone gets the same treatment’.”.

The data in respect of the wider engagement of solicitors in supporting young suspects’ rights inevitably comprises scattered observations. This study is not well-suited to investigating the issues in depth because the principal informants, the young participants themselves, could only speak to their direct engagement with their solicitor, whilst observations cannot hope to capture every exchange between solicitor and CO in respect of each young suspect. Nonetheless, what does emerge is a general picture of the telescoping of the solicitor’s role so that it is reduced effectively, in terms of presence at least, to the protection of rights in interview alone. This comes about it seems as a result of a combination of police practices, the occupational culture of solicitors (driven considerably by funding constraints), as well as the constraints of the custody process itself. But the data does reveal starkly what the result of this reduced engagement can mean, namely that lengthy periods in detention and harshly punitive conditions may go unchallenged, whilst young suspects’ rights in terms of release and caution may be worryingly under-protected.

Conclusions

The evidence concerning the requesting and use of legal advice blends a now familiar combination of issues. It reveals clearly how vital the support of a solicitor can be, whilst underlining how infrequently a young suspect will be able to enjoy the full benefits of that assistance. Perhaps the most concerning indication emerging from the evidence is that, inkeeping with previous research (Kemp et al. 2011), a sizeable number of young suspects continue to decline legal advice in the police station. This research has been able to identify more clearly the basis for those refusals. In the first instance young participant accounts underline how critical the explanation provided by the CO is for the uptake of legal advice. Not only did many decline in part as a result of their failure to appreciate how legal advice could benefit them, where, for example, they intended to make admissions, or conversely to make no comment. But some refused advice having failed even to understand in a basic sense what was meant by “solicitor” and “legal advice”, or considering that requesting a solicitor implied guilt. In addition,

concerns about the independence of a solicitor, particularly the duty solicitor, also drove waiver. Even for those who did opt for representation, ongoing doubts about impartiality and confidentiality affected their willingness to provide instructions and follow advice. In light of this it is deeply concerning that, on observation, COs routinely fell far short of ensuring full “comprehension of the possible benefit and importance of seeking legal advice” as required by the APP,¹⁶⁷ and often omitted reference to independence.

Young participant accounts also reveal strikingly how desperation to avoid any delay, even a delay of an hour, dominated their decision-making. Yet, again, COs often failed to deal adequately with such concerns when they were raised. Indeed, whilst the evidence of explicit dissuasion was limited, implicit dissuasion in response to queries about likely delay does emerge as a cause for concern. CO suggestions that they are prevented by the prohibition on dissuasion (Code C 6.4 and 6ZA) from positively endorsing the benefits of legal advice do not appear to be justified in light of the APP.

The offer of legal advice is revealed as a critical moment for the young suspect. Yet it is also the moment where the conflicted position of the CO comes into sharpest focus. On the one hand, COs are independent of the investigation, and have a duty to secure procedural fairness. As the APP stresses this should tend towards encouraging the uptake of legal advice. On the other hand the police more generally are in the business, in police custody, of case construction and function within an adversarial framework (McConville et al. 1991). In that regard, a young suspect securing legal advice is a set-back for case construction. The evidence suggests a clear inclination on the part of many COs to favour “crime control” at the expense of “due process” concerns (Packer 1964), to the critical disadvantage of young suspects. The adversarial system, which makes the need for a solicitor so urgent, emerges as a prominent factor in militating against uptake, reinforcing distrust in the young suspect whilst disinclining the CO to support better decision-making.

In addition the analysis identifies that the protections in place to mitigate poor decision-making, particularly the right of the AA to override the young person’s decision, operate inconsistently and present practical problems of their own. Whilst blanket requirements by AA schemes for solicitors to attend inevitably improved uptake, otherwise the safeguard was often undermined by the limited understanding of

¹⁶⁷ APP(CYP) 3.3.

the AA and delays in their attendance. The evidence suggests an urgent need to reconsider the requirement for a child suspect to request legal advice. The proposal in Taylor's (2016) review of the youth justice system that there should be a presumption that a solicitor will be called unless the child specifically objects is to be welcomed. However, the depth of concern about delay expressed by some young participants, and the ease with which they could be steered to opt out, suggests that a mandatory legal advice position may be necessary, despite the autonomy issues that this would raise.

The examination of the solicitor's engagement in supporting the young suspect outside the interview process, however, suggests that adequate funding of such support will be vital to ensure its effectiveness. Although the evidence of the solicitor's engagement with the young suspect's broader rights is relatively limited, it suggests that generally the solicitor's role has become reduced, in large part because of funding issues, to advising in respect of interview, and brief advice in respect of bail and charge, or caution. There is little time to check on the young suspect's conditions of detention or to support their access to their wider rights and entitlements. It seems that solicitors are not commonly available to make representations on review of detention, nor are they often present for charge or bail. As we have seen in Chapter 5, placing reliance on the AA to fulfill such needs can leave a young suspect critically under-supported.

For those who do request legal advice, there remain further barriers to their engaging effectively with the solicitor. For some young participants a solicitor who could establish rapport and provide comprehensible advice was plainly a vital source of help and reassurance. However, the odds of supporting a young suspect effectively are stacked against the solicitor by virtue of time constraints, the natural immaturity of their young clients and the complexity of the information that they have to convey. As with the decision to request advice, young participants were preoccupied by competing priorities, particularly anxiety not to delay matters and distrust, especially of duty solicitors. Young participants also had to contend with pressures their older counterparts may less frequently experience in making key decisions: particularly honouring peer loyalties, but also navigating the competing claims of the authority figures of solicitors, parents and police officers. All this is demanded of a young person who, as we have explored in Chapter 4, is often exhausted and distressed by a lengthy period in a cell. Too frequently young participants described decision-making, particularly decisions to make no comment, which were driven by their immediate preoccupations with the

custody experience, notably the desire to “get out” quicker, to vent their frustration or to antagonize the officers.

The evidence suggests that, in these circumstances, to expect a young suspect to make a free and informed choice about what do in their best legal interests is unrealistic for many young participants. Nor are many in a suitable state to perform well in interview. It is perhaps unsurprising that, as a result, some solicitors seek to shortcut the process by advising no comment as a near blanket approach. The position is deeply unsatisfactory, both from a crime control perspective, in terms of obtaining reliable evidence in interview, and from a due process perspective, in terms of enabling a young suspect to participate effectively in the process, particularly in making decisions concerning the exercise of their defence rights. The fact that the detention process operating to achieve this unhappy outcome is itself punitive and alienating aggravates the position further. The findings underline the importance of authorising detention and interviewing in custody only where strictly necessary and as a last resort. Whilst there are challenges posed by voluntary interview which also need further investigation (see Dehaghani 2019), particularly with regard to ensuring access to legal advice and AA support, the evidence suggests that it is far preferable to the custodial arrest position. The next chapter further explores this worrying thread, with a close examination of fitness for interview and the young participant’s experience of questioning itself.

Chapter 7

Interview

As I did with all the young participants, I asked 16 year old Aidan what advice he would give to a young person who had been arrested and taken to a police station:

Aidan: Be yourself, don't act an idiot, and be careful what you say because they will try and trip you up. Get food, ask for food regularly, make sure you get some food down ya, and that's about it really. Just don't be an idiot.

He went on to illustrate from his own experience why he felt it was so important to eat and drink before interview:

Aidan: I felt drained, no food in my system. They give you little capsules of orange, and that doesn't hydrate you...and you just feel like not yourself, you know what I mean, you don't feel like good in yourself. You just feel like, like a walking zombie really.

MB: And how does that affect how you are in interview, do you think?

Aidan: Like now I'm speaking good aren't I, I know what I'm saying, but say if I've had no water or no food, I don't know what to say, like you can't think, you can't function properly, you know what I mean? And that's when you do slip up 'cause you don't know what to say to 'em, know what I mean like?...

MB: And if you feel like that, would you feel able to say, "I don't want to be interviewed now because I just don't feel up to it."?

Aidan: I don't think I would, no, because like I just want to get that interview over, you know what I mean?... 'cause I think if I did that, they'd re-do the interview and it'd take, you know, longer, 'cause that's what they do, and I just want to get it over and done with to be honest with ya.

Aidan's account raises four issues for young suspects in interview that dominate this chapter. Firstly, as he identifies in focusing on the interview in his imagined advice, the interrogation is the critical moment in the detention process for young people in

interview. “Obtaining evidence by questioning” is frequently the primary ground for the authorization of detention (s37(3) PACE), and the evidence obtained is often of “fundamental importance for the development and the outcome of the case” (Cape, Hodgson, and Spronken 2007, 19-20), indeed frequently it is determinative of it (Belloni 2000). Secondly, his warning that the police will “try and trip you up” captures a central concern in young participant accounts – coping with the techniques used by the police to extract an admission from them. This may seem unsurprising, given that commentators have long noted the police’s focus on the interview as the principal forum of “case construction” (McConville et al. 1991). Aidan’s reference to the effect of his physical state on his performance in interview raises a third key issue which arises from the data – whether the arrangements currently in place function effectively to identify unfitness for interview and those who need further assistance. Finally Aidan pulls again at the thread that runs through all the evidence in this study, the desperate desire to “get it over and done with” which continues to constrain and undermine mechanisms to mitigate children’s detention experiences, and to support their participation in interview.

In this chapter, I review young participants’ experiences in interview. I consider in detail the question of how their fitness for interview is approached by COs and healthcare practitioners (‘HCP’s), and the contribution of solicitors and AAs. I then turn to consider young participants’ accounts of interview, and the extent to which they felt able to participate effectively and provide reliable responses to questioning. Finally I assess how effectively solicitors and AAs support young suspects during interview.

However, before turning to fitness for interview it is important to set out why the fairness of the interview process is so critical for young suspects. Research into the investigation and interrogation of adult suspects has long observed the police emphasis on obtaining a confession (Irving and Hilgendorf 1980b; McConville et al. 1991; Belloni 2000). McConville et al (1991) identified this as the primary investigative strategy of the police; an understandable approach in an adversarial system where the easiest way to achieve victory is to avoid the contest by securing the “surrender” of the other party, by way of confession, and ultimately by guilty plea (Belloni 2000, 43). Whilst, as I discuss below, there is reason to believe that the introduction of the PEACE model of interviewing (Bull 1999, Clarke and Milne 2001) has reduced the use of more oppressive interviewing techniques (Soukara et al. 2009), there continue to be

indications that the police act as “agents of the prosecution” in interview rather than playing an “inquisitorial, fact-finding” role (Quirk 2017, 53).

In interview young suspects are, for three reasons, significantly more vulnerable than adults. First, psychological research has demonstrated, and indeed Code C acknowledges (NFG11C), that young suspects are especially vulnerable to providing unreliable answers in interview. In particular, young suspects are more susceptible to interrogative pressure because of a range of factors including that they may recall fewer details of their experiences, may be confused by unfamiliar and complex questions and are typically more suggestible (see for discussion Lamb et al. 2013). They are thus disproportionately more likely to confess, and to confess falsely (Gudjonsson et al. 2006, Redlich et al. 2004, Kassin et al. 2010) and, as discussed in chapter 1, are more vulnerable to poor decision-making (Cohen et al. 2016).

Secondly, although the use of diversion is increasing (Robin-D’Cruz and Tibbs 2019),¹⁶⁸ where the suspect is a child, there is an emphasis on using out of court disposals, particularly cautions and conditional cautions (section 66ZA(1)(b) and 66B(3) CDA 1998), where that is appropriate.¹⁶⁹ 10,999 cautions were imposed on children in the year ending March 2018 (YJB/MOJ 2019). Such disposals dramatically reduce the workload of the investigating officer, and are widely favoured, including by solicitors (Holdaway 2003) and parents, since they avoid prosecution. However they require the young suspect to have made admissions to an offence, potentially prioritising that outcome in the interview (Goldson 2000).

This is compounded by a third feature which is that the only legal protection against undue interrogative pressure, namely the exclusion of evidence from the interview at trial (PACE s76-78), is much less likely to be available to young suspects than to adults. As Evans observes the prevalence of out of court disposals means that the majority of children are “dealt with without recourse to the courts... Since pre-court decisions by the police take place behind closed doors there is little or no opportunity to ascertain how the interview has been conducted or to test the reliability of any confession.” (Evans 1994, 74). Even for those who are prosecuted, the availability of a referral order for a first guilty plea (Powers of Criminal Courts (Sentencing) Act 2000 s16-28), with its advantageous disposal arrangements, means that significantly fewer

¹⁶⁸ There has been a welcome rise in point of arrest diversion or triage schemes, some of which do not require admissions. However provision is patchy and is not a statutory duty of YOTs.

¹⁶⁹ See the Crown Prosecution Service (‘CPS’) Full Code Test para 4.17b and CPS Guidance ‘Youth Offenders’, available at <https://www.cps.gov.uk/legal-guidance/youth-offenders> last accessed 22/04/19.

cases proceed to trial in the youth court. Even where there is a trial, the courts place heavy reliance on records of taped interview ('ROTI') (Brookman and Pierpoint 2003; Baldwin 1992; Zander and Henderson 1993) which are often incomplete (Baldwin 1991) and unlikely to reveal undue pressure being imposed.

These three features in combination place the young suspect at a substantial disadvantage in interview. Arguably they should prompt a greater watchfulness of the process for young suspects, more significant expertise engaged to avoid unfair outcomes and greater internal scrutiny of the process. The evidence contained within this chapter reveals that this is not in fact what occurs, and underlines why these failures should be so critically concerning.

Fitness for Interview ('FFI'): Policy and Existing Literature

The first protection engaged for a vulnerable suspect in advance of interview is the requirement that the CO consider whether they are fit for interview and, if so, what safeguards, if any, are required. It is the CO's duty to "assess" and decide on FFI, although they should consult with the arresting officer and "appropriate" HCPs where "necessary" (Code C 12.3). Paragraph 12.3 defines this assessment as "determining and considering the risks to the detainee's physical and mental state if the interview took place and determining what safeguards are needed to allow the interview to take place".¹⁷⁰ It refers to Annex G, and prohibits interview where this would "cause significant harm to the detainee's physical or mental state". Importantly paragraph 12.3 also identifies that vulnerable suspects, including 'juveniles', "shall be treated as always being at some risk during interview" and repeats the requirement for an AA. The APP addresses the issue very briefly, and provides no further guidance than that contained in paragraph 12.3.¹⁷¹

Annex G itself is framed as providing "general guidance" for officers and HCPs. It considerably expands on the concept of FFI, introducing the issue of reliability. It identifies that a detainee may be "at risk" in an interview not only where significant harm could result, but also where anything they may say in interview about the allegation "might be considered unreliable in subsequent court proceedings because of

¹⁷⁰ A detainee can be interviewed if not deemed FFI, or where the safeguards, such as an AA, are not in place where the grounds for urgent interview are made out, see Code C 11.18. Note: the guidance in Note 11C in respect of urgent interviews has been updated in the newest version of Code C (07/18).

¹⁷¹ APP Response, arrest and detention 7.1.

their physical or mental state”.¹⁷² Critically paragraph 3 of Annex G requires the assessment of FFI to consider how the detainee’s physical or mental state may affect their ability to “understand the nature and purpose of the interview, comprehend what is being asked and appreciate the significance of any answers given and make rational decisions about whether they want to say anything”, as well as whether their replies may be “affected by their physical or mental condition (rather than representing a rational and accurate explanation of their involvement in the offence)” and how the “nature of the interview (which could include particularly probing questions) might affect the detainee”. Importantly Annex G makes clear in paragraph 8 that whilst there is a binary decision to be made, to allow interview or not, there is also a requirement to determine “what safeguards are needed” when the interview is proceeded with.

Although the introduction of Annex G in 2003 has to a degree addressed concerns of early commentators around how the test should be conceptualized (Norfolk 1997, Gudjonsson 1995, Gudjonsson, Hayes, and Rowlands 2000), there remain issues with the lack of clear guidelines for assessment by HCPs. This is problematic because of the range of conditions which can cause unfitness (see Ventress, Rix, and Kent 2008 for a discussion of the caselaw) and the acknowledgment that identifying in the custody suite psychological vulnerabilities which may give rise to unfitness is difficult even for experienced psychologists (Gudjonsson 1993).

Despite the complexity of this test, and the challenges of identification, there has been no significant empirical consideration of how the question of FFI in respect of young suspects is approached by COs, and assessed by HCPs. Reviewing the existing literature, there is good reason to consider that there may be particular difficulties for young suspects, especially when considered in the context of concerns around the efficacy of the AA safeguard (see chapter 5). In particular a number of conditions prevalent amongst young suspects, including mild or moderate learning disability (‘LD’), an inability to handle interrogative pressure and anxiety states, are acknowledged by clinical commentators to give rise to a significant risk of false confession, but were considered adequately addressed by the presence of an AA (Norfolk 1997), a view largely agreed with by lawyers, police officers and clinicians (Gudjonsson et al. 2000). In addition, Chris Bath of the National Appropriate Adult Network has raised the concern in respect of FFI that COs do not “have a prompt which

¹⁷² Annex G 2(b).

requires them to consider whether a child has any additional needs that make them particularly vulnerable” because of the automatic presence of the AA (APPGC 2014b, 38). Additionally, we have no existing literature considering in depth how young suspects themselves feel about their ability to cope in interview, given the challenging circumstances of the custody suite and the inefficacy of the protections meant to be in place for them.

Feeling up to it: Young Participants’ Experiences of FFI

All of the young participants had undergone police interview during a detention episode. Whilst a significant proportion were very capable communicators just over a quarter volunteered, in discussion, a diagnosed mental health condition or developmental disorder, such as ADHD, and I suspect a good number more had similar issues to which they did not refer. As far as I could identify, no young participant had been found unfit to be interviewed, nor had any been afforded additional support in interview, such as an intermediary or HCP support. Their accounts of being questioned, analysed below, reveal a range of individual concerns about their capacity to withstand interrogative pressure and provide reliable evidence. I consider here concerns about FFI which were indicated more generally by their accounts as a whole.

Most strikingly, young participants’ accounts provided substantial evidence of difficulties in interview arising from the effects of detention on their physical and emotional state. A significant number of young participants, both those with and without a diagnosed condition, felt that this impacted negatively on their ability to participate in consultation and interview (recalling similar complaints by participants in Kemp and Hodgson 2016, 150). Like Aidan above, they described at the time of interview being “half asleep” (Simon), “just too out of it ... just really, really emotional and afraid and tired” (Sandor), and “tired so you can’t really talk to your solicitor properly” (Rezar).

Interviewees reported that such physical and emotional exhaustion could have a significant effect on their ability to handle questioning. As Aidan had identified: “that’s when you do slip up”. FAA3 provided a vivid example of how this might come about, where her son in providing his alibi in interview had got his “times all mixed up” and she had intervened to allow him time to think. The officer had challenged her son, who had responded, “ ‘Well I’m just tired at the minute, hang on a minute while I get my

bearings' ” (FAA3). He had gone on to correct his mistake and eventually no further action was taken against him. Yemi similarly described in interview that he had “lost it” because he “hadn’t eaten anything that day”. Reflecting on the long delays and their detrimental effect, Hussain wondered whether lengthy periods in the cell were used by the police “for psychological purpose, to mess you up” so that “when you go into the interview room you’ll feel a bit different.”. The dangerous effects of such factors have been observed in psychological research. Kassin et al found that prolonged isolation can increase distress levels and act as an incentive for a suspect to remove themselves from the situation by acquiescing to demands in interview (Kassin et al. 2010). Additionally sleep-deprivation can reduce the ability to maintain attention, think flexibly and can increase suggestibility in the face of leading questions (Harrison and Horne 2000, Blagrove 1996).

On observation several solicitors also raised the concern that a young suspect who was otherwise FFI might become unfit if they had been held in custody for a long time (Sol6), particularly where the police wanted to interview very late at night (Sol4) or where their detention had been particularly problematic (echoing concerns in Kemp and Hodgson 2016, 149). However, young suspects may not always be represented, or their solicitor, or AA, may be unaware of their physical and emotional state. Worryingly, like Aidan above, those who described such ill-effects tended not to draw attention to their compromised state before the interview for fear of delaying their release. Sandor explained, “I was just completely out of it and just didn’t want anything to make it longer. I just wanted to get through everything as quickly and as smoothly as possible and just leave.” Alternatively, as raised in chapter 6, some young participants felt that it was better to make no comment in such a situation, sometimes against advice, preferring to waive their right to participate rather than undergo interview when exhausted, or delay their release. Both approaches should be a cause for concern. And, in light of the lengthy detention periods, common refusal of food and difficulties sleeping reported in Chapter 4, such difficulties are likely to be widespread.

Most young participants suggested that they could understand the questions that they were asked in interview (a consideration for FFI (Annex G para 3a)). AAs and solicitors likewise generally felt that, as Sol3 put it, “Most of the time I do think they (the officers) pitch it about right”. It is impossible to identify to what extent these assessments are correct, although, as explored in chapter 6, young participants and solicitors tended to be overly optimistic about their comprehension in respect of the

police caution at least. However, there were some participants who were more circumspect, suggesting, for example, that they had understood only “sometimes” (Jo) or “quite” (Jake). Some felt able to raise the issue with interviewing officers, “Sometimes I just can’t understand what they’re asking...if they don’t click on that I can’t figure it out, I just say I don’t understand” (Megan), or would ask a solicitor or AA for help. But not everyone felt they could do that. Kyle explained, “Some of it I didn’t really understand what they were trying to get at”, but he would not raise the issue with the officers, “just think it in my head really, I don’t like speaking to them”. Jayden, when he did not understand, deflected the issue, “I’d just try and think about other stuff.” Kaiden, who had similar difficulties, took an alternative approach, “If I don’t know it and I don’t understand it, then no comment”. As with issues relating to exhaustion and hunger, there is a real danger that widespread comprehension issues may not be identified or raised, or that young people may feel forced to opt for no comment where they cannot follow the questioning.

Perhaps more concerning, was the extent to which, whilst understanding syntactically what is being asked, young participants revealed that they did not understand the import of the questions or the ramifications of the answers they had given (Annex G para 3a). This might be said to be generally indicated by the way young participants, as we have seen, were prepared to sacrifice their right to respond to questioning (and risk an adverse inference being drawn) in favour of a swifter release from custody. But this was raised in particular in respect of young suspects with autism spectrum conditions (‘ASC’s) who, as one AA observed, might not appreciate the “consequences” of a certain response (RHAA4). However this difficulty was not restricted to those with dispositional vulnerabilities. As IO3 remarked, “The problem is around gravity sometimes – they don’t understand that something is an offence to begin with”. Indeed, lack of offence awareness has been identified in previous research with teenage school attendees (Bevan 2015)). This was a feature for some young participants, although it tended to arise in respect of more complex areas, particularly secondary liability, an issue not infrequently encountered by young suspects. Elijah, implicated in drugs supply by virtue of his presence observed, “I didn’t know how serious it was”. Likewise, Simon explained how he had learnt from experience over the course of several arrests that presence at the scene could be “just as bad”. As we see beneath, where leading or legal closure questions are freely used, such a lack of

understanding could be really problematic. Although the presence of a solicitor could address this difficulty, as noted in Chapter 6 this support is often waived.

The Approach of Custody Officers

How then is the question of FFI approached by COs? Although CO responses were quite mixed, the overriding view of COs was that young suspects are rarely unfit for interview. Some COs primarily associated unfitness with intoxication, others with acute mental ill-health, and both groups identified that, since young suspects rarely presented with such conditions, unfitness was rarely an issue. Most strikingly, as Chris Bath had raised (APPGC 2014b), a number of both COs and HCPs across the fieldwork sites suggested that FFI is not addressed as an issue for young suspects because, as one psychiatric nurse typically observed: “they have an AA already” (L&D7). Provision of an AA is the generalised response to FFI concerns for vulnerable adults (Code C Annex E), and so the automatic presence of the AA for a young suspect is considered by some, in effect, to satisfy any concerns without further assessment being required: “fitness for interview is not frequently an issue for juveniles. They have an AA in place – I might get a CPN to review first but that is a rarity.” (CO20).

Several HCPs also identified the focus on moving young suspects through the system as quickly as possible as a reason why they were not asked to assess: “We tend not to see them for fitness to detain or fitness for interview. The intent is to get them in and out ASAP” (FNP6). One can appreciate how this comes about. In F3 (FNP6’s area), for example, where, at the time of observations no L&D services were in place, Ins2 observed, “You can wait 8-9 hours to see the nurse”. Understandably, as CO41 related, “it’s not often I send a juvenile to the nurse”. This finding accords with concerns about the “custody clock” impacting on the quality of fitness assessment raised in respect of mentally disordered suspects in (Oxburgh et al. 2016, 145).

Across the fieldwork sites COs, and HCPs, recognized the high frequency with which young suspects presented with developmental and behavioural disorders (in line with prevalence research Hughes et al 2012). ADHD and ASC in particular were commonly raised by young suspects during RAs on fieldwork (see Chapter 3). Such conditions could plainly have a significant impact on the young suspect’s ability to provide reliable answers in interview, according to the factors set out in Annex G (Young et al. 2011, National Autistic Society 2005), but were rarely identified by COs as an issue in respect of FFI. Indeed, the issue of reliability generally was not a concern

often raised by COs and notably no CO volunteered a reference to Annex G at all when asked about their approach to FFI.

Concerns in terms of communication and comprehension difficulties generally, and LD in particular, were similarly rarely identified as giving rise to FFI concerns. There were some exceptions. CO20, for example, explained, “concerns about fitness for interview would usually be around LD” and suggested referral to an HCP to assess, whilst CO26 identified that he would try bail such a detainee for further help to be obtained.

We should not be particularly surprised by the approach taken by some COs. HMIC identified that COs appeared to be overlooked or not always able to access child specialist training (HMIC 2015, 21). Whilst the lack of awareness training for COs in respect of mental health conditions, LD and developmental disorders has been repeatedly identified (CJJI 2011, Jacobson 2008). COs during fieldwork tended to confirm this deficit, commonly stating that they had had no specific training on communicating with young people, or on health issues relating to young people. CO7 typically observed: “I have had no youth specific training as a custody sergeant. (You) use your life experience, experience of your own children and everything.” CO31 who had undergone CO training 6 months previously described “half a day input on mental health issues, alcohol withdrawal and mental health – we don’t get much insight on ADHD, autism etc. you pick it up as you go along”. Some COs alluded to ad hoc, often online, training on particular mental health issues: “I believe there is NCal training on autism”. But several acknowledged that this was not a satisfactory way to be trained: “We have an over-reliance on this – on-screen training – a few clicks. We click boxes and read a case study and then the force says we’ve been trained.” (IO2). As CO26 observed, “Online training packages are informative. But ... you feel if it were important they’d train me how to do that”.

Timing of the assessment

The evidence of young participants above suggests that the timing of the assessment of FFI could be of critical importance. In F3 COs stated that they considered FFI as part of the risk assessment when the young suspect arrives in custody. Although a CO would typically see a suspect several times again prior to interview, concentrating this decision on arrival means that any deterioration during detention will not be considered as part of the substantive FFI assessment and may not be identified before questioning. By

contrast in F2, in addition to the general risk assessment on booking in, each suspect underwent a FFI “assessment” immediately before being taken into interview. The custody record is stamped with a checklist which is completed in the presence of the detainee, and their solicitor if they have one. The checklist requires the CO/CA to ask the suspect whether their AA/solicitor/interpreter is present (according to their identified requirements), to confirm that they have had sufficient rest and feel fit to be interviewed, and that there are no medical issues preventing interview. However, on observation this process was often completed in a perfunctory, administrative manner, unlikely to identify, or encourage disclosure of, difficulties arising from prolonged detention. As intimated by young participants above, given the desire of everyone involved at that stage to proceed with the interview, in anticipation of release soon after, there is little prospect that a young suspect, or even those in support (as observed re YS28 in Chapter 5) will raise an issue at that stage.

The experience of YS30 provides a clear example of both the level of FFI scrutiny engaged in at this late stage, but also the challenges that arise in doing so. YS30, a 17 year old girl, was arrested just before midnight and detained overnight, during which there were several interventions to prevent her self-harming in the cell, leading to her being placed on constant watch. She is recorded as finally falling asleep at 3am. At 9.04 am the custody record noted that she was not required to see the CPN before interview. The FFI checklist was completed at 10.43, and all questions ticked (no solicitor present). At 10.49 a sterowipe falls from her sleeve and she explains she has been trying to self-harm with the packaging’s sharp edges of the packaging. The FFI checklist is repeated, all questions are ticked again with no HCP intervention. She is interviewed at 11.05am and makes full admissions. She is seen by the CPN and mental health team at 12.33 and is recorded as “agitated” in her cell, before her release at 1.30pm. In the circumstances one might reasonably have concerns about the reliability of her answers in interview, and indeed about the fairness of her being questioned in that state. However, one can also see how the desire of all involved to move her through the process, including YS30 herself, militated against delay at that late stage to assess her capacity in detail.

The Approach of HCPs

Referral to a HCP for expert assessment, as Code C 12.3 proposes, may not, even when it occurs, ensure that unfitness is adequately identified in a young suspect. Firstly, no clinician spoken to during fieldwork had specific child or adolescent training, although some, especially those who had worked as nurses in accident and emergency departments had completed paediatric modules in their core training. Some were quite conscious of this lack of expertise: “In all our team most of us are a little ‘eek’ about juveniles” (L&D6). Lay experience was again often invoked: “If it counts for something I have children myself” (FNP1). Enquiries about ASC and LD specialisms met similar responses: “no-one on my team (F1) is an LD specialist” (L&D4), “I have attended the odd day’s training on autism” (LND5). Additionally, apart from occasional reference to the use of a SQIFA (a youth specific mental health needs assessment tool) generally clinicians described using adult assessment tools for young suspects.

Secondly, despite the specific role of HCPs in FFI assessments delineated in Annex G, a number of HCPs expressed reluctance to engage with the question of FFI for young suspects in any depth. Those nurses who did not have a mental health specialism generally suggested that such issues should be considered by nurses with such specialisms, or by L&D practitioners, where there was such provision. But these more specialist practitioners were often equally reluctant. L&D6 observed, for example: “I always try to avoid fitness for interview. I would say, ‘In my view there is no evidence of acute mental ill health’ or ‘X has capacity’ but nothing more. I would never say ‘X is fit for interview’”. Indeed, there was a strong sense amongst L&D staff that the decision remains with the CO (as per Code C 12.3), and they would at most “contribute for an assessment” (L&D3).

Additionally, many HCPs complained of a lack of access to information about young suspects which would arguably support better identification of unfitness issues. In F1 for example HCPs had no access to CAMHS notes or details relating to psychological intervention through the YOT (L&D3). Whilst in F2 no medical notes were available for children since they were held by a different trust to that which provided the service. This lack of information may not be assisted by young suspects who could be reluctant to engage with HCPs. Although some found talking to a HCP helpful, “it was good to have someone to talk to” (Yemi) , others would not necessarily answer accurately, “I just chat rubbish” (Avery), or may refuse to engage at all, “I just

say fuck off, don't wanna talk to you. They say alright then. They can't force you to talk to them." (Luke).

The hope that L&D schemes might lead to all young suspects being screened by forensic mental health practitioners (Bradley 2009) is not necessarily being realised. In F2, for example, where the intention was that all young suspects should be seen by an L&D practitioner, L&D staff were plain that this is not always manageable: "We should see all juveniles and we try our best to get through them but it's highly pressurised in here and acutely unwell people need to come above them in the list." (L&D6). In addition, although assessing ability to participate was included in the initial L&D service specification¹⁷³, FFI did not appear to be a significant feature of the assessments conducted on fieldwork. From a L&D perspective, where difficulties were identified the focus tended to be on onward referral, rather than measures within custody generally, or within the interview specifically. For example, L&D4 observed that if they identified "speech and language issues" there was a "speech and language youth worker on the team", but that this was for support in the community, not in interview. FNP6 observed, "More than anything it's about their release – to make sure they are safe to be released." As a result, even where young suspects were seen by HCPs this might not be in time to address FFI, as we see in the case of YS30 above: "Sometimes they'll see the CPN, but it's not a barrier for them being interviewed first." (CO20).

The Impact of Solicitors and AAs

Solicitor and AA impact on the issue of FFI is inevitably restricted by the timing of their attendance. Arrival shortly before interview, as discussed in Chapters 5 and 6, substantially reduces their capacity to identify any issues that have been overlooked. Additionally, as we have seen above, a young suspect who has endured detention for several hours is less likely to raise with AA or solicitor an issue which they perceive may delay their release. Malik explained of his solicitor: "They don't give a fuck. I couldn't be bothered telling them nothing. I just wanted to get out of there."

As discussed in Chapter 5, the AA, especially a FAA, may be aware of participation difficulties, or have access to information about the young suspect. However, NFAAs and solicitors may attend without prior knowledge of the young person or immediate access to third party information. Indeed, even where a young

¹⁷³ Accessible at <https://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2014/04/ld-ser-spec-1314.pdf> last accessed 22/04/19.

suspect has raised a medical or participation issue at RA, unless the condition identified may endanger the AA or solicitor, they will not routinely receive disclosure of that information (Code C 3.8A). In the absence of reliable information, the ability of a solicitor or AA to identify any but the most glaring fitness issues in a brief consultation must be very doubtful, considering the challenges for psychologists (see Gudjonsson 1993), especially since training in the presentation of conditions commonly affecting the participation abilities of young people is not mandatory for solicitors or AAs.¹⁷⁴

Where solicitors or scheme AAs did have concerns, most felt, as Sol5 put it, that “if we say something it gets taken quite seriously”. In particular officers might accede to a request to bail rather than interview late at night, where fitness concerns arising from exhaustion were raised. COs themselves generally suggested that they would seek HCP input if challenged in this way. However, some solicitors complained that sergeants could be “really difficult” and insist on interviewing sometimes where the effects of prolonged detention were a concern (eg Sol4). Equally some solicitors were concerned that HCP assessment did not always result in identification of unfitness where it appeared to be indicated. Sol6, for example, was very critical of responses to fitness concerns:

there is very little you can do...It's so rare for a custody sergeant to say that they (young suspects) are not fit for interview. They put them before a medic, a nurse and they always say they're fit for interview. I've never had anyone not fit for interview. But the next day ...the mental health team at court will say they are not fit for court when the custody nurse says he was fit for interview.

RHAA1 expressed her frustration at the lack of adjustment for a young suspect with Asperger's whose interview was subsequently challenged at court, “at the time (in custody) it didn't seem to make a blind bit of difference”.

However, not all AAs suggested that they would raise an issue, even where they were aware of a participation difficulty. This was particularly the case for FAAs, in large part because they felt they would not be listened to. FAA7 complained that even though she had shown the CO a report on her son's medical condition he had still refused to allow her to bring necessary food and drink for him. Even those with training may not be effective in ensuring fitness concerns are attended to. VAA3, for example,

¹⁷⁴ Although Prof AA, who co-ordinates AA provision for a number of contracts nationally, stated that there had recently been a requirement for all AAs to have autism awareness training and this was in the process of being arranged.

explained that on the rare occasion that she has concerns about a young suspect's FFI, "I leave it down to the police officers to carry on.... I would just let the interview continue and it would be sorted out". Given the prevalence of out of court disposals and referral orders, the chances of such an issue being "sorted out" later are slim.

FFI Outcomes: an Unhappy State of Affairs

Even where a CO identifies that a young suspect might be "at risk in an interview", I encountered no meaningful consideration of safeguards "in addition to those required under the Code" as provided for in Annex G para 8. No CO identified any specific adjustment, beyond reliance on the AA, to address risk in interview in respect of a young suspect. Sol10, who specialises in representing young people with dispositional vulnerabilities, spoke of her "frustration" with COs who were unable to identify the vulnerability of young suspects and adjust processes accordingly: "it's quite rare to find an enlightened one". The only reference to the possibility of support beyond the use of an AA came from CO26, and his suggestion involved bailing the young person for help to be obtained outside the custody suite.

Nor did any clinician that I spoke to identify any specific adjustments for a young person in interview, beyond reliance on the AA. None that I spoke to had ever been asked to, or advised, that they sit in on an interview (as envisaged in Annex G paragraph 8). Nor did I encounter any professional, AA or officer who had experienced an interview involving intermediary assistance for a young suspect. There seemed to be a degree of hopelessness in respect of developmental issues in particular, as L&D7 observed, "Developmental issues, autism, aspergers...we're not equipped to deal with that in this sort of place". Indeed, an investigating officer (IO2), who had family experience of a child with ASC, remarked "I despair of how we (the police) deal with special needs".

Ultimately if the CO considers that the suspect is fit but the solicitor or AA disagrees, the options are fairly limited. Both solicitor and AA can repeat their concerns about fitness during the interview itself, so that they are captured on the recording. This can, as Sol4 observed, leave an investigating officer feeling "very awkward", but is not always an effective remedy given that the contents of the recording are unlikely to be scrutinised at court (as discussed above) and will not prevent an out of court disposal or guilty plea on the basis of admissions unfairly extracted. Alternatively solicitors

suggested that they would be likely to advise no comment, perhaps following the making of a prepared statement, or may suggest that their client simply refuse to cooperate with interview entirely (Sol9, Sol6, Code C 12.5). But critically wherever interview proceeds and the young suspect does not answer questions, the young suspect's options are automatically narrowed, since an out of court disposal is ruled out, making formal prosecution more likely.

In those few cases where the CO concludes that, even taking into account available safeguards, the young suspect is unfit and the interview cannot go ahead, the options then are even more heavily constrained. If the CO rules out bailing the suspect for enquiries into obtaining further help (as CO26 had suggested) the only option, where 'no further action' is inappropriate and there is sufficient evidence, is to forego the interview entirely, and to "charge and get rid" (CO32). Again vulnerability can operate to rule out less coercive out of court disposals and trigger a harsher outcome.

In short, the evidence suggests that young suspects may be undergoing interview when they are unfit to do so, and that some who need extra assistance are not being adequately supported. Additionally, young participant accounts reveal that prolonged detention can significantly undermine the fitness of those who might otherwise function adequately in interview. The fairness of proceeding with an interview in such circumstances is, at the very least, highly questionable. It is plain that the support of the AA is widely considered to address any participation needs raised, and that their automatic presence operates to discourage more detailed consideration of functional difficulties. The evidence of HCPs themselves reveals that they too may not be responding to requests for assessment as Annex G envisages, and are not effective in ensuring that adequate adjustments are made to support those "at risk" in interview. There emerge, in any event, a number of challenges for the effective assessment of FFI. The detention setting, and the ticking PACE clock, mean that assessments have to be made swiftly, often without good information, by individuals under-equipped to make the judgement and in circumstances where the young suspect may be disinclined to raise issues, particularly for fear of delaying their release.

Interviewing Young Suspects: Policy and Existing Literature

Policy

I turn now to consider how the interview itself is conducted, how young people experienced that process and the extent to which they felt able to participate effectively. Code C provides very limited guidance for the interviewing of young suspects. The most significant adjustment is that, save in the case of urgent interviews, a young suspect may not be interviewed unless their AA is present (C11.15). The AA should be informed of their role in the interview: that they are not to act “simply as an observer” and that the purpose of their presence is to advise the interviewee, to observe whether the interview is being conducted “fairly and properly” and to facilitate communication with the interviewee (Code C 11.17). Tellingly, the arrangements for removing an AA from interview are rather more detailed (Code C 11.17A). Otherwise NFG 11C contains the only other guidance. This warns that juveniles (and vulnerable adults) may be “particularly prone” to providing information which may be “unreliable, misleading or self-incriminating” and requires “special care” be taken in questioning such a person, counseling that the AA “should be involved” if there is any doubt about the individual’s age, mental state or capacity.

The APP provides no more specific guidance about the interviewing of children. In line with Code C it notes: “People with clear or perceived vulnerabilities should be treated with particular care, and extra safeguards should be put in place.”¹⁷⁵ Likewise, the APP acknowledges that children “may be more suggestible and require special protection”.¹⁷⁶

The PEACE model of interviewing was introduced nationally in 1992 (Bull 1999, Clarke and Milne 2001), in response to mounting evidence of the role played by adversarial interviewing in the major miscarriages of justice in the 70s and 80s (Williamson 1993). It should be adopted in respect of all suspects, including young suspects. The term PEACE is a mnemonic used to describe the five parts of the interview process: ‘Preparation and Planning’, ‘Engage and Explain’, ‘Account’, ‘Closure’ and ‘Evaluate’. The model encourages the elicitation of truthful, reliable evidence rather than focusing on confession, beginning with the use of open questions to assist suspects to provide their own account, followed by an exploration of inconsistencies or

¹⁷⁵ APP (Investigation: Investigative Interviewing) (‘APP(II)’) 1.

¹⁷⁶ APP(II) 2.

contradictions within that account, which is then challenged by comparison with police evidence that counters the suspect's position (Soukara et al. 2009). In respect of questioning the APP specifies that it is acceptable for interviews to be persistent so long as they are also "careful and consistent but not unfair or oppressive" (APP(II) 2.7). Questions should be "as short and simple as possible", "multiple questions" are counseled against on the basis of "confusion" and leading questions should be used "only as a last resort" (APP(II) 4.3).

Existing literature

Despite the critical importance of the interview, it is perhaps concerning that there is also a limited amount of research evidence about the conduct of interviews with child suspects. The RCCJ had to be persuaded that research into the conduct of interviews with juveniles would be a "useful contribution" (Evans 1994, 74) to the programme of research in relation to police powers. Much of what we have is now of some age, but it suggests that, following PACE, oppressive interrogation tactics continued to be widely used in interviews of young suspects. Evans' review of 164 juvenile interviews revealed the use of persuasive tactics in 23% of the interviews and that such techniques were "more likely to be used where the suspect does not readily confess". In particular leading questions were used in 19.5% of cases, and legal closure questions in 12.2% of cases (Evans 1993). The findings reflected the widespread use of similar questioning techniques in adult interviews (McConville and Hodgson 1993, McConville et al. 1991).

These studies predate the era of PEACE interviewing. Although evaluations of PEACE have been somewhat mixed (eg Clarke and Milne 2001) all ages research suggests that PEACE has led to a reduction in the use of more problematic techniques such as intimidation, minimization,¹⁷⁷ and maximization,¹⁷⁸ although the continued over-use of leading questions was noted (Soukara et al. 2009). However, the picture in respect of children is more worrying. Medford et al's later examination (2003) of the efficacy of the AA safeguard involved analysis of 136 juvenile interviews. This revealed that the total number of 'interrogation tactics' (including the use of leading questions and mid-sentence interruptions) deployed by interviewing officers was greater

¹⁷⁷ Where the questioner underplays the seriousness of the offence or the consequences should the suspect confess, in order to encourage an admission.

¹⁷⁸ Where the questioner seeks to increase the anxiety of a suspect who makes no admissions by emphasizing the seriousness of the offence or the consequences of maintaining denials.

for juvenile interviews than for those conducted with adults with an AA. More recently, a review of 12 juvenile interviews identified coercive techniques employed by officers in 6 interviews, including maximization, minimization and the use of “hypothetical evidence” to encourage admissions (Kemp and Hodgson 2016, 161). The use of minimization techniques has been found to increase the rate of false confessions, as well as true confessions (Russano et al. 2005). There is also ample psychological evidence that misinformation can make suspects vulnerable to manipulation (Kassin et al. 2010), particularly younger and more suggestible suspects (Redlich and Goodman 2003).

Additionally, officers achieved the lowest ratings for interviewing skills and competence, measured in accordance with the PEACE model, in interviews with juveniles in comparison to adults (Medford et al. 2003). More recently the CJI’s review found that “Investigating officers made little adjustment in interviews for difficulties in communication” (CJI 2011, 8). This is reflected in Kemp and Hodgson’s work where police said that there “tended to be no difference in the way they interrogated juveniles based on their age”, although there was some suggestion that less formal approaches may be taken in interviews for less serious allegations (Kemp and Hodgson 2016, 152).

There has been no substantial qualitative study focusing on young suspects’ experiences of interview, particularly how they respond to questioning techniques. Young people in Hazel et al.’s work on the justice system more generally complained of “rapid and confusing questions” (2003, 12), of officers “twisting” their words or feeling that the interviewers, as one young participant put it, “were just putting words into my mouth” (Hazel 2006). This latter complaint was made in the same terms by participants in HMIC’s study, in which young people also complained of “unfair” questioning techniques such as continually challenging their account and repetitive questioning (HMIC 2015, 184). Young participants in Kemp and Hodgson’s work also complained of officers trying to “twist their words” or “trip them up” (2016, 141).

The power imbalance in the interview room is also a prevalent theme in the literature. Hazel et al.’s participants spoke of verbal aggression and threats of lengthy custodial terms in interview, which could lead to feelings of isolation and distress, particularly where parental AAs were unsupportive (Hazel 2006). Whilst those giving evidence to the APPGC (2014b) also described questioning which was confusing and intimidating. Commentators have noted that young suspects tend to be “undemanding and even passive in their resignation to police control” (McConville and Hodgson 1993,

51) and that all the pressures on the suspect are to capitulate to police expectations (Hodgson 1994). Research has consistently identified disengagement in young suspects' and young defendants' responses to police power (Hazel et al. 2003), a "tuning out" rather than "tuning in" to criminal justice processes (Plotnikoff and Woolfson 2002, 26)

Young Participants' Experiences in Interview

Of those who answered questions in interview, several young participants described feeling that they had been able to give a good account of themselves on at least one occasion. Jackson, for example, explained, "100 per cent – I make sure that I get my position across". However, this group, who were positive about at least one interview, and felt that they had been able to participate effectively in it, were a very small minority. It is, of course, not possible to evaluate their interviews, or to exclude the possibility that others who did not speak in detail about, or recall much of, their interview were also able to engage positively in that process. However, the very low numbers expressing satisfaction in the interview process is troubling.¹⁷⁹

Those who found the interview process challenging on one or more occasions described a range of reasons, which broadly fall into three categories: issues arising from the interview process itself, issues relating to the manner of the interviewer, and, closely linked, objections to the nature of the questioning.

Issues Arising from the Interview Process Itself

In addition to the issues arising from the toll of the detention experience itself (dealt with in respect of fitness for interview above), participants raised a number of issues relating to the interview process itself. Some young people were simply pleased to be going into interview, because this meant that they were progressing towards release: "to be honest it's actually a relief" (Hussain). But others were "edgy" (Zayn) or nervous about the process: "Just really just being in the police station – them asking all them questions I don't really like." (Kyle). Hudson described feeling stressed: "you don't really wanna talk in the interview, you wanna go innit" and he had found this feeling

¹⁷⁹ Although the numbers are small, it is interesting to note that they tended to be young participants who did not go on to be charged, so were either making admissions resulting in a caution or giving an account which ended in no further action. There was no notable disproportionality in terms of ethnicity, gender or relative youth in the group.

“worse” when he had faced a really serious allegation at the age of 14, “it was mad”. Some recounted being in distress during interview. Sandor, for example, recalled “crying and everything” at the start of the interview.

Whilst one might expect any interview with the police to be a nerve-inducing experience, several young participants’ accounts revealed particular discomfort for them arising from their situation. This resulted in particular from the difficulty of divorcing investigating officers from those who had been detaining them. For example for Kate this arose from being taken from her cell to “speak to the people that are winding me up”. Jake also initially objected to being interviewed by an officer who had seemed to “take the mick” out of him on booking in.

For other young people the power imbalance of the detention experience, and the adversarial context, induced a feeling of helplessness and futility at the outset (McConville and Hodgson 1993). Sandor explained, “It’s just really uncomfortable and you just feel like it doesn’t matter what you say, it’s wrong and it’s going to be used against you”. Coupled with the unfamiliar demands of the interview young people could feel curtailed in their ability to give their account. Kyle described how it was more difficult to speak when “under pressure”: “I get a bit like nervous in speaking so I don’t really like saying everything I just say what I say...you’re not used to having to explain yourself to tell a story about what happened – so it can sometimes not be very easy to give all the info.” For Tom it was “just so many people looking at you at once, chatting away.”

Issues Relating to the Manner of the Interviewer

Those who were positive about an interview presented a fairly consistent view of what made a good interviewing officer. They focused on officers who established rapport, did not rush or pressurize them and explained what was happening throughout. Yemi, for example, described one interviewing officer:

He was really friendly. He was really calm. It was a really chilled interview..... Before we started the interview he just told me everything about what’s going to happen... He was clear... at the end he went through everything that he wrote down just to tell me, am I sure this is what I want to say?

Appropriate adults similarly approved of officers who were “professional” (FAA6), asked “straightforward questions” (FAA5), and were “understandable and understanding” (VAA3).

Negative assessments were more marked, with a number of young people complaining that officers did not listen to what they said, or made it clear that they disbelieved their account. The idea of the interview as the suspect's opportunity to advance an account which will be meaningfully considered was wholly at odds with the experience some young people recounted. Tom explained, "...if I answered a question, even if it was truthfully, he'd look at me as if I'm lying. I was like thinking, 'Don't, fuck, why are you looking at me like that. I know exactly what I'm saying sort of thing. I'm not stupid.'". Evan encapsulated the frustration and powerlessness that several young participants experienced in this regard, "Even when you get interviewed, it's like you've done it, so what's the point?".

For some others, officers could be "really intimidating" (Simon), echoing complaints in evidence to the APPGC (2014b). As Michael described, "They ask you questions quite rudely – like they're looking for a certain moment to catch you out". Rapport building can plainly be helpful, as Yemi illustrates, but in the context of other contact with the police this could be ineffective. Luke, a regular in police custody explained,

Some of them look at you funny – like give you looks like trying, like trying to be nice, nice to you like they're your pal, trying to talk to you like. 'Oh yeah, alright then mate...' No that's – nah you don't, I've never really spoke to police. I don't really like 'em if that makes sense.

Offering inducements

There were several young people who objected to the use of inducements by interviewing officers to elicit material. Alex felt that an officer had been "manipulative" in telling him, "if I'm just honest with them, in my reasoning of why I have, why I had the knife, then I think they said that I will get less charges and stuff and... I've told 'em why I had it, and I still had the same charges, so...". Zayn had similar objections, "they (the officers) act as if they're the ones that decide if you're going to jail or not sometimes, they don't really think of court and it's just you if you're new to the system, you've never been arrested, so they manipulate you." Similar complaints about the threat of custody are noted by Hazel (2006).

Several young participants described feeling under pressure to make admissions so that they could receive a caution or, later, a referral order. Whilst the option of diversion where admissions are made is desirable, in the absence of legal advice the

evidence suggests that this can easily be experienced as coercion. Avery, for example, recounted an incident in which she was arrested for a public order offence which did not appear to disclose offending on her part (and indeed once the tapes were off Avery described the officer apologising to her). She explained that she felt she “had to admit it in interview”. Her reasoning had been “if I admit it in interview they would give me a caution and then they would take me home” and “if I admit it now it’s not really like a conviction on me”. She explained that she had not had legal advice and the officer had told her “otherwise they would have taken it further”.

Inducements could also simply relate to release from police custody, sweetened even, as Avery intimates, with the offer of a lift home. Sadie described asking, “ ‘When can I go home?’ ”, and that officers responded, “ ‘Well it depends what you say.’ ”. Similarly, Luke felt strongly that being put in the cell was a tactic to get information from him,

they want you to feel scared they want you to, it’s like holding somebody hostage, like torturing them. ‘Right tell me this or I’m taking your ‘and off’, that’s what they do. ‘Tell me, just tell me and we’ll let you go. Soon as you tell me you’re on your way’.

It is important not to under-estimate how powerful such inducements could be in the absence of legal advice, given the distressing accounts of young people’s experience of detention recounted in Chapter 4, combined with normal adolescent impulsivity and deficits in future-orientation (Cauffman and Steinberg 2012). The psychological pressures of the detention experience on suspects particularly concerned the RCCP (1981); Williamson posits that they were influenced by similar issues raised in the US Supreme Court case of *Miranda v Arizona*¹⁸⁰ (Williamson 1993).

Objections to the Nature of the Questioning

A significant number of young participants complained of questioning methods which they felt were designed to “get you mixed up” (Rezar), “catch you out” (Aidan, Dexter), “trip” (Kyle, Sadie, Riley), “trick” (Carter, Avery, Sadie, Nathan) and “twist” your words (Kate, Evan, Avery). Such reactions accord with the repeated identification of persuasive and oppressive techniques in previous research (Kemp and Hodgson 2016, 153-158; Hazel 2006; Medford, Gudjonsson, and Pearse 2003). A number of

¹⁸⁰ 384 U.S. 436 (1966).

interrogation tactics, observed in interviews with adults, were complained of by young participants.

“Tripping”

Most prominent, raised by 14 young participants, was the persistent repetition of questions: “They will ask you same question over, like, five times” (Rezar). Persistent or repetitive questioning is not outlawed under the PEACE model and can be acceptable as long as it is “careful and consistent but not unfair or oppressive” (APP(II) 2.7). However, young participants’ descriptions of the use of this technique suggest that in some cases it moved beyond the “acceptable”. Carter describes how the technique was adopted with him, “they try to trick you and try to say something, and then say something else, and then go back to the exact same thing, and try and get you to say something different or something like that.” A number of participants complained that the questions would be slightly adjusted each time, “you say one answer and then they change the question like they’ve just asked to try and trick you out. Ask it like, word it in another way and that...” (Avery). Research findings underline that it is particularly dangerous to adopt such techniques with children, particularly younger children, since they tend to change their response, assuming that the repetition results because their initial answer was not correct (Saywitz and Lyon 2001, Ceci et al. 2002).

For those with a learning disability repetitive questioning could be really problematic. Evan, who described himself as “head’s all over the place and my memory’s not the best” explained:

if I’m asking you a simple question like, ‘What day is it?’ then five minutes after, after somethin’ else, so your mind- so you’ve lost everything - they’ll ask you again, ‘What day is it?’. Then ten minutes after. So, you’re completely- you can’t remember- I couldn’t remember what the first thing they said to me, so then they ask you again. Then again and again until they get what you (sic) want. But if you don’t give ‘em what you (sic) want, like- I’ve been there with my dad and we’ve been in an interview for about three hours.

Professionals also recognised this technique:

the questions they ask - confession cases in particular – go on and on. It’s quite oppressive actually – I have stopped people being questioned. They ask the same thing in a slightly different way over and over again. (Sol6)

For some young participants, many desperate for release, the relentless repetition was hard to withstand. Far from eliciting a reliable account, it tended to induce

frustration and a loss of focus. Avery, for example, described becoming “bored” and “annoyed” and that she “started not thinking before I say anything”. Likewise, Aaron’s response, in the interests of getting out “quicker” was to “just answer ‘em short, innit, I’m just not arsed”. Evan found containing his frustration more difficult, “it just really winds me up... I snapped”.

A significant number of young participants explained that they took the approach of making no comment because of previous experiences undergoing this sort of questioning. Carter explained:

The questions, they try to trick you and try to say something, and then say something else, and then go back to the exact same thing, and try and get you to say something different or something like that. That’s why I just go with, “No comment,” because they’ve caught me out a couple of times.

Having no answer which “would withstand questioning” can be part of the basis for a proper adverse inference being drawn.¹⁸¹ However, what young participants described in some cases appeared to go beyond being caught out in a lie, but rather suggested avoiding what were felt to be unfair tactics which might trap them even where they were telling the truth. Alex for example explained in this regard, “I wouldn’t say I’m weak-minded, but it’s just, they’re extremely clever... Even when I haven’t done anything, I do a ‘No Comment’ thing”. The concern is that the unnecessarily adult tactics used by police in interview have the effect of driving some young suspects into a blanket position: “I don’t sit there and explain myself any more” (Harper), “I just knew with my experience with these bastards – I just know you don’t talk in there (the interview room)” (Malik). The interview process has become, in this sense, wholly counter-productive. Young people do not participate effectively in the process and do not engage their right to give their account; whilst at the same time the police do not obtain useful evidence by questioning.

Leading

Another common complaint from young participants was that officers “put words in your mouth”. One method young participants often referred to was the use of leading questions: “they weren’t like asking me questions, they were telling me questions, like telling me the answers to the question” (Simon). This was particularly difficult when asked as part of a multiple question format. Elijah, for example, described, “Like, when

¹⁸¹ See *Daly* [2002] 2 Cr App R 201; *Petkar* [2004] 1 Cr App R 270.

I got arrested for the knife, they was like, ‘You was in school with a knife, tryin' to stab someone, correct?’ I was like, ‘No. I was in school with a knife, 'cause I'd been told my life was at threat.’” Riley similarly recounted,

They ask you stupid shit, don't they? Say you ‘ad a fight or somethin’, it was like, ‘Right, well what time did you throw the first punch?’....They just ask it to you, and that's what fucks with your ‘ead and then you end up just blurtin’ out random shit and getting yourself in more trouble.

The combination of repetitive and leading questions could be particularly dangerous. Sol9 was concerned about the use of “pressure” in combination with leading questions, “...children are more easy to lead. With a younger juvenile it is concerning because they start agreeing to things and that's not what their instructions were.” Logan demonstrates how this sort of questioning can prompt unreliable answers, “Some questions that they ask, they'll pressure you and you'll be that pressured that you might ‘ave to lie and say, ‘Yeah, fair enough, I did do it’... Just to get it over with, ‘cause they'll just keep pressuring you and asking you.” Such observations correspond to the psychological research which identifies children's raised propensity to confess falsely (Gudjonsson et al. 2006, Kassin et al. 2010).

“Twisting”

Allied to these concerns, young participants frequently complained that officers “twist” what they say in interview (echoing objections in the same terms in Kemp and Hodgson 2016, 141). What they seem to be describing is the use of legal closure questions, (identified as a prominent tool for case construction in McConville et al. 1991) or the drawing of unfair inference from, often leading, questions. Simon, for example, recounted: “And they go do you know the bike shop this place, and I'm like ‘Yeah, I know of it. It's in town. Um’ and they go, ‘So you admit that you're selling bikes, you've been selling stolen bikes?’ And I'm like, ‘No mate...’”. Harper explained how it felt to experience this tactic,

...even if you do say something they will try and twist it into thinking that you've said something completely different. And they will read it back to you but they will say it completely different to how you said it and it's like ‘I didn't say that’. And it's like then they try and make out like it's your fault. And then they try and make you think it's your fault and then you slip up and say ‘Yeah, it's my fault’, kind of thing.

Thirteen year old Kaiden's experience provides some insight into how dangerous such questioning tactics can be when combined with the powerlessness many felt,

Kaiden: ...sometimes they'll ask me 'Why did you rob that boy, did you say that you'd done this, did you say that you done that?' But I never.

MB: OK and do you feel you can say 'Hey, I never did that?'

Kaiden: No, cos they won't believe it anyway. Cos obviously if they're asking me if I done it, they're thinking it's me.

MB: OK. And is it not your chance to say – 'Hey, this wasn't me'?

Kaiden: No cos they don't deal that. They took my bike and they never gave it back.

Evan describes alternative options for dealing with such a technique. Either he would not provide full detail: "you won't wanna say exactly, 'cause you know they'll twist it into gettin' what they want". Or safer still, he suggests making no comment: "there's been times where I just feel like saying, "No comment," all the way. 'Cause, no matter what you say, it's gonna get twisted in one way or another". Again, as with the case of Harper and Malik above, this tactic is wholly counter-productive, jeopardising the reliability of the account provided, and driving the young suspect into a no comment position.

Question subject matter

Several young participants objected to being asked irrelevant questions in interview. Some of the young participants' concerns related to being asked about their broader life situation not relevant to the allegation at hand. Kyle explained how police, "Wanna know everything reallySome things that they ask as well, they don't really need to know about... They aren't necessary for the subject". For young people with difficult life circumstances or traumatic histories this could be distracting and difficult to deal with. Kyle, who was not represented, described how he responded, "You can't really have a bad reaction in there, can you? It's just got you thinking in your head really". He went on, "you couldn't really do anything could you? It's police...I just let it go" - his resigned approach a now familiar response.

A similar complaint related to questions about previous offences which had no relevance to the allegation. Logan, for example, recounted,

Winds me up. It could be for burglary and you've got a criminal record for assault or summat. They bring that up even though it's not even relevant. Fair enough if it said, 'Oh, yeah, you've got previous burglaries. Is it true that you've got previous burglaries?'. Not, 'Is it true that you've got previous assaults?'

In his case, his legal representative would advise him, " 'No, don't answer it.' ", but as we see with Kyle, without professional support, such a response may not seem like an option.

Six young participants complained specifically about being misled or deceived by officers. Elijah explained, "They was like, 'Your mate has already told us that you was talkin' to him about stabbin' your enemy.'... I knew they was lyin', 'cause my mate got away.... I was like, 'Listen, don't try to lie to me.' I hate it when the officers lie. I hate it." However, not everyone recounted having been able to identify the deception at the time of the interview. Nathan described his experience,

I grassed one of my mates up when I was, when I first got done for something as a young 'un. They told me that two of my mates have said it's me. So I've said 'Nah, nah I'll tell you the truth innit.' But nothing like that happened they just trickin' us out innit.

Such a tactic can, as Nathan's account reveals, yield results. However, the product may not necessarily be reliable. Abigail explained that her response to deceit is to "just do it back". But more concerning is the damage done to police legitimacy by such tactics. Carter, who felt deceived in interview, reflected of the police, "they're just as untrustworthy as the criminals....Who lies to someone to catch them out?" (discussed further below). Such an experience could lead to more confrontational exchanges. Alex, for example, described how feeling manipulated on previous occasions had led him to be more "vocal" on arrest. Although the numbers are small, those complaining of deliberate deceit by officers were disproportionately BAME young people, and tended also to be those who were regular attendees in custody or had had at least three previous custodial arrests. In no other area of complaint about interviewing approaches was there any other marked disproportionality in respect of ethnicity, gender or relative youth.

Maintaining No Comment: Policy and Existing Literature

I have discussed in detail in Chapter 6 young participants' understanding of, and engagement with, the decision to make no comment. I address here the experiences of

those, numerous, young participants who decided to make no comment to some or all of the questions asked. To what extent did they feel that police practices enabled them to maintain that decision?

Officers are entitled to continue to question a person making no comment: “A person’s declaration that they are unwilling to reply does not alter this entitlement” (Code C NFG 1K, Home Office Circular 22/1992). Indeed APP (Investigative Interviewing) 2.8 makes plain that the officer has a “responsibility” to put questions to those making no comment as long as this is done in an “effective and acceptable way”. No further guidance is provided as to how this might be done. Research suggests that most officers do continue to question suspects exercising their right to silence so that the adverse inference can be drawn (Quirk 2017).

Maintaining no comment in the face of questioning has long been recognized to be challenging, requiring an “abnormal exercise of will” (Irving and Hilgendorf 1980a, 153) (see also Quirk 2017). This is not least because it violates conversational turn-taking (Carter 2011). Building on typologies developed previously Moston (1990), Moston and Engelberg (1993), and McConville and Hodgson (1993, 141ff) have identified a range of techniques used by the police to attempt to break the silence of suspects, including: downgrading¹⁸², persistence, upgrading,¹⁸³ rationalization,¹⁸⁴ and interpreting non-verbal behaviour.¹⁸⁵ There are indications that these techniques have persisted following the introduction of the PEACE method. Kemp and Hodgson’s study revealed the use of some of these tactics, particularly downgrading and the interpretation of non-verbal behaviour, notably smiling (Kemp and Hodgson 2016). Whilst in Quirk’s research an officer described trying to provoke the suspects into answering questions (Quirk 2017, 80).

Young Participant Experiences of No Comment

Some young participants found maintaining no comment to present few difficulties, for several it was even “easy” (Nathan). These tended to be young people who had several, often regular, experiences in custody. RHAA1 explained,

¹⁸² Asking the suspect about banal matters unconnected to the allegation, particularly about their own personal habits and lifestyle, in attempt to get them talking.

¹⁸³ Asking the suspect questions which introduce evidence underlining the seriousness of the offence or the suspect’s involvement in it.

¹⁸⁴ Commenting on the suspect’s exercise of their right of silence in an attempt to rationalize against it.

¹⁸⁵ Making reference to behaviour by the suspect, for example smiling.

they're conditioned some of them. They know exactly what ticks, when they get into an interview room they're not phased by it. You have to prove I'm guilty so I'm not gonna incriminate myself, I'll leave that for you and the investigation. So yeah, some are just really clued up.

But for others this was more of a challenge (as noted for adults Irving and Hilgendorf 1980a; Quirk 2017). The data reveals the widespread use by officers of techniques similar to those previously identified in adult interviews, such as downgrading (McConville and Hodgson 1993, Moston and Engelberg 1993). However, the evidence suggests that for young participants such tactics could be more challenging than for adults.

Several young participants found it hard to stick to no comment because of the challenge of containing emotion and maintaining focus. Kate was worried that she would “slip up a bit...snap and get annoyed and (say), ‘No that never happened’, or sommat’ ”, but had been able to maintain her stance. Michael had more difficulty. He explained, “Like for the first couple of questions like I was like ‘No Comment’ and then I was like ‘in my house’ then ‘no comment’, ‘in my house’ you know what I mean?”.

These difficulties might be said to reflect the “abnormal exercise of will” required of a suspect of any age (Irving and Hilgendorf 1980a, 153). However, for young suspects such self-control can be developmentally more challenging; capacity for self-regulation increasing gradually over adolescence (Blakemore 2018). Indeed, several young participants felt that officers had deliberately tried to provoke them into answering a question. Alex explained, “they will say something that they know will aggravate you, so they like to get a reaction out of you, so it is hard, yeah.... Sometimes I feel I just wanna answer”. Occasionally this was accompanied by a more intimidating manner. Zayn described feeling uncomfortable making no comment, “when they're shouting they're trying to make you feel bad about something and they think they're smart”. Or the question could be pursued more persistently. Azade described an interviewing officer in a no comment interview asking, “ ‘Why didn't you say sorry?’ . She asked me that about ten times.”. She explained that the interview became very confrontational as she struggled to control her emotions. Zayn and Alex had resisted the temptation to respond, but not everyone could control the impulse. Malik, for example, described being caught in making a response when the interviewer asked him about how he “felt about” the complainants in respect of a serious assault allegation. He recounted, “This was the only question that hit me. I go ‘No comment’, but I go,

‘Are they alright?’ Do you get me, I don’t wanna talk to you, but if I could say sorry, I’m sorry to (them).”.

Some other young participants complained of the use of tactics broadly falling within the category identified as ‘downgrading’. Aidan had quite clearly spotted the tactic, “they ask you questions that you’d know, you know what I mean, that you know, and you know you can answer, but you don’t, you do not want to slip up”. Kate offered examples of the sort of banal questions she was asked, “Have you got a grey hoodie on? Have you got facebook? Have you got a phone?”. She described her response:

They’re trying to slip me up...they were trying to provoke me and they were trying to get into my mind and like, ‘Well, we’ll play you. We’ll reverse it on you, make you spit sommat out, say something.’ Even if I would have said, ‘I know my dad’ or anything like that, they could’ve twisted it, couldn’t they?

Several solicitors stated that they would step in to remind their client of their advice in such circumstances, but often relayed that clients would return to no comment only to find that the officer would “do it again” (Sol12).

Azade identified another tactic familiar from adult interviews: the interpretation of non-verbal behaviour. She was incensed that, during a no comment interview, the officer had tried to suggest that she was smiling, putting her, she felt, in a very difficult position: “so obviously when I don’t actually say I’m not smiling the judge is gonna think or like have a picture in her head, saying ‘Oh (Azade)’s smiling, she taking this as a joke fam’.”. Azade described her anger at the use of this tactic, “she (the officer) took the piss out of my life like, what the hell?”. Whilst Azade’s reaction may be more forceful than many, it chimes with the general assessment of young participants that officers who engaged in this sort of questioning were underhand, attempting to “trip” and “twist” them, rather than being engaged in a fair exchange.

Solicitors generally took the view that maintaining no comment was more challenging for children than adults, although for one the distinction was “marginal” (Sol8). Several solicitors referred in particular to the natural difficulties for a child of not answering questions asked by an adult; the power differential between the adult in authority and the child exacerbating the difficulty of breaching turn-taking (Carter 2011). Sandor described the pressure to defer to an adult officer, “I just feel like if I say, ‘No comment’ then I’d be holding them back, not working with them, not being polite.” Some solicitors described specifically preparing their younger clients for a no comment interview with this in mind,

I say, ‘Look you’re going to find this difficult because this officer is a grown up and he’s asking you questions and you’re going to think, ‘Oh I should be polite, I’ll get into trouble if I don’t answer grown ups’ questions’. I say, ‘You know he’s not your family, he’s not your friend – I’m your only friend. He’s out to get you. (Sol8)

VAA2 also picked up on the difficulty of resisting the temptation to defer to adults, “I say about no comment, ‘The officer won’t mind – he’s used to no comment.’”

Another solicitor referred to the challenge for suspects, but particularly children, of the interview format itself, moving from the preliminary part of the interview, where questions had to be answered (the client’s name, date of birth and understanding of the caution) to the body of the interview, where they were able to choose to reply. She felt it helped to draw this out in a visual diagram to assist her clients (Sol12).

Far from seeking to adjust the process to enable young suspects to exercise their right to silence, young participant and solicitor accounts suggest that some officers engage in exactly the sort of tactics that they might use in challenging an adult, even that they may seek to exploit a young suspect’s natural developmental immaturity in this regard. Such tactics could not realistically be said to be “appropriate”, as required by APP(II) 2.8, given that they go far beyond the requirement to put details of the case to establish grounds for an adverse inference. Young participant accounts reveal how problematic such techniques could be, both in terms of maintaining their decision to make no comment, and in respect of their views of the police more generally.

Specialist Training for Interviewing Officers?

Findings that interviewing techniques are often unadjusted to the youth of the suspect should not perhaps come as a surprise. Achieving Best Evidence (‘ABE’) training¹⁸⁶ is routinely required for interviewing children as witnesses. However, there is no requirement for officers interviewing child suspects to have any specific training in respect of questioning children or on aspects of child development; a position noted in a number of recent reviews (APPGC 2014b; CJI 2011). Indeed recent research based on material elicited through Freedom of Information Act requests to all forces in England and Wales identified that none of the forces responding had separate policies or guidance covering interviews with child suspects (Gooch and von Berg forthcoming). This contrasts with the approach taken in the courts where expertise in acting for young

¹⁸⁶ A three week course teaching specialist techniques for the interviewing of young and vulnerable witnesses.

witnesses or defendants is increasingly considered essential and “radical” adjustment of questioning processes to “adapt to the witness not the other way round” is expected (*R. v Lubemba*¹⁸⁷ at [45], also *R v Grant-Murray*.)¹⁸⁸

In line with this literature, at no fieldwork site was there a requirement for specific training for those interviewing young suspects (beyond the Tier 1 PEACE training delivered to all officers). IO1 for example explained, “Any officer can interview a juvenile in custody”, in contrast to the interview of a child witness which would be done, “on ABE and it would not be in custody”. Some investigating officers spoken to, such as IO1, explained that they had done ABE training and drew on those skills in interviewing young suspects. Whilst this is to an extent encouraging, the emphasis of the ABE approach is different to that required in an adversarial interview under caution. In F3 budget reductions had led to a force restructure, resulting in officers who had not been required to interview for many years now routinely interviewing suspects, including children. COs were concerned about the quality of interviews as a result. CO26 for example observed that solicitors had raised concerns, “they’re telling us the officers are not asking the right questions”. Dip sampling of interviews by COs had found some evidence to support these concerns, although there was a suggestion that this oversight was also diminishing. These observations accord with concerns expressed elsewhere that budget cuts may be affecting the quality of interviews (Kemp and Hodgson 2016).

How Effective are the Protections?

The issues arising out of the interview suggest that the protections which should be in place for young suspects in interview may not always function adequately. I explore two protections in particular: the solicitor and the AA.

Solicitors’ interventions

Previous research into the effect of the presence of a solicitor in interview, although much now of some age, generally paints a fairly mixed picture. Evans in his 1993 study found that solicitors attended interviews in 11% of the 164 cases that he reviewed; in half of these police used oppressive tactics and obtained a confession, and in only one interview did a solicitor intervene (Evans 1993). Ten years later, Medford et al’s study (2003) (including 136 juvenile interviews) identified more positively that suspects were

¹⁸⁷ [2014] EWCA Crim 2014.

¹⁸⁸ [2017] EWCA Crim 1228, esp [226].

significantly more likely to make admissions when no legal representative was present, which was consistent with previous findings (Gudjonsson 2003).¹⁸⁹ More recently, in Kemp and Hodgson's examination of nine juvenile interviews involving a solicitor there was intervention by the solicitor in eight cases, including providing advice and requiring a break for consultation as well as intervening to object to a line of questioning, although in not every case did the researchers conclude that the intervention had been appropriate or effective (Kemp and Hodgson 2016).

We have very little information about how young suspects themselves experienced legal support in the interrogation itself, and what in particular they found helpful or unhelpful. Kemp and Hodgson's research included a single focus group with five young participants who are reported as being complimentary about solicitors' support in interview, especially where police were trying to "twist their words" or "trip them up" (Kemp and Hodgson 2016, 141). Hazel et al's research appears to have uncovered a "heavy reliance" on the solicitor when present, but no further detail is available (Hazel 2006).

Not all young participants opted for legal advice, and certainly not on every occasion. Nonetheless, their accounts provide some evidence of the positive effect of having a solicitor in interview, and those aspects of which they found most helpful. A significant number of the young participants who had had legal advice commented positively on their support in interview. Simon, for example, related how effectively a solicitor could prevent officers using manipulative tactics: "with a solicitor there they can't say anything, they can't push the things they wanna do and you know, bad things they can't do that, so it excludes them, you know, not abusing their position". Several young participants described solicitors preventing officers asking repetitive questions, in particular asking them to "move on" in the questioning (Alex, Jo). Young participants also referred to solicitors identifying, and putting a stop to, the asking of irrelevant, particularly personal, questions. Some others appreciated solicitors helping them to avoid incriminating themselves unduly in interview, even where this was done forcefully. Avery, for example, described approvingly having received "a proper kick under the table" from her solicitor when she was being "cheeky" in interview or allowing her frustration to take over. Solicitors could also be useful when the young person could not understand a question. Hussain reported, "when I had a solicitor near

¹⁸⁹ And accords with subsequent findings in respect of adults (Clarke, Milne, and Bull 2011).

me... I would just ask him ‘What’s he talking about?’... and then they fully explained it to me.”.

Solicitors who could balance the power differential to a degree, or enable agency, were especially welcomed. Dexter, for example, particularly appreciated that his solicitor would just “tell ‘em (the officers) straight” when he were not happy with the questioning. Whilst Jo described with approval a solicitor who had suggested a mechanism which gave him a sense of control, tapping on the table to indicate that he wanted to have a break in the interview.

However, there were also indications in the data that the solicitor was not always an effective protection from oppressive interview tactics. A significant proportion of those referred to above who experienced coercive tactics reported having solicitors in interview who, it is plain, did not prevent inappropriate questioning. Logan for example, recounted feeling so pressurised that he was tempted to provide false admissions: “I felt like lying once and saying, ‘Yeah, I did do it.’ But I just asked to speak to me solicitor and then I just said to ‘im and ‘e just went in and said... ‘Don’t answer questions.’”. It is fortunate that the solicitor drew the interview to a close, but concerning that he or she left it to Logan to ask for a break when he was plainly feeling extremely pressurised. Sometimes the AA was left to take the initiative. Kate, for example, described an interview where officers made lengthy and repeated attempts to break her silence. The solicitor did not object and the interview only ended after the AA intervened saying “This is getting ridiculous now”.

AA interventions

The apparent inefficacy of AAs in the interviews of young suspects has long been a subject of concern. An ineffective AA may be counter-productive, bestowing a “degree of respectability” on what may otherwise be an unfair interview (Medford et al. 2003, 263). As discussed in Chapter 5, it is challenging to expect an AA to be able to identify inappropriate questioning and to intervene. Indeed, research suggests that it is not always easy even for a lawyer to identify inappropriate questioning (see for example Kemp and Hodgson 2016). Canadian research has called into question, in particular, parents’ ability to insulate young suspects in interview from the negative effects of their knowledge deficits and vulnerability to coercion (Woolard, Cleary, Harvell and Chen 2008).

Evans' interview analyses revealed that parents (and other non-professionals) acted as AAs in 80% of the cases examined, but in three quarters of these the AA did not intervene, and when they did so they were as likely to be unsupportive as supportive. However non-professionals intervened substantially more frequently than professional AAs (at that time generally a residential or specialist social worker) who intervened in only one case. In 62% of cases where a professional AA attended the police obtained a confession using persuasive tactics (Evans 1993). Medford et al's research again revealed that AAs interacted very little in interview, at times their input was inappropriate and their presence had no significant effect on the rate of admissions. Nonetheless, AAs' presence alone in interview appeared to have a "decisive effect on the behaviour of the police and the legal representative" (Medford et al. 2003, 262). In a survey of officers, lawyers and medical practitioners which asked whether AAs provided "significant protection" only 49% believed that they did, with the lawyers, at 35%, holding the least favourable views (Gudjonsson, Hayes, and Rowlands 2000). More recent research conducted by Sim reflects Evans' finding, in that AAs both trained and untrained contributed both appropriately and inappropriately, but that untrained AAs tended to contribute more frequently (Sim 2013).

As with legal advice, there is very little existing literature examining the views of young suspects themselves in respect of the assistance of AAs in interview. Hazel et al's research suggests that young suspects felt significant pressure as a result of the presence of parents in interview (Hazel 2006), whilst the young people in Kemp and Hodgson's research seemed to view the AA as not contributing significantly to the interview (Kemp and Hodgson 2016).

NFAAs

NFAAs themselves suggested that they rarely intervened in police interviews. This is concerning considering the prevalence of oppressive and persuasive tactics described by young participants in their interviews. VAA4's observation was fairly typical, "I've not had much call to intervene in all honesty in police interviews – they're not kindly but they're not confrontational." Similar observations were made by NFAAs in respect of intervening to support understanding or communication: "it's not very often you have to intervene. Very occasionally I would – when the juvenile doesn't understand. Only 2 or 3 in all the time I've been doing it" (PAA5, very experienced AA). No young participant volunteered an example of a NFAA spontaneously intervening. Indeed, in

contrast to reflections on FAA interventions, there did not seem to be any assumption on the part of young participants that NFAAs would, or should, intervene on their behalf. Tom, for example, felt that the scheme AA was “just sitting there ’cause I needed someone there ’cause I was under 18...I think he was just there for the legal side of it.”

Two features emerge from the data which may provide some explanation as to why there is so little intervention. The first relates to NFAAs’ understanding of appropriate interviewing, and what appears to be a high threshold for inappropriate questioning. YOTAA, for example, explained his role was ensuring,

that the interview goes how it should go, and there’s no intimidation, there’s no violence, no force, no threats involved. It’s gonna be a police interview, which means they’re trying to catch somebody out so they will ask repeat questions, and they will ask some questions that you may not think are relevant but they have other information that you’re not aware of.

His threshold for intervention was plainly extremely high, and his inclination seemed to be more supportive of police objectives than of the young person him or herself.

The second issue arises from the relationship between the role of solicitor and the AA. Commentators have previously identified some overlap between the role of the solicitor and the AA in monitoring appropriate questioning (see for example Gudjonsson 2003). There is some suggestion in the data that NFAAs may delay intervening, understandably expecting that the solicitor, with professional expertise, will intervene where necessary. PAA1 for example explained that when officers “ask the same question 3-4 times in a different way” the solicitor will intervene; she continued, “I have the right to step in and say something too, *if the solicitor doesn’t*” (my emphasis). Likewise with supporting comprehension, NFAAs tended to describe leaving it to officers or solicitors in the first instance: “I think most of the time the police spot they don’t understand before I intervene.” (VAA4).

FAAs

Young participants were more likely to comment spontaneously on the intervention of FAAs. A number of young participants spoke very positively of their FAA’s intervention in interview, with some suggesting that their FAA always got involved. For example, Aidan explained of his Mum, “If she didn’t like a question that they ask me, she’d step up on it, and like she’d stop the recording.... and we’d go for a talk”. FAAs

themselves also commented on intervening. This tended to be, they suggested, where the young person did not appear to understand.

However, both young participants and FAAs recounted difficulties arising because of FAA interventions. Several young participants and FAAs complained of officers preventing the AA's involvement. Some instances recounted are clearly suggestive of the officers inappropriately curtailing the exercise of proper support. Riley, for example, described his grandfather "objecting to the way the way they was just puttin' pressure on me constantly" but he had been stopped by the officer. Riley noted, "They said he can get involved if they say anything he doesn't like, but then when he got involved, they said he was answering questions for me." Likewise FAA1, for example, described interjecting to support her son's understanding: "therefore I just step in and I interpret it my way...then (he) understands it straight away. And then I'm told to be quiet." Although the officer had explained her role at the beginning of the interview she had then been told that she was there "as an appropriate adult only" and that it was not her place to get involved in questioning. FAA1 reflected, "So they do contradict themselves quite a lot." Her husband, she explained, had had a panic attack when he was threatened with arrest by interviewing officers when he tried to stop an interview in which a child of his was becoming upset. These findings add to previous observations in Kemp and Hodgson's (2016) research of officers responding negatively to interventions by AAs.

Other incidents, however, reveal the challenges for all parties in ensuring that the protection is effective in interview. Several participants described interventions which, whilst triggered by apparent improper pressure, were couched in emotive terms liable to be problematic. Elijah, for example, described his Mum intervening by saying, "...Because, if you are accusin' my son of doin' somethin' that he isn't, then I'm takin' you to court, 'cause that's offensive. You're pinnin' it on my son that he's a drug dealer before he can even answer." One can understand the emotional situation the adult finds themselves in, but one can also see how such interventions might raise the tension of the interview and trigger an officer to seek to curtail entirely the AA's involvement. Kaiden described having stopped a particular family member acting as AA because he was "just too feisty". One particularly forthright FAA described how she had learned, "You've got to keep your mouth shut, just say your name and your address and that's it." (FAA7). A solicitor, ICV, or even NFAA, who found their legitimate role curtailed, might feel empowered to object. By contrast a FAA is unlikely to be aware that they

have been inappropriately silenced, and even less likely to feel able to challenge the officer, or to pursue a complaint.

FAAs could also, because of their lack of appreciation of the adversarial nature of the process, intervene in a way which was unhelpful in terms of the young person's legal interests. Sol2 recounted, "They can interject in interview – say, 'Don't forget to tell the officer about X' and that can be a problem". IO3 made a similar observation, "It can be the case that the juvenile says nothing and then the mother uses a couple of expletives and then says his life is over and he may as well tell the truth and then she comes up with all of it.". Neither solicitors nor interviewing officers displayed much patience in their recalled dealings with FAAs in interview, nor appeared to value their contributions (as also observed in Gudjonsson et al. 2000).

The very closeness which makes the FAA a welcome support for many young suspects, and an engaged observer of the process, can nevertheless result in an intervention which is problematic in tone, misguided or unhelpful to the defence position. However, what is most striking in the findings is not so much the challenge of identifying unfair questioning, but rather the FAA's inability to hold the officers to account where they had identified a problem. The adversarial nature of the interview means that for some their lack of professional expertise, and their alignment with the suspect in the eyes of the officer, makes them liable to coercion themselves. As with other aspects of the custody process, the power imbalance between family member and officer, the unfamiliar demands of the process, and the fraught nature of the interrogation coalesce to undermine the effectiveness of the protection, lending support to previous findings (Woolard, Cleary, Harvell and Chen 2008).

Conclusions

This chapter addressed the central purpose of the custodial process in most cases: the obtaining of evidence through questioning. The picture which emerges is a very concerning one. Although there is some evidence of good practice, of young participants treated in an age-appropriate way who felt able to advance their account effectively, these voices are few and far between. The majority of young participants describe the experience of interview in extremely negative terms, and provide compelling evidence that their engagement was severely challenged by their physical and emotional state, and by the very adult, and often oppressive, interviewing techniques that many encountered.

The evidence suggests that FFI processes may be failing to identify all those who are unfit, whilst those who require extra assistance to be able to participate effectively in their interview may not be adequately supported. In addition, young participants, many without pre-existing conditions, recounted occasions where the challenges of the interview were exacerbated by their poor physical and emotional state following lengthy periods in the cell, often with inadequate sleep and food. The analysis indicates that these problems arise because of a number of different issues. In particular, although Annex G sets out in some detail what aspects the CO should consider, the evidence suggests that an assessment of fitness for interview is rarely fully engaged in the case of a young suspect, particularly in light of the ubiquitous presence of the AA. Even where such an assessment is pursued, as with other stages of the process, desperation to leave the station is liable to prevent young suspects raising issues of fitness themselves for fear that this will delay their release. In addition, inadequate information, time constraints and a lack of child and adolescent expertise conspire to make identification of such issues by AAs, solicitors and HCPs really challenging. And ultimately, even where concerns are identified, for example at risk assessment, there was no evidence of additional support being provided, or specific adjustment being put in place.

Mandatory training in child development and prevalent conditions giving rise to participation difficulties would certainly support COs to make better decisions around FFI and additional support for those at risk in interview. However, a significant proportion of the problems revealed by this study stem from, or are significantly exacerbated by, the fact that the assessment of the child and the provision of appropriate support, occurs in the resource- and time-constrained setting of the custody suite. The young suspect is not in a state of mind, or an environment, conducive to meaningful assessment of their functional capacity. The necessary information is hard to obtain in time, and where specific support is required (an intermediary, or a particular key-worker for example) it will often be impracticable to arrange that support within a time frame that is manageable for a child being detained in a cell, and the CO watching the PACE clock. As is apparent from the analysis here and chapter 5, whilst an AA, particularly a FAA, can provide emotional support to a young suspect, and may provide assistance with minor comprehension difficulties, the idea that an AA of any sort is in a position adequately to address functional deficits of any significance increasingly appears to be a fallacy.

The overwhelming inference from the evidence surrounding FFI is that the current processes, even where followed, rarely function effectively in the custody suite precisely because they occur in the custody suite. In all but the most serious cases, there is a compelling argument that young suspects should be bailed to attend for interview enabling them in the interim to be suitably assessed, and for additional support to be arranged, where that is required. Where the young suspect is previously unknown to the youth justice system a screening appointment with L&D in the community could be arranged in advance of interview to identify if there are any pre-existing dispositional difficulties which give rise to fitness concerns. For those without such difficulties, interview by appointment would allow them to attend for questioning in a physical and emotional state which is more conducive to the making of good decisions and the provision of reliable evidence.

Despite the promise of PEACE interviewing (Bull 1999, Clarke and Milne 2001) as a method for obtaining “accurate and reliable information from suspects...in order to discover the truth about matters under police investigation” (Home Office Circular 22/1992), the accounts of young participants suggest that ‘case construction’ and the obtaining of a confession remain prominent police objectives in child suspect interviews. The overwhelming thrust of the accounts in this study suggest that many interviewing officers fundamentally fail to show the “special care” required in Code C NFG 11C, or to question children in a “child-friendly” manner, making allowance for their vulnerability and needs. This is disappointing given that the requirement for adjustment to the needs of young suspects and defendants could not be more clearly or more frequently restated - in domestic legislation,¹⁹⁰ guidance,¹⁹¹ National Police Chief Council strategies,¹⁹² domestic and European caselaw,¹⁹³ and international conventions and guidelines.¹⁹⁴

Undoubtedly mandatory training for officers interviewing young suspects, and guidance on the conduct of such interviews would help to improve their quality. The difficulties described by young participants in interview underline how important it is for a programme similar to the ABE guidance for interviewing vulnerable witnesses

¹⁹⁰ eg Equality Act 2010, s19.

¹⁹¹ eg College of Policing APP(II) 1.

¹⁹² eg National Strategy for the Policing of Children & Young People 2015, Key Principles.

¹⁹³ *HC (A child), R (on the application of) v Secretary of State for the Home Department & Anor* [2013] EWHC 982 (Admin) [43 and 50], *G* [2003] UKHL 50 at [53], *Panovits and Cyprus*

¹⁹⁴ 1989 UNCRC; The Beijing Rules; Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 17/11/10, IV, C, 33.6.

(Ministry of Justice 2011) to be developed for the interviewing of young and vulnerable suspects. Indeed it is surprising, and it should be chastening in light of young participant accounts, to consider that guidance for vulnerable witness interviewing has been in existence since the publication in 1992 of the Memorandum of Good Practice on Video Recorded Interviews with Child Witnesses for Criminal Proceedings (Home Office and Department of Health 1992) and yet there are not yet even proposals for similar work for young and vulnerable suspects.

However, the persistence of oppressive, confession-seeking tactics for young suspects, even following the introduction of the PEACE model, suggests that there is a more deep-seated problem which further training and guidance is unlikely to address effectively. From a young suspect perspective at least, the evidence suggests that there is a fundamental problem with the adversarial process in the police station, and particularly in the police interview. In court the adversarial process functions effectively, in so far as it does, because of the presence of the judge (or magistrates), the referee for the contest, who decides whether one side needs additional supports, and when questioning has overstepped the mark in some way. In the custody suite there is of course no referee. In the absence of a referee it is perhaps unsurprising if the rules of the game are not, as the evidence demonstrates, scrupulously observed. The check on police malpractice is the risk that evidence obtained in breach of the codes may be excluded (s76-78 PACE). However, in the case of young suspects, as discussed in the introduction, there will rarely be any chance of scrutiny in the courts, and an admission will often be dealt with by way of caution or referral order. The evidence in this study emphasises just how problematic the adversarial approach is for young suspects in practice, raising the question of whether more problem-solving approaches (Taylor 2016, Carlile 2014) should be investigated for young people in contact with the criminal justice system, or whether it is necessary to consider some additional oversight of the investigative process for young suspects, perhaps by an examining magistrate.

Young participants' reflections on the contributions of their solicitors during interview suggest that a good solicitor can provide significant and vital support to a young suspect: curtailing oppressive questioning techniques, supporting communication and providing young suspects some sense of control in the interview. However, in the first instance, as discussed in chapter 6, too many young suspects refuse legal advice. Even for those who do engage that support, the prevalence of coercive techniques in their accounts of police interview suggest that not every solicitor is as engaged, or

perhaps as skilled, as they need to be to protect their young clients. The findings emphasise the critical importance of competent legal support for every young suspect. If children are to continue to be interviewed following detention in police custody, the case for mandatory legal advice for young suspects, or at the very least a presumption (Taylor 2016), grows ever stronger. But such provision will be ineffective if it is not resourced by legal advisers with sufficient specialist training, and sufficient funding, to provide competent support.

As with other aspects of the custody process, the evidence in respect of the contribution of the AA to interview is mixed. It is concerning to have received so little positive material about NFAAs in interview. It may be that their engagement recedes in the memory of a young participant more quickly than more emotive recollections of the officer's questioning or parental intervention. Nonetheless, the findings in their regard suggest that further research is required to understand whether the NFAA's efficacy is undermined by the overlapping of their role with that of the solicitor, and what is gained by this aspect of the role where a solicitor also attends. Additionally, their apparent difficulties in identifying oppressive techniques do call into question whether it is realistic to require a lay person, even one with training, to monitor whether the interview is being conducted "fairly and properly". The FAA's contribution in interview reveals, as elsewhere in the process, the tension between the substantial support they can often provide by virtue of their emotional connection with the young suspect, and the challenge of fulfilling that role without training or professional standing.

Reviewed as a whole, the evidence of this chapter suggests that the coercive approach taken in interview by many officers has a tendency to be significantly counterproductive. Young participants' accounts indicate that the various techniques adopted (the use of repetitive questioning, leading questions, the drawing of unfair inference or misleading the interviewee) are liable to cause confusion and frustration rather than to elicit reliable evidence, and may even lead to false admissions. Indeed, as discussed above, these techniques have been associated in psychological research with false confessions, especially where used against children (Gudjonsson et al. 2006; Gudjonsson 2003; Kassin et al. 2010). The danger of eliciting evidence from a suspect using age-inappropriate questioning techniques is well-documented not only in this jurisdiction, where for example the false confessions of children in the *Confait* case (Fisher 1977) were instrumental in the introduction of the Police and Criminal Evidence

Act 1984 , but also in other jurisdictions (see for example the ‘Central Park Jogger’ case, and Feld (2006) for a discussion of juvenile false confession cases in the US).

In addition, there is evidence to support the contention that such questioning approaches have a counter-productive effect in respect of later detention episodes and interrogations. A number of young participants suggest that, having endured such questioning once, they tended to make no comment on later occasions. Indeed, there is indication in Chapter 6 in addition that solicitors too may, in light of such approaches, be inclined to advise no comment unless a caution is the likely outcome. The findings suggest that these coercive techniques have the capacity to undermine the whole purpose of the interview, and indeed the entire detention process, namely the obtaining of reliable evidence in interview. The findings suggest that quantitative research is needed to examine the rate at which young suspects make no comment in police custody, and the frequency with which young people answer questions in full in interview to matters which are not resolvable by caution. The data in this study suggests that the latter figure would be worryingly low.

But unfair and coercive techniques in interview can have yet more lasting negative effects. Scholars of the procedural justice perspective identify that an individual is more likely to ascribe legitimacy to a law enforcement authority, and accept their immediate decision, if they are treated in a procedurally just manner. Procedural justice in this context encompasses fairness in decision-making (‘quality of decision-making’) and treatment with respect and dignity (‘quality of treatment’) (Tyler 1990; 2003; Bottoms and Tankebe 2012). However, it is notable that the young participants’ accounts of interview pulsate with resentment and negative characterizations of the process. Young participants described variously how in interview they felt: targeted (Alex), manipulated (Zayn, Luke, Alex), lied to (Carter, Elijah, Alex), wound up (Logan), provoked (Kate) tripped up (Kyle), tricked (Carter, Sadie, Avery), mixed up (Rezar), caught out (Aidan, Carter, Abigail) intimidated (Simon), patronised (Harper), pressurised (Logan, Riley), baited (Luke), egged on (Nathan) and dictated to (Harper).

Such treatment has the capacity to alienate not just the young suspects themselves. But there is also the danger that police legitimacy is fatally undermined in family members, on whom the criminal justice system relies to support desistance. FAA2 was clear about the effect of her son's custodial arrest for her,

I really have no faith, and that's the one thing I've always had faith in, the police. Yeah, respect for them doing their job and all that, but obviously the way they treated a child that had never even spoken to a police officer, and me, I just think they're worse than some criminals really.

Chapter 8

Conclusions

Given the numbers of young people who pass through the police station each year, many never to have further contact with the criminal justice system, it is surprising that we have previously had so little information about their experiences. This study makes a substantial, original contribution to our understanding in this area providing, for the first time in England and Wales, an in-depth exploration of young suspects' experiences of police custody, and a qualitative review of the workings of the process as a whole for children and young people. I return here to the question posed in the introduction: are we satisfied that injustices of the sort which occurred in the *Confait* Case are not being repeated today? In doing so I draw together the findings of the study in respect of the two questions designed to illuminate that enquiry. Firstly, how do children and young people experience detention as a suspect, and in particular to what extent do they feel able to participate effectively in the process? And secondly, how is policy regarding the detention of young suspects implemented in police custody? The short answer is that there remains significant scope for injustice arising from the detention and questioning of children as suspects. The longer answer examines the factors which give rise to this state of affairs, and offers some tentative suggestions for improving the position of young suspects.

How do Young Suspects Experience Being Detained in Police Custody?

Although responses varied considerably, and across detention episodes, the majority of young participants recounted detention experiences which were deeply painful. The agony of waiting in a bare and restricting cell was at worst almost intolerable, at best exhaustingly boring and frustrating. The isolation of the cell, and the blank lack of distraction was difficult for some to cope with; whilst the noise of neighbouring detainees was for some a welcome distraction, for others it could be irritating or alarming. Many lacked an understanding of the process and experienced significant uncertainty about what would happen and how family and friends would react. Some,

particularly the youngest participants, found the experience frightening, whilst for others waiting could be deeply distressing. Their accounts underline how critical the protections are, in terms of mitigating the process and enabling young people to participate, particularly in the later critical questioning phase.

Sometimes the sympathy or concern of COs and staff brought welcome relief. Friendly officers who were not judgemental and took what might be described as a “child-friendly” approach, were much appreciated. However many young participants experienced police custody as degrading and humiliating, especially where staff responded in a reciprocal fashion to non-compliant behaviours, or acceded inconsistently to requests on the buzzer. Such treatment was experienced as punitive, disrespectful, and emblematic of a lack of care, and could trigger a vicious cycle of more problematic, defiant behaviour and harsher responses by officers. Alternatively, some young participants lapsed into resigned helplessness, whilst others still adopted more maladaptive responses such as resorting to attempts to self-harm.

The analysis has revealed how deeply affecting police detention can be for young suspects. In her 2011 study Skinns observed that the feelings described by adult suspects were “reminiscent of the (endogenous) pains of imprisonment identified by Sykes” (Sykes 1958; Skinns 2011b, 202). In particular she noted that detainees in her research experienced the pains of “deprivation of liberty, deprivation of goods and services, and deprivation of autonomy” (Sykes 1958; Skinns 2011b, 202). Subsequently Wooff and Skinns (2017, 565ff) have reflected on the “liminality”, the feeling of being “in limbo”, and the uncertainty of the custody experience, as contributing to those pains of detention, particularly deprivation of liberty. The accounts in this study reveal detention to be psychologically painful for young suspects in respect of these same “pains”. However, young participant experiences were often characterised by a more profound sense of deprivation than that conceptualized by Sykes, albeit of shorter duration, and a more destabilising form of uncertainty than that described by Wooff and Skinns’ participants. In particular, the very lengthy period of containment in the blank cell, marked by a lack of distraction and meaningful interaction with others, and an absence of clarity about what was happening and when they might be released, induced in some a sense of loss of control more fundamental than can adequately be captured by the concept of “deprivation of autonomy”. As Carter described “it makes you go a bit mad”. For Tom the experience was particularly extreme: “It’s just being trapped in a room. I was literally, I felt like I wanted to kill

myself. I was just locked in a room. It's horrible. It is one of the worst experiences you can ever have, I think."

In addition, young participants described a sense of containment, the all-encompassing restriction of the cell, which could be more profound than the "deprivation of liberty" ordinarily experienced in a prison setting. Several, like Tom, referred to their detention as being "trapped" or "stuck in a cage" (Alex):

it's horrible, it's just out of the comfort zone. Like, you're always texting someone, you're always got someone to talk to, and then all of a sudden you're just shoved in like a cage sort of like room and then you've got nothing to do, doing nothing, you've just gotta wait. You've just gotta wait – and you dunno how long it's gonna be. (Will)

The experiences of these young participants more closely align with those of young people held in solitary confinement in the US: "since it's a small room it makes you think crazy" (Santo 2015), "They treat you like an animal" "It can make you go crazy" (Bronx Defenders 2014, 3, 7) (see also Haney et al. 2016). Although these accounts are associated with much longer-term or 'supermax' confinement, the experiences recounted by young participants, including loss of control, self-harm and suicidal ideation, have long been identified as associated with solitary confinement (Haney 2003; Hagan et al. 2018), leading to its prohibition for young people under The United Nations Standard Minimum Rules for those in custody (the Mandela Rules).¹⁹⁵

Similarly, comparisons with the prisons literature in respect of young suspects' behavioural responses to the detention experience also tend to reveal the distinct nature of police detention for children, in comparison with the prison experience. Assessing the responses of prisoners in a medium-secure institution, Crewe identified a typology of "adaptive styles" engaged by adult prisoners: "enthusiasts", "pragmatists", "stoics", "retreatists" and "players", based primarily on their "compliance with institutional means and goals" (Crewe 2009, 156). Seeking to apply this typology to young suspects provides some insights into the police custody experience for young suspects. In the present study a number of young suspects, particularly those who were regularly

¹⁹⁵ The Mandela Rules prohibit solitary confinement (defined as less than 2 hours of meaningful contact with others daily) for any young person – a prohibition which is urged upon the UK government by both the Equality and Human Rights Commission: *Protecting human rights: Key challenges for the UK's third universal periodic review*, 2016, accessible at <https://www.equalityhumanrights.com/sites/default/files/protecting-human-rights-uk-third-universal-periodic-review-december-2016.pdf>, last accessed 23/04/19 and The British Medical Association, The Royal College of Paediatrics and Child Health, and The Royal College of Psychiatrists: *Joint position statement on solitary confinement of children and young people* (2018).

detained, behaved on occasion in a manner that Crewe (2009) has identified as “pragmatist” - complying for “mainly instrumental and fatalistic” reasons, considering resistance “either impossible or imprudent” (Crewe 2009, 167). Amongst these young suspects fatalistic reasoning, “you can’t do nowt about it” (Cole), rather than instrumental approaches tended to predominate. Other “adaptive styles” within the typology identified by Crewe as being adopted by prisoners on the basis of “their compliance with institutional means and goals” (2009, 156) are harder to identify. No young participant could be convincingly described as an “enthusiast”. Such a prisoner, according to Crewe’s typology, demonstrates “committed compliance” to the normative aims and means of the institution (Crewe 2009, 157). Insofar as any young participant, like Sandor, embraced the gathering of evidence, particularly the opportunity to provide their own account in interview, there is little indication that they approved of the institutional means, their incarceration, to achieve this. Similarly, in respect of extra-PACE institutional goals such as deterrence, although several young participants acknowledged the use of harsh conditions to discourage future episodes, “it’s not meant to be nice in there” (Tom), there was no clear indication of a normative alignment with this aim.

Likewise, there was little scope for behaviour that might be described as that of a “player” – outward compliance masking “backstage forms of resistance” (Crewe 2009, 200). Resistance, which I frequently observed and was often described by young participants, was inevitably more openly enacted in police custody, in physically resisting restraint, in making noise or “messing up” the cell, although it was always in the end subdued. We see glimpses of “player”-like behaviour and “backstage” resistance in Jayden’s “longing out” of the RA process, and his and Hussain’s “no comment” strategy to antagonise interviewing officers. However, the resistance they engaged was generally very limited, and futile, in the sense that they tended to disadvantage themselves by it. As a result to describe them as “players” is something of a misnomer. Similarly, there was sometimes a measure of resistance in more maladaptive behaviours, such as the use or attempt of self-harm. However, this was more often engaged in as a “frontstage” activity, as a regressive response to intolerable circumstances or an effort to get attention.

In short whilst there is some correspondence in adaptive behaviour between young suspects and prisoners, the application of the typology tends rather to reveal a number of differences between their responses, underlining the distinct features of the

custody suite in comparison with the prison experience. First is the immediacy and total nature of the police detention experience. For young participants, especially those with limited experience, the pains of detention are so immediate, the control so total and the correspondence of aims and means often so obscure, that submission is more apt to describe their behaviour than compliance. They are subdued rather than persuaded, and their focus tends to be on just enduring the process. Notably, the acute nature of the police custody experience, and its extreme restrictions, tends to produce in young suspects a preponderance of more negative and destructive behaviours: fatalism, futile resistance or maladaptive responses, unaccompanied by the sort of compliance or acceptance observed in Crewe's prisoners. Secondly, although as Crewe acknowledges, typologies are not fixed, those of the young suspect are strikingly contingent, variable not durable. One individual might engage in pragmatic behaviour on one occasion, but on another, due to variation in circumstances, may resort to maladaptive responses. Or an individual might change response during a detention episode, moving from pragmatism to maladaptation very swiftly.

It is perhaps more fruitful to think of the young suspect's experience as akin to that of the inmate in a "total institution", in which there is no "cultural victory" but the creation and sustaining of a "particular kind of tension between the home world and the institutional world" (Goffman 1968, 23-4). This persistent tension in police custody is a useful tool for "management", which in the suspect's case includes not just containment but the elicitation of evidence. The young suspect is "systematically, if often unintentionally, mortified" (1968, 24ff) – by the "stripping" of his or her personal possessions, the "admissions procedures" of public booking-in, risk assessment and the taking of photographs and samples. They undergo a total "loss of self-determination" (1968, 47ff) within the cell, where they must submit to staff for every need to be met. In this context the "player"-like behaviour of Jayden and Hussain is more apt to be considered a "secondary adjustment" engaged in not to advantage the young suspect but simply to provide the young person "with evidence that he is still his own man" (Goffman 1968, 56) (or person). Resistant behaviours too map better onto the "intransigent line" of "flagrantly refusing to cooperate", which Goffman describes as a temporary state liable to resolve into "situational withdrawal" (1968, 61-2), a regressive, maladaptive response.

To What Extent do Young Suspects Feel Able to Participate in the Custody Process as a Result?

In contrast to Goffman's inmates, young suspects are, whilst coping with these tensions, expected at the same time to engage with new information, assimilate advice and ultimately undergo questioning. The evidence in this study underlines how negatively the detention experience, and the alien and adversarial environment of the custody suite, affect young suspects' capacity to participate effectively in these processes. In considering effective participation, I focus on the young person's capacity to understand the process and to engage actively with it, notably by making decisions and exercising their defence rights, most notably in interview (drawing particularly on *SC v UK*, *T v UK*, *V v UK*, and *Panovits v Cyprus*).

Lack of understanding of the various aspects of the process emerges repeatedly during the empirical chapters. Failures of comprehension occurred across the process, starting with a total lack of awareness of the authorisation of detention process, lack of appreciation of the purpose of the RA, and misunderstanding of the scope and operation of their rights and entitlements. Critically, many young suspects failed to appreciate the role and benefits of the solicitor, and the nature of their right of silence.

Against this background, it is unsurprising that the majority of young participants displayed significant deficiencies in their decision-making. Not only did lack of understanding reduce abilities to make informed decisions, but, as we saw in Chapter 6, the toll of the process meant that some did not engage at all in rational decision-making, being too exhausted or desperate to make considered choices. As touched on above, for some the need to exercise agency led to poor decision-making in respect of silence in interview. Whilst for others natural developmental immaturity and limited capacity for future orientation (Cohen et al. 2016; Blakemore 2018; Cauffman and Steinberg 2012) led them to make decisions driven by the imperative of "getting out" as quickly as possible, rather than considering their longer-term legal best interests. The evidence also suggests that the presence of supportive adults could raise tensions, as the paternalistic approach of FAAs came into conflict with the solicitor's legal advice. Additionally, concerns arising from peer loyalties, and anxiety not to "grass", further constrained and distorted young suspects' decision-making. In short, the young suspect is hampered in their decision-making by virtue of their natural developmental immaturity, their situational vulnerability and the particular pressures arising from the inadequacy of protections intended to support them.

The interview itself brings into sharp focus these participation difficulties, as I discuss in detail in Chapter 7. Some young participants felt able to maintain their decisions and answer questions effectively in interview. However, many young participants who did answer questions recounted a range of persuasive, even oppressive, techniques employed by interviewing officers, particularly “tripping” and “twisting” questioning, which hampered their ability to give their account of the allegation. For some young participants this meant that on future occasions they decided to forgo their right to advance an account and make no comment instead. Likewise, the evidence suggests that solicitors also frequently advised silence as a result, especially where a caution was unlikely to follow. Equally troubling, where young participants had decided to exercise their right of silence, their accounts suggest that some interviewing officers engaged in sustained tactics to undermine their decision, with some suggestion that, far from making allowance for their natural developmental immaturity, officers deliberately sought to exploit it. Inevitably an effective interview would be expected to place some pressure on a suspect, but the evidence of this study suggests that in navigating the tension between fairness and effectiveness, ever-present in policing (Skogan and Frydl 2004), the approach too often taken prioritises effectiveness at the expense of fairness. Where the suspect is a child this approach is fundamentally problematic, given the evidence of young people’s vulnerability to interrogative pressure (Kassin et al. 2010; Redlich and Goodman 2003).

The widespread challenges in participating effectively in the process, particularly in interview, are deeply worrying. The data raises real concerns about the fairness of the custody process in practice for young suspects and the reliability of the evidence obtained; evidence which is often critical to any future prosecution (Ashworth 1994). The findings suggest that a child suspect’s right to a fair trial under Article 6 of the United Nations Convention on Human Rights (incorporated into the UNCRC in Article 40) is often fundamentally challenged by their experiences in police custody, and that the requirement to support participation and pursue a “child-friendly” approach, which is repeated across soft law instruments such as the Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice, is too often not met.

Wider Exclusionary Effects

Indeed the custody process may not only be counterproductive in terms of the lack of reliable evidence elicited. Far from fostering effective participation, the findings suggest that police custody can have a wider exclusionary effect. The detention of a suspect is a critical moment for the criminal justice system's relationship with the suspected individual. Ashworth (1994) notes that a pre-trial system should impose "minimum burdens" on individuals subject to it – "no punitive action until conviction". The accounts of young participants underline why this is so critical. In combination with the disrespectful and disproportionately harsh treatment that many young participants recounted, processes experienced as unfair could undermine the legitimacy of the police in the eyes of young suspects, and in turn young suspects' relationship with authority more generally.

Procedural justice has been observed to comprise both fairness in decision-making ('quality of decision-making') and treatment with respect and dignity ('quality of treatment') (Tyler 1990; 2003; Tyler and Huo 2002; Bottoms and Tankebe 2012). A significant number of young participants held negative views of the police arising from their experiences. Some related this directly to manipulative treatment in interview. Carter for example explained that the police are "just as untrustworthy as the criminals.... because they're lying to you, to catch you out.". For others this was more closely connected to what they perceived to be generally disrespectful and unfair treatment, "they just piss me off because they think they can throw their weight around because they've got a police badge on" (Robert). For a number of young participants their negative views arose from what they considered to be extended periods in the harsh environment of the cell, which they felt were not warranted by the low level of the allegation. Alex, for example, described how, "When I go there for no reason, that's what really makes me look at them a different way and it just brings on hatred."

Adults also recognised the ill-feeling which arose when young suspects felt they had been disproportionately harshly treated in custody. Sol9 observed a "mismatch between the police and the prosecution approach at court", particularly where a young person had been remanded by the police but bailed at court. This led in his view to "a generation growing up calling them (police) 'pigs'.". Officers too noted "a real contrast with the rest of the youth justice system" (CO43), as CO40 observed, "They go to court and are released. They're angry with the police, 'You had me in a cell and the court released me.' Everyone's bitter.". The APPGC received similar accounts from

young people of experiences with the police which were “both negative and long-lasting, cementing hostile and distrustful views of the police for years to come” (APPGC 2014b) (see also (Rogowski 2000, 61; Goldsmith 2011).

Negative views of the police following custodial encounters were disproportionately expressed by those who were regularly detained and those who had experienced three or more custodial episodes. This reflects, to a degree, research into anticipatory injustice (that is the expectation of unfair or discriminatory treatment in the legal system) in the US (Woolard, Harvell, and Graham 2008). However, in contrast to Woolard et al’s findings, BAME young people were not over-represented in this group. However, notably, the very small group of those who expressed positive views about the police subsequent to a custodial experience was disproportionately comprised of white young people who had had only one experience in police custody.

Of concern in addition to this hostility were the observations of several young participants that, as a result of their experiences in the custody suite, they would not trust the police or go to them for assistance in future. Tom explained his reservations:

it’s the sort of thing where if I needed them I wouldn’t even bother... I just wouldn’t wanna call ‘em, just because I don’t think they’re that nice people. Since I was in there for so long and they were useless when I was in there, I just don’t really think they’re that trustworthy.

Given the high levels of victimization amongst young people who find themselves in conflict with the law (Rivara et al. 1995, Smith and Ecob 2007), this position is extremely concerning.

Research in the US context suggests that punitive experiences with the police can negatively shape the formation of young people’s wider “civic identity” (Weaver and Lerman 2010, 819), as part of a “hidden curriculum” of “anticitizenry” education by the state through which young people are:

bombarded with messages that they are not citizens belonging to the group of the whole in charge of governing, but are a class of problem people to be excluded, monitored, and surveilled, treated harshly and punished arbitrarily. (Justice and Meares 2014, 167) (see also Bernuz Beneitez and Dumortier 2018)

Young participant accounts lend some support to this line of argument. As Carter reflected: “Basically, I get treated like this, what’s the point? The police officer don’t see criminals as equals to them, they see ‘em as people that are just...I don’t know, they’re less anyway so....”.

How is Policy Regarding the Detention of Young Suspects Implemented?

These negative experiences underline the importance of the range of adjustments to the custody process which young suspects should enjoy. These are enshrined not only in domestic legislation, such as PACE, and its accompanying Code C, and national guidance, such as the APP, but reinforced by international obligations, in particular the UNCRC and its accompanying instruments. This study has revealed that, in practice, these adjustments and protections are often not implemented, or where they are implemented are frequently ineffective.

Perhaps most significant amongst these is the right of a child to be detained only where “strictly”¹⁹⁶ necessary, under section 37 PACE, reinforced by Article 37 of the UNCRC which prohibits child detention save “as a measure of last resort”. Despite some signs of a “sea change” (Dehaghani 2017a), too often young people were detained where the strict necessity grounds were not made out. Secondly, despite the requirement for the prioritisation of young suspects, the need to detain them for the “shortest appropriate period” (UNCRC Article 37) and not overnight unless “absolutely necessary”¹⁹⁷ the evidence in Chapter 4 suggests that children are not routinely prioritized in processing or investigation, and are frequently detained for more than ten hours, and often overnight pre-charge. Thirdly, child suspects are often not treated as “children first”¹⁹⁸, and in a way that recognises their distinct needs (UNCRC Articles 37 and 40). In particular they are routinely detained for lengthy periods in an adult cell, contrary to Code C 8.8, shorn of their possessions and without adequate means to distract themselves in their isolated confinement. Whilst some staff were empathetic and approached them in a manner consistent with their age, too often responses to children were routinised and displayed a depletion of sympathy, particularly where a young person did not manifest or “perform” their vulnerability (Brown 2015, Dehaghani 2017b). Young suspects were routinely not made aware of provisions which could have mitigated their isolation and uncertainty, such as the right to speak to an appropriate adult (‘AA’) “at any time” (Code C 3.18) and to make a phonecall (Code C 5.6). Notably the provision of support for girls was not offered in a manner likely to trigger uptake.

¹⁹⁶ APP(CYP) 2.

¹⁹⁷ APP(CYP) 2.

¹⁹⁸ Para 4.1, NPCC, National Strategy for the Policing of Children and Young People 2015, 2016.

Other entitlements and protections, both those available to suspects of all ages and those specific to young suspects, although nominally implemented, were often ineffective. For example, the RA process - lengthy, untailored to young suspects' capacities and frequently undertaken in public and in the presence of adult suspects - often failed to elicit complete or reliable information to enable adjustment of the detention experience. Likewise, young suspects whilst routinely provided with the Notice of Rights and Entitlements, were rarely able to engage usefully with the material contained within it, and were likely to display scepticism about the utility of those rights (Choongh 1997).

Perhaps of most concern is the operation of the AA protection, the most significant adjustment for a young suspect. This was invariably implemented, at least for interview. However, the role was rarely performed as envisaged on paper. The evidence indicates that young suspects are spending protracted periods in custody without AA support, and that when present, AAs may be unable, or disinclined, to fulfill all aspects of this complex role. FAAs were often able to provide substantial emotional support for a young suspect, although this was not without complication, but struggled to support young suspects' understanding of the process and to act as guardians of their rights. Conversely, NFAAs were better-placed to protect a young suspects' process rights, but seemed rarely to exert effective pressure on COs and staff to ensure due process. They were also often unable to establish rapport with the young suspect, and were limited in their advisory and support role by their lack of legal privilege.

Similarly whilst legal advice was routinely offered in some form of words, young suspects also engaged inconsistently with this support. Too frequently young suspects waived their right to legal advice, often without appreciating the vital support that a solicitor could provide and preoccupied with concerns that calling a solicitor would delay their release. Solicitors who could establish a rapport, and demonstrate that they cared and could be relied upon, were warmly appreciated. However, a number of young participants found it difficult to trust the solicitor and to provide full instructions. Engaging with legal advice could also be problematic, where young participants, often exhausted and frustrated by time in the cells, had to get to grips with complex advice and balance the often competing demands of the various authority figures: police, FAA and solicitor. Young participant accounts of interview suggest that a child-friendly approach to questioning is frequently not employed, and that solicitors

and AAs often failed to insulate young suspects from oppressive interviewing techniques.

Worryingly, protections which were ineffectively engaged sometimes had the unfortunate effect of exacerbating the experience of a young suspect. For example, the evidence suggests that delays in securing the attendance of the AA could extend the overall detention time for a young suspect. Having to engage with a scheme AA could be experienced as intrusive and contribute to the frustration experienced by a young suspect. Conversely, the presence of a FAA could disincline a young suspect to provide a full account of an allegation to a solicitor or to follow legal advice in interview.

Of particular concern was the prevalence of significant vulnerabilities within the cohort of young people encountered in this study. In line with the prevalence data referred to in the introduction, many young suspects and participants had complex dispositional vulnerabilities and some also had adverse experiences in their histories, arising from trauma, loss or victimization. Young people looked after by the local authority were disproportionately represented in both young suspect and young participant groups. The failure to implement protective policies, or the inadequate application of protections, tended to have a particularly adverse impact on these most vulnerable young people, who were often detained for long periods, and struggled to engage supportive provisions. In the inflexible surrounds of the custody block, where acknowledged at all, additional vulnerabilities tended to be addressed with a view to reducing institutional risk rather than maximising welfare, particularly emotional welfare.

Finally, the contingent nature of the custody process also meant that where supportive policies were inadequately implemented, young suspects' more negative experiences could have a cumulative effect on later parts of the process. So, failure to prioritise a young arrestee at booking-in, for example, could affect the manner in which the young person behaved, and thus was treated, at the desk, and their willingness to engage with the RA, which could in turn significantly affect the care they received in detention. Most significantly, young participants described how lengthy and distressing experiences in the cell could result in disengagement in legal consultation, and poor decision-making and performance in interview.

Continued Scope for Injustice?

I return to the question posed in the introduction: can we be satisfied that injustice of the sort experienced by Lattimore, Salih and Leighton is not being repeated today? The evidence reviewed in answering the questions above suggests that we cannot comfort ourselves that the police custody process now functions in a way which insulates young suspects effectively against unfairness. Granted, today the three young suspects would almost certainly be informed of their core, “continuing” rights, in particular their right to legal advice. However, as the findings in Chapters 3 and 4 suggest, that notification of rights and entitlements would be unlikely to be as full as procedures require, and it is probable that the three young suspects would fail to appreciate and engage their rights in significant respects. In particular the evidence explored in Chapter 6 indicates a likelihood that the three young participants may have waived their right to legal advice, and may have struggled to engage effectively with their solicitor if they chose to be represented.

Similarly, the three young suspects would almost certainly be interviewed in the presence of an AA. However, as Chapters 5 and 7 lay bare, an AA, particularly a FAA, as is frequently the case, may be ineffective in interview. It may be that a murder suspect today would be interviewed by a specialist officer, trained in advanced PEACE techniques, but the evidence suggests that even for serious charges the young suspects may well be interviewed in a manner which is oppressive, and with which they would struggle to participate effectively. Perhaps most worryingly, as far as communication support is concerned, the consideration of fitness for interview in Chapter 7 reveals that, even were Lattimore’s learning disability to have been identified, he would be highly unlikely to be supported by anyone more expert than his parents, nor would the interviewing officer necessarily be trained to be able to adjust his or her interviewing technique accordingly.

This unpromising assessment raises the more fundamental question of why the protections introduced following the *Confait* Case are not implemented, or prove to be inadequate, and what can be done to improve matters. As the empirical chapters unfolded a range of factors - structural, legal, institutional and individual - have been identified which contribute to the widespread failure of the current process to protect young suspects.

Limitations in the Legal Framework

Striking deficiencies are revealed in the formulation of the AA protection, the single most significant adjustment available for a young suspect. As explored in detail in Chapter 5, the protection, as set out in Code C and related guidance, is inherently contradictory. The young suspect is disadvantaged in a number of respects, and his welfare, due process and participation needs to be addressed. However, the evidence reveals that seeking to meet those needs through the efforts of a single individual is misconceived, and the role seems rarely to be satisfactorily fulfilled. This difficulty is exacerbated by the AA's lack of legal privilege which hampers the efforts of NFAs still further.

However, perhaps even more fundamental than these concerns is the neutering of the protection as a result of the control imposed by the CO. One cannot expect the AA to operate as an effective check and balance on the CO when their access to the young suspect, their understanding, and indeed their very retention of the role, is within the gift of the CO him or herself. This approach is "theoretically unsound", as Lord Devlin has noted in respect of similar expectations placed on the police in wider investigation: "There is a great difference between playing fair with an opponent, which the police are rightly required to do, and holding the balance between him and yourself" (1979, 71).

Structural Factors

Structural factors also feed into this troubling position. Breaches of PACE and Code C requirements are enabled, in particular, by the low visibility of the custody suite, especially for young suspects. Of particular concern is the fact that the focus on diversion and out of court disposals for young suspects produces a raised emphasis on obtaining admissions in interview, but at the same time there is a reduced likelihood that the circumstances giving rise to those admissions will be the subject of scrutiny in court. Additionally, young participants' accounts suggest that they are unable to make use of other accountability structures. Where young participants felt aggrieved about their treatment more generally, the power imbalance they experienced in custody meant that, if they knew of the process for making a complaint, they felt that pursuing such a course would be futile. Indeed those few who had complained had been unsuccessful and were adamant that they would not repeat the experience.

The evidence suggests that other mechanisms for ensuring that protections for child suspects are observed in police custody also fall short. ICV participants were often aware of failures to achieve adjustment, such as detention “not in a cell” (Code C 8.8), but appeared to have had little purchase on addressing these deficiencies (in line with observations of Kendall 2018). Likewise, HMIC inspections, such as those conducted in the observation areas in this study, frequently identified the lack of alternatives to detention in a cell for young detainees, but this seemed not to trigger action or change.

Resourcing issues, can also be clearly identified as contributing to this undermining of welfare and due process concerns. The lack of multi-agency support in the community was a factor in a number of avoidable detentions observed in this study. Cuts to police funding were also felt, not only in terms of longer investigation times, which extended detention periods but also in terms of the staffing of the block. With bigger, busier suites, lower staffing levels and more paperwork, the sheer pressure of the job was liable to overwhelm the effective implementation of protections. Pressure contributed to PACE protections becoming reduced to tick box requirements, as physical safety concerns, and institutional risks, were prioritized over emotional well-being.

Limited resources affected the capacity of other supportive adults as well, particularly solicitors and AAs, to fulfill their roles. Contractual arrangements and fixed fees for solicitors were widely acknowledged to have reduced their capacity to support young suspects beyond the immediate requirements of the interview. Their late arrival and swift departure, as identified in Chapter 6, meant that they could provide little effective input in respect of authorisation or review of detention, enable young suspects’ wider engagement with their rights, or support their understanding of the later stages of the process. Likewise, the contractual arrangements of scheme AAs were raised as a factor in their reduced presence in the custody suite and the limited hours of scheme operation.

Finally, the physical facilities available to custody staff also played a part in exacerbating detention experiences. Even were a CO or CA to appreciate the ramifications of a particular vulnerability, there would be little scope for them to adjust the conditions of detention for a young suspect. In all blocks there was a shortage of ‘non-cell’ accommodation, space for an AA to sit out with a YP, and little means of adjusting the detention space. Coupled with this, the brief period which a custody episode spans brought its own difficulties. As we saw in Chapter 5 the brevity of an

AA's time with a young suspect is problematic in terms of building rapport. Whilst in Chapter 7 we saw how the ticking PACE clock provides little scope for a fuller assessment of a young suspect's fitness for interview, and the arrangement of an intermediary would be exceptionally difficult within such a short time span.

Individual factors

The lack of training of COs and staff is also implicated in implementation failures. Many COs and CAs did their best to care for young suspects but, as we saw in Chapters 3 and 4, were themselves hampered by a lack of training with regard to communicating with young suspects, and understanding the ramifications of some of the common dispositional vulnerabilities, such as ADHD, ASC, and LD, with which they presented (a problem noted in previous reviews HMIC 2015, APPGC 2014). Although required by policy to take a "children first" approach they are not supported with the expertise to do so. Thus, many failed to appreciate where adjustments were required in respect of particular presentations, or to make the link between problematic behaviour and vulnerability. As a result, officers tended to fall back on normative assumptions about vulnerability, so that too frequently only those young suspects who were "upset and tearful" (CA11), who performed their vulnerability (Dehaghani 2017b), were accorded more sympathetic treatment. Those who behaved in a less compliant, more openly transgressive, way appeared to lose the right to a welfare-focused approach. Officer responses were also constrained by the relentless and pressurized nature of the job, and the constant fear that a misjudgement of the risk a suspect presented might result in a detainee coming to serious harm under their watch. This latter factor tended to lead to a young person's vulnerability being viewed as a risk to be managed, triggering more intrusive responses.

The Adversarial Process and Vulnerability

Were the resources and will to be available, there are undeniably changes which could be made to improve protections for young suspects by addressing some of these factors. For example, Chapter 5 illustrates that, in contrast to the recent reframing of the AA role (in the updated Code C), what is required is a full review of the role of the AA, with consideration given to separating the competing duties which comprise the protection, and considering the introduction of specialist communication support for cases of significant need. Likewise, Chapter 6 identifies that the provision of properly resourced, mandatory legal advice, or at the very least a presumption in favour of legal

advice for young suspects (as recommended in Taylor 2016), would address some of the concerns in respect of young suspects' access to legal advice.

However the evidence of this study, and the lack of significant progress for young suspects in the 40 years since the Fisher Report (1977), make plain that such changes will not achieve substantial improvements, because they do not address the two issues which lie at the heart of the problem: the adversarial nature of the police custody setting, combined with the huge differential, in terms of power and capacity, between the police officer and the child.

The adversarial nature of the criminal justice process has been the subject of criticism in respect of child defendants (Carlile 2014), but arguably it is at its most problematic in the police custody phase of the youth justice system. Although the police remit in investigation is to pursue evidence which both leads towards and away from the suspect we have seen in this study that the approach to the young suspect, and indeed often the FAA, is fundamentally an adversarial one. In this framing the "obtaining" or "securing" of evidence which is the basis for detention becomes an exercise in "case construction" (McConville et al. 1991) rather than unbiased enquiry and the young suspect is approached not as unconvicted child but as perpetrator, "here for a reason" (CA3, CA42).

This gives rise to a fundamental conflict within the role of the CO. He or she is required by PACE to act as an independent guardian of the welfare and rights of the young suspect. Yet this position is fundamentally at odds with the institutional objectives of the police generally, and the CO's investigating colleagues in particular, since refusal to authorise detention, the timely provision of supports such as legal advice and the presence of a well-informed appropriate adult are likely to diminish the prospects of admissions in interview. It is unsurprising, therefore, that often in this study, as in previous investigations, COs do not act as "guardians of suspects' rights" but rather "work to achieve police goals." (Choongh 1997, 179). Conscious that they are in the "house" of the prosecution (Rezar), young suspects also take an adversarial approach to the CO and custody staff, and the protections that they purport to provide. It is understandably difficult for them to appreciate that the CO offers independent help from lawyers, healthcare practitioners and AAs, when the CO's position is, self-evidently, in opposition to him or her.

At the same time, the young suspect, is particularly disadvantaged in this adversarial setting. The CO (and staff) are in complete control of the environment, the

provision of information and support to the young suspect, and whether, and when, they can be released. Every suspect is, as a result, situationally vulnerable in police custody (Brown 2015, 31) but this problematic position is more extreme for young suspects whose natural developmental immaturity exacerbates their difficulties. There is no other moment in the youth justice system where the welfare needs of the child suspect/defendant are more pronounced, or their legal jeopardy greater. The product of the police interview is frequently determinative of the case as a whole, yet, as the young participants revealed, the child suspect is often substantially disadvantaged by the toll of the custody process and unable to participate effectively as the functioning of the system requires.

Additionally, this combination of adversarial approach and the youth of the child suspect, particularly their capacity for reform, bring other institutional motivations into play which are also inimical to a due process and welfare- oriented approach to young suspects. Predicated on the assumption that the young person in question has been involved in some criminality, some COs and CAs expressed the view that a detention episode could have a positive effect on the child. In particular there was the sense that custody operated as a form of “naughty step” (CO12), that a period might “do the trick” (CA10) and set the young person “on the right path” (CO34). In this thinking a rights violation is understood as a “courtesy to the child” (Goldson 2002, 52). Allied to this was the view expressed by some that custody has a role in teaching young people “what is done when you have done something wrong” (CA21). This use of police custody as a form of “social discipline” is not new (Choongh 1997), nor is this “pedagogic” approach to policing as a means of communicating norms to young people (Loader 1996, 88). However we see in this study how such a view gives rise to an embedded sense of ‘less eligibility’, where the affording of comforts and support, being too “warm and fluffy” (CO12), is considered to undermine the power and purpose of the custodial episode.

To return to Packer’s (1964) models, officers pursuing these institutional motivations might be understood to prioritise a “crime control” approach. The “due process” concerns of PACE, Code C and the APP are acknowledged in so far as they are required to legitimise the process and the evidence which may be obtained, but are otherwise drowned out. Legal advice is offered because it must be recorded on the custody log, but further explanation to ensure an understanding of the right so that the young suspect can engage meaningfully with it is not necessary to achieve institutional

objectives and so can be overlooked. Likewise the AA, is almost always present for interview, since they must feature on the record of the interview if it is to be admissible, but enabling the AA to fulfill his or her wider supportive role is not valued and is, as a result, rarely prioritized. Consequently, Code C and the APP, tend to function in practice more as a ‘fig leaf’, legitimizing what is in some cases disproportionately harsh and sometimes unfair treatment. Functioning in this way policy creates a sort of “ideological façade” (Reiner 2010, 117) which enables wider agencies of the criminal justice system to turn a blind eye. As a result, the risks of injustice identified in the Fisher Report persist (1977), and the young suspect remains substantially under-protected in comparison to the young defendant at court.

A Tentative Proposal

In short, the findings of this study suggest that the custody process, as currently configured, operates in a largely counter-productive fashion for children and young people. Too frequently it fails to achieve statutory aims, in terms of obtaining reliable evidence, or even institutional objectives, putting the young suspect “on the right path”, and instead fuels resentment and alienation. This study suggests that, whilst there will always be a need for some form of secure detention for very serious cases, otherwise, detention should be avoided at all costs for young suspects. It is plain, however, that such a substantial change in approach is unlikely to be achieved without a fundamental rethinking of the adversarial nature of the custody process. How this might be achieved is difficult to envisage given the resistance such a proposal is likely to incur. The RCCP observed in 1981 that “change to a fully-fledged inquisitorial system, even if it could be shown to be desirable, would be so fundamental in its effect upon institutions that had taken centuries to build as to be impossible on political and practical grounds” (RCCP 1981, 4). I do not doubt that remains the position, even in respect of young suspects and defendants. However, the evidence of this study suggests that a quasi-judicial role in police custody for young suspects may be the only way of ensuring that detention is only authorized in accordance with the necessity criteria, and that young suspects who are detained understand their rights and are afforded the required protections.¹⁹⁹ Such a role could be fulfilled remotely by a lay magistrate, using the video-link technology

¹⁹⁹ I am indebted to Vicky Kemp who initially posed the idea of an examining magistrate at discussions during the iSPER Child Suspects Symposium, *Obtaining Best Evidence from Child Suspects in Police Custody – Challenges and Opportunities*, University of Plymouth, 30/11/18

currently in place in many custody suites. The custody process would then be reserved, as policy intends, only for those cases in which it was strictly necessary.

Concluding Reflections

Within the policing and custody world there seems to have grown up a tacit acceptance of the inadequacy of the custody suite to accommodate the needs of young suspects. Martin Hewitt, as Assistant Commissioner of the Metropolitan Police, described as “unthinkable” the prospect of his own children being detained in a police custody suite “kind though the staff are”,²⁰⁰ a view I heard echoed by officers and professionals during this project. Without evidence of how young people experience police custody, and cope with the demands of the process, it is not possible to challenge those who hold such views to act to make the necessary changes. It is hoped that the evidence produced by this study will begin the process of bringing the experiences of young suspects out of the shadows and into the light, so that those changes can be made.

²⁰⁰ Speaking at the Howard League for Penal Reform’s Children and Policing Conference, 08/11/17.

References

- Adams, C. (2000) "Suspect Data: Arresting Research." in Roy D. King and Emma Wincup, eds. *Doing research on crime and justice*, 1st ed. New York: Oxford University Press.
- Alderson, Priscilla (1995) *Listening to Children: Children, Ethics and Social Research*. Barkingside: Barnardo's.
- All Party Parliamentary Group for Children (2014a) *Children and the Police inquiry: Oral evidence session 2: The detention of young people in police custody*. London: National Children's Bureau.
- All Party Parliamentary Group for Children (2014b) "*It's all about trust*": *Building good relationships between children and the police. Report of the inquiry held by the All Party Parliamentary Group for Children, 2013-2014*. London: National Children's Bureau.
- Allen, David, Carys Evans, Andrew Hider, Sarah Hawkins, Helen Peckett, and Hugh Morgan (2008) "Offending Behaviour in Adults with Asperger Syndrome." *Journal of Autism and Developmental Disorders* 38 (4):748-758.
- Amnesty (2018) *Trapped in the matrix: Secrecy, stigma and bias in the Met's Gangs Database*. London: Amnesty International.
- Anckarsäter, Henrik, Thomas Nilsson, Jean-Michel Saury, Maria Råstam, and Christopher Gillberg (2008) "Autism spectrum disorders in institutionalized subjects." *Nordic Journal of Psychiatry* 62 (2):160-167.
- Anckarsäter, Henrik, Thomas Nilsson, Ola Ståhlberg, Mats Gustafson, Jean-Michel Saury, Maria Råstam, and Christopher Gillberg (2007) "Prevalences and configurations of mental disorders among institutionalized adolescents." *Developmental Neurorehabilitation* 10 (1): 57-65.
- Ashworth, Andrew (1994) *The criminal process: an evaluative study*. Oxford: Clarendon Press; New York: Oxford University Press.
- Back, Les (2007) *The art of listening*. Oxford: Berg.
- Baldwin, John (1991) "Summarising tape recordings of police interviews." *Criminal Law Review* (Sep): 671-679.

- Baldwin, John (1992) *The Conduct of Police Investigations: Records of interview, the Defence Lawyer's Role and Standards of Supervision*, Royal Commission on Criminal Justice, Research Study Nos. 2, 3 and 4. London : HMSO.
- Baldwin, John and Michael McConville (1979) *Jury trials*. Oxford: Clarendon, Oxford University Press.
- Barnes, Karen, and J. Clare Wilson (2008) "Young People's Knowledge of the UK Criminal Justice System and Their Human Rights." *International Journal of Police Science and Management* 10 (2): 214-221.
- Bartlett, Peter and Ralph Sandland (2003) *Mental Health Law Policy and Practice*. Oxford: Oxford University Press.
- Bateman, Tim (2017) A Night in the Cells: Children in police custody and the provision of non-familial appropriate adults. Accessible at <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2018/06/A-Night-in-the-Cells.pdf>, last accessed 18/07/19.
- Bath, Chris (2014) "Legal Privilege and Appropriate Adults." *Criminal Law & Justice Weekly* 178 (27): 404.
- Bath, Chris, Bina Bhardwa, Jessica Jacobson, Tiggey May, and Russell Webster (2015) *There to help: Ensuring provision of appropriate adults for mentally vulnerable adults detained or interviewed by the police*. London: National Appropriate Adult Network. Accessible at https://www.appropriateadult.org.uk/images/pdf/2015_theretohelp_complete.pdf, last accessed 23/04/19.
- Beckett, Helen, and Camille Warrington (2015) "Making justice work: experiences of criminal justice for children and young people affected by sexual exploitation as victims and witnesses." University of Bedfordshire, <http://uobrep.openrepository.com/uobrep/handle/10547/347011>, last accessed 23/04/19.
- Belloni, Frank P and Jacqueline Hodgson (2000) *Criminal injustice: an evaluation of the criminal justice process in Britain*. Basingstoke: Macmillan.
- Bernuz Beneitez, Maria José, and Els Dumortier (2018) "Why Children Obey the Law: Rethinking Juvenile Justice and Children's Rights in Europe through Procedural Justice." *Youth Justice* 18 (1): 34-51.
- Bevan, Miranda (2015) Investigating young people's awareness and understanding of the criminal justice system: An exploratory study, Howard League for Penal Reform, accessible at: <https://howardleague.org/wp-content/uploads/2016/06/Investigating-young-people%E2%80%99s-awareness-and-understanding-of-the-criminal-justice-system.pdf>, last accessed 23/04/19.

- Bevan, Miranda (2017) "Vulnerable Suspects: The Investigation Stage" in Penny Cooper and HHJ Heather Norton eds. *Vulnerable People and the Criminal Justice System*. Oxford: Oxford University Press.
- Blackstock, Jodie, Ed Cape, Jacqueline Hodgson, A. Ogorodova, and Taru Spronken (2014) *Inside police custody: An empirical account of suspects' rights in four jurisdictions*. Cambridge: Intersentia.
- Blagrove, Mark (1996) "Effects of Length of Sleep Deprivation on Interrogative Suggestibility." *Journal of Experimental Psychology: Applied* 2 (1): 48-59.
- Blakemore, Sarah-Jayne (2018) "Avoiding Social Risk in Adolescence." *Current Directions in Psychological Science* 27 (2): 116-122.
- Bonnie, Richard J., and Elizabeth S. Scott (2013) "The Teenage Brain: Adolescent Brain Research and the Law." *Current Directions in Psychological Science* 22 (2): 158-161.
- Bosk, Charles L. (2002) "Obtaining Voluntary Consent for Research in Desperately III Patients." *Medical Care* 40 (9):V64-V68.
- Boswell, Gwyneth (1996) *Young and dangerous: the backgrounds and careers of Section 53 offenders*. Aldershot: Avebury.
- Bottoms, Anthony E. and by J. D. McClean (1976) *Defendants in the criminal process*. London: Routledge and Kegan Paul.
- Bottoms, Anthony, and Justice Tankebe (2012) "Beyond procedural justice: a dialogic approach to legitimacy in criminal justice" *The Journal of Criminal Law and Criminology* 102 (1): 119-170.
- Bourdieu, Pierre (1990) *The logic of practice*. Cambridge: Polity.
- Bowen, Phil (2017) *Building Trust: How our courts can improve the criminal court experience for Black, Asian and Minority Ethnic defendants*. London: Centre for Justice Innovation.
- Bowling, Ben, and Coretta Phillips (2003) "Policing ethnic minority communities." in Tim Newburn, ed. *Handbook of Policing*. Cullompton: Willan Publishing.
- Boyatzis, Richard E (1998) *Transforming qualitative information: Thematic analysis and code development*. Thousand Oaks, California: SAGE Publications.
- Bradley, Lord Keith (2009) *The Bradley Report: Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system*. London: The Department of Health.

- Braun, Virginia, and Victoria Clarke (2006) "Using thematic analysis in psychology." *Qualitative Research in Psychology* 3 (2):77-101.
- Broeking, Julia Miriam Christina (2003) "Parents' involvement in youth justice proceedings from the perspective of youth: A pilot study." Master of Arts, Department of Human Development and Applied Psychology, Ontario Institute for Studies in Education,, University of Toronto, unpublished.
- Bronx Defenders (2014) *Voices from the Box: Solitary Confinement at Rikers Island. A Report by the Bronx Defenders Solitary Confinement Project*. New York: The Bronx Defenders. Accessible at <https://www.bronxdefenders.org/wp-content/uploads/2014/09/Voices-From-the-Box.pdf>, last accessed 23/04/19.
- Brookman, Fiona, and Harriet Pierpoint (2003) "Access to Legal Advice for Young Suspects and Remand Prisoners." *Howard Journal of Criminal Justice* 42 (5): 452-470.
- Brown, David C., Tom Ellis and Karen Larcombe (1992) *Changing the Code: Police Detention under the Revised PACE Codes of Practice*. Home Office Research Study No. 174. London: Home Office.
- Brown, David C. (1997) *PACE ten years on: a review of the research*. London: Home Office.
- Brown, Kate (2015) *Vulnerability and young people: care and social control in policy and practice*. Bristol: Policy Press.
- Bryan, Karen, Jackie Freer, and Cheryl Furlong (2007) "Language and communication difficulties in juvenile offenders." *International Journal of Language & Communication Disorders* 42 (5): 505-520.
- Bucke, Tom and David Brown (1997) *In police custody: police powers and suspects' rights under the revised PACE codes of practice*. London: Home Office.
- Buckingham, David (1991) "What are words worth? Interpreting children's talk about television." *Cultural Studies* 5 (2): 228-245.
- Bull, Ray (1999) "Police Investigative Interviewing." in Amina Memon and Ray Bull, eds. *Handbook of the psychology of interviewing*. Chichester: Wiley.
- Cain, Maureen E. (1973) *Society and the policeman's role*. London: Routledge and Kegan Paul.
- Cant, Richard, and Penny Standen (2007) "What professionals think about offenders with learning disabilities in the criminal justice system." *British Journal of Learning Disabilities* 35 (3): 174-180.

- Cape, Edward (2011) *Defending suspects at police stations: the practitioners' guide to advice and representation*. 6th ed. London: Legal Action Group.
- Cape, Edward, Jacqueline Hodgson, and Taru Spronken (2007) *Suspects in Europe*. Antwerp: Intersentia Ltd.
- Carlile, Lord Alexander (2014) *Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court Chaired by Lord Carlile of Berriew CBE QC*. London: National Children's Bureau.
- Carter, Elisabeth (2011) *Analysing Police Interviews: Laughter, Confessions and the Tape*. London: Bloomsbury.
- Casey, Betty Jo, Sarah Getz, and Adriana Galvan (2008) "The adolescent brain." *Developmental Review* 28 (1): 62-77.
- Cauffman, Elizabeth, and Laurence Steinberg (2012) "Emerging Findings from Research on Adolescent Development and Juvenile Justice." *Victims & Offenders* 7 (4): 428-449.
- Ceci, S., A. Crossman, M. Scullin, L. Gilstrap, and M. Huffman. 2002. "Children's Suggestibility Research: Implications for the Courtroom and the Forensic Interview." in H Westcott, G Davies and Ray Bull eds. *Children's Testimony: a handbook of psychological research and forensic practice*. New York: Wiley.
- Chaulk, Sarah J., Joseph Eastwood, and Brent Snook (2014) "Measuring and Predicting Police Caution Comprehension in Adult Offenders." *Canadian Journal of Criminology and Criminal Justice* 56 (3): 323-340.
- Chitsabesan, Prathiba, Leo Kroll, Sue Bailey, Cassandra Kenning, Stephanie Sneider, Wendy McDonald and Louise Theodosiou (2006) "Mental Health Needs of young offenders in custody and in the community". *British Journal of Psychiatry* 188: 534-540.
- Choongh, Satnam (1997) *Policing as social discipline*. Oxford: Clarendon, Oxford University Press.
- Chown, Nick (2010) "'Do you have any difficulties that I may not be aware of?' A study of autism awareness and understanding in the UK police service." *International Journal of Police Science and Management* 12 (2): 256-273.
- CJJI (2011) *Who's looking out for the children? A joint inspection of Appropriate Adult provision and children in detention after charge*. Accessible at <https://www.justiceinspectors.gov.uk/hmicfrs/media/whos-looking-out-for-the-children-20111215.pdf> , last accessed 23/04/19.

- Clare, Isabel C. H. and Gisli H. Gudjonsson (1992) *Devising and piloting an experimental version of the 'Notice to detained persons'*. Home Office Research Study No. 7. London: HMSO.
- Clarke, Colin and Rebecca Milne (2001) *National evaluation of the PEACE investigative interviewing course*. Police Research Award Scheme. Report No: PRAS/149. London: Institute of Criminal Justice Studies. Accessible at <https://sofi.org/wp-content/uploads/peaceinterviewcourse.pdf>, last accessed 23/04/19.
- Clarke, Colin, Rebecca Milne, and Ray Bull (2011) "Interviewing Suspects of Crime: The Impact of PEACE Training, Supervision and the Presence of a Legal Advisor." *Journal of Investigative Psychology and Offender Profiling* 8 (2): 149-162.
- Cohen, Alexandra O., Kaitlyn Breiner, Laurence Steinberg, Richard J. Bonnie, Elizabeth S. Scott, Kim Taylor-Thompson, Marc D. Rudolph, Jason Chein, Jennifer A. Richeson, Aaron S. Heller, Melanie R. Silverman, Danielle V. Dellarco, Damien A. Fair, Adriana Galván, and Betty Jo Casey. 2016. "When Is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts." *Psychological Science* 27(4): 549-562.
- Cohen, Louis, Lawrence Manion and Keith Morrison (2000) *Research methods in education*. 5th ed. London: Routledge.
- Connolly, Paul (2008) "Race, gender and critical reflexivity in research with young children." in Pia Monrad Christensen and Allison James eds. *Research with children: perspectives and practices*. Abingdon: Routledge.
- Cooper, Penny, and David Wurtzel (2013) "A day late and a dollar short: In search of an intermediary scheme for vulnerable defendants in England and Wales." *Criminal Law Review* (1): 4-22.
- Counihan, Carole Marie, and Steven L. Kaplan (1998) *Food and gender: identity and power*. Amsterdam, The Netherlands: Harwood Academic Publishers.
- Crabtree, Benjamin F., and William F. Miller (1992) "A template approach to text analysis: developing and using codebooks." in Silverman ed. *Doing Qualitative Research*. Thousand Oaks, California: SAGE Publications.
- Crewe, Ben (2009) *The prisoner society: power, adaptation, and social life in an English prison*. Oxford: Oxford University Press.
- Crown Prosecution Service (2019) *Youth Offenders: Legal Guidance, Youth crime*. Accessible at <https://www.cps.gov.uk/legal-guidance/youth-offenders>, last accessed 23/04/19.

- Cummins, Ian (2007a) "A Path Not Taken? Mentally Disordered Offenders and the Criminal Justice System." *Journal of Social Welfare and Family Law* 28 (3-4): 267-281.
- Cummins, Ian (2007b) "Boats against the Current: Vulnerable Adults in Police Custody." *Journal of Adult Protection* 9 (1): 15-24.
- Cummins, Ian (2008) "A place of safety? Self-harming behaviour in police custody." *The Journal of Adult Protection* 10 (1).
- Cummins, Ian (2011) "'The Other Side of Silence': The Role of the Appropriate Adult Post-Bradley." *Ethics and Social Welfare* 5 (3): 306-312.
- Dehaghani, Roxanna (2017a) "Automatic Authorisation: an exploration of the decision to detain in police custody." *Criminal Law Review* (3): 187-202.
- Dehaghani, Roxanna (2017b) "'Vulnerable by law (but not by nature)': examining perceptions of youth and childhood 'vulnerability' in the context of police custody." *Journal of Social Welfare and Family Law* 39 (4): 454-472.
- Dehaghani, Roxanna (2019) *Vulnerability in Police Custody: Police decision-making and the appropriate adult safeguard*. Abingdon: Routledge.
- Dehaghani, Roxanna, and Daniel Newman (2019) "Can - and Should - Lawyers be Considered 'Appropriate' Appropriate Adults?" *The Howard Journal of Crime and Justice* 58 (1): 3-24.
- Dent, Helen, and Rhona Flin (1992) *Children as witnesses*. Chichester: Wiley.
- Department for Education (2014) *Children's Homes Data Pack*. London: Department for Education.
- Devlin, Patrick (1977) *The Judge*. Oxford: Oxford University Press.
- Dixon, D. 1990. "Juvenile suspects and the Police and Criminal Evidence Act." in David A. C. Freestone ed. *Children and the Law*, Hull: Hull University Press.
- Dixon, David (1992) "Legal Regulation and Policing Practice." *Social & Legal Studies* 1 (4): 515-541.
- Drake, Kim E., Raymond Bull and Julian C.W. Boon (2008) "Interrogative Suggestibility, Self-Esteem, and the Influence of Negative Life Events." *Legal and Criminological Psychology* 13: 299-307.

- Eder, Donna, and Laura Fingerson (2002) "Interviewing children and adolescents" in Jaber F. Gubrium and James A. Holstein eds. *Handbook of interview research: Context and Method*. Thousand Oaks, California: SAGE Publications.
- Evans, Roger (1993) *The Conduct of Police Interviews with Juveniles*, Royal Commission on Criminal Justice, Research Study No. 8. London: HMSO.
- Evans, Roger (1994) "Police interrogations and the Royal Commission on Criminal Justice." *Policing and Society* 4 (1): 73-81.
- Feld, Barry C. (2006) "Police Interrogation of Juveniles: An Empirical Study of Policy and Practice." *The Journal of Criminal Law and Criminology* 97(1): 219-316.
- Fenner, Susanne, Gisli.H. Gudjonsson, and Isabel C.H. Clare (2002) "Understanding of the current police caution (England and Wales) among suspects in police detention." *Journal of Community and Applied Social Psychology* 12 (2): 83.
- Fereday, Jennifer, and Eimear Muir-Cochrane (2006) "Demonstrating rigor using thematic analysis: A hybrid approach of inductive and deductive coding and theme development." *International journal of qualitative methods* 5(1): 80-92.
- Fisher, Sir Henry (1977) *Report of an inquiry by the Hon. Sir Henry Fisher into the circumstances leading to the trial of three persons on charges arising out of the death of Maxwell Confait and the fire at 27 Doggett Road, London SE6*. London: HMSO.
- Fram, Sheila M. (2013) "The constant comparative analysis method outside of grounded theory." *The Qualitative Report* 18(1): 1-25.
- France, Alan (2003) "Young People" in Sandy Fraser, Vicky Lewis, Sharon Ding, Mary Kellett and Chris Robinson eds. *Doing research with children and young people*. London: SAGE Publications.
- Geertz, Clifford (1973) *The interpretation of cultures: selected essays*. New York: Basic Books.
- Gendle, Kate, and Jessica Woodhams (2005) "Suspects who have a learning disability: Police perceptions toward the client group and their knowledge about learning disabilities." *Journal of Intellectual Disabilities* 9(1): 70-81.
- Glaser, Barney G. and Anselm L. Strauss (1968). *The Discovery of Grounded Theory: Strategies for Qualitative Research*. London: Weidenfeld and Nicolson.
- Goffman, Erving (1968) *Asylums: Essays on the social situation of mental patients and other inmates*. Harmondsworth: Penguin Books.

- Goldsmith, Carlie (2011) "it just feels like it's always us": young people, safety and community. Unpublished PhD Thesis, University of Brighton, ProQuest Dissertations Publishing. Accessible at <https://search.proquest.com/docview/1787508154/> , last accessed 23/04/19.
- Goldson, Barry (2002) "New Labour, Social Justice and Children: Political Calculation and the Deserving/Undeserving Schism." *The British Journal of Social Work* 32(6): 683-695.
- Goldson, Barry. 2009. "COUNTERBLAST: 'Difficult to Understand or Defend': A Reasoned Case for Raising the Age of Criminal Responsibility." *Howard Journal of Criminal Justice* 48(5): 514-521.
- Goldson B. (2000) "Wither diversion? Interventionism and the new youth justice" in Goldson B ed. *The New Youth Justice*. Lyme Regis: Russell House Publishing.
- Goldson, Barry, and John Muncie (2006) "Critical Anatomy: Towards a Principled Youth Justice" in Barry Goldson and John Muncie eds. *Youth Crime and Justice*. London: SAGE Publications.
- Goldstein, Joseph (1960) "Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice." *The Yale Law Journal* 69(4): 543-594.
- Goldweber, Asha, Julia Dmitrieva, Elizabeth Cauffman, Alex R. Piquero, and Laurence Steinberg (2011) "The development of criminal style in adolescence and young adulthood: separating the lemmings from the loners." *Journal of youth and adolescence* 40(3): 332.
- Gooch, Kate, and Piers von Berg "What happens in the beginning matters in the end: Achieving Best Evidence with Child Suspects in the Police Station". (Forthcoming)
- Goodin, Robert E.E., (1985) *Protecting the Vulnerable: A Re-Analysis of our Social Responsibilities*. London: University of Chicago Press.
- Goodwin-De Faria, Christine, and Voula Marinos (2012) "Youth Understanding & Assertion of Legal Rights: Examining the Roles of Age and Power." *International Journal of Children's Rights* 20(3): 343-364.
- Goriely, Tamara (2001) *The Public Defence Solicitors Office in Edinburgh: an independent evaluation*. Edinburgh: Scottish Executive Central Research Unit.
- Gray, Paul (2015) "'I Hate Talking About It': Identifying and Supporting Traumatized Young People in Custody." *Howard Journal of Criminal Justice* 54(5): 434-450.

- Gregory, Juliette, and K. Bryan (2011) "Speech and language therapy intervention with a group of persistent and prolific young offenders in a non-custodial setting with previously un-diagnosed speech, language and communication difficulties." *International Journal of Language and Communication Disorders* (46): 202-215.
- Greig, Anne and Jayne Taylor (2007) *Doing research with children*. 2nd ed. Los Angeles: SAGE Publications.
- Grisso, Thomas (1981) *Juveniles' Waiver of Rights: Legal and Psychological Competence*. New York: Plenum Press.
- Grisso, Thomas (1997) "The competence of adolescents as trial defendants." *Psychology, Public Policy, and Law* 3: 3-32.
- Grisso, Thomas, Laurence Steinberg, Jennifer Woolard, Elizabeth Cauffman, Elizabeth Scott, Sandra Graham, Fran Lexcen, N. Reppucci, and Robert Schwartz (2003) "Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants." *Law and Human Behaviour* 27(4): 333-363.
- Grodin, Michael A., and Leonard H. Glantz (1994) *Children as Research Subjects: Science, Ethics and Law*. Oxford: Oxford University Press.
- Groundwater-Smith, Susan, Sue Dockett and Dorothy Bottrell (2015) *Participatory Research with Children and Young People*. London: SAGE Publications.
- Gudjonsson, Gisli H. (1993) "Confession evidence, psychological vulnerability and expert testimony." *Journal of Community & Applied Social Psychology* 3 (2):117-129.
- Gudjonsson, Gisli H. (1995) "Fitness for Interview during police detention: a conceptual framework for forensic assessment." *Journal of Forensic Psychiatry* (6): 185-197.
- Gudjonsson, Gisli H. (2003). *The psychology of interrogations and confessions: A handbook*. Chichester: Wiley.
- Gudjonsson, Gisli H., Gwilym D. Hayes, and Paul Rowlands (2000) "Fitness to be interviewed and psychological vulnerability: the views of doctors, lawyers and police officers." *The Journal of Forensic Psychiatry* 11(1): 74-92.
- Gudjonsson, Gisli H., Jon Fridrik Sigurdsson, Bryndis Bjork Asgeirsdottir, and Inga Dora Sigfusdottir (2006) "Custodial interrogation, false confession and individual differences: A national study among Icelandic youth." *Personality and Individual Differences* 41(1): 49-59.

- Hagan, Brian, Emily Wang, Jenerius Aminawung, Carmen Albizu-Garcia, Nickolas Zaller, Sylviah Nyamu, Shira Shavit, Joseph Deluca, and Aaron Fox (2018) "History of Solitary Confinement Is Associated with Post-Traumatic Stress Disorder Symptoms among Individuals Recently Released from Prison." *Bulletin of the New York Academy of Medicine* 95(2): 141-148.
- Haney, Craig (2003) "Mental Health Issues in Long-Term Solitary and "Supermax" Confinement." *Crime & Delinquency* 49(1): 124-156.
- Haney, Craig, Joanna Weill, Shirin Bakhshay, and Tiffany Lockett (2016) "Examining Jail Isolation: What We Don't Know Can Be Profoundly Harmful." *The Prison Journal* 96(1):126-152.
- Harrington, Richard, and Sue Bailey (2005) *Mental health needs and effectiveness of provision for young offenders in custody and in the community*. London: Youth Justice Board.
- Harrison, Yvonne, and James A. Horne (2000) "The Impact of Sleep Deprivation on Decision Making: A Review." *Journal of Experimental Psychology: Applied* 6(3): 236-249.
- Harvey, Joel (2007) *Young men in prison: surviving and adapting to life inside*. Cullompton : Willan Publishing.
- Haydon, Deena, Siobhán McAlister, and Phil Scraton (2012) "Young People, Conflict and Regulation." *Howard Journal of Criminal Justice* 51(5): 503-520.
- Hazel, Neal, Ann Hagell, and Laura Brazier (2003) *Young offenders' perceptions of their experiences in the criminal justice system. Summary and Full Report of Research Activities And Results*. Economic and Social Research Council.
- Hazel, Neal (2006) *Young offenders' perceptions of their experiences under police arrest*. Presentation at the British Society of Criminology Conference, Strathclyde University, Glasgow, 5th July 2006.
- Health Committee, House of Commons (2014) *Children's and Adolescents' Mental Health and CAMHS, Third Report of Session 2014-15*. London: HMSO.
- HMIC (2015) *The welfare of vulnerable people in police custody*. London: HMIC. Accessible at <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/the-welfare-of-vulnerable-people-in-police-custody.pdf>, last accessed 23/04/19.
- HMIC (2016) National Child Protection Inspections. The Metropolitan Police Service 1 February – 27 May 2016. Accessible at <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/met-national-child-protection-inspection.pdf>, last accessed 23/04/19.

- HMIP (2018) Her Majesty's Inspector of Prisons for England and Wales, Annual Report 2017-8, HC 1245. London: HMSO. Accessible at https://www.justiceinspectorates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2018/07/6.4472_HMI-Prisons_AR-2017-18_Content_A4_Final_WEB.pdf, last accessed 23/04/19.
- Hodgson, Jacqueline (1994) "Adding Injury to Injustice: The Suspect at the Police Station." *Journal of Law and Society* 21(1): 85-101.
- Hodgson, Jacqueline (1997) "Vulnerable suspects and the appropriate adult." *Criminal Law Review* (Nov): 785-795.
- Holdaway, Simon (1983) *Inside the British police: a force at work*. Oxford: Blackwell.
- Holdaway Simon (2003) "Final warning: Appearance and reality" *Criminology and Criminal Justice* 3(4): 351–367.
- Home Office (1995) *Appropriate Adults: Report of Review Group*. London: HMSO.
- Home Office and The Department of Health (1992) *Memorandum of Good Practice on Video Recorded Interviews with Child Witnesses for Criminal Proceedings*. London: HMSO.
- Hood, Suzanne, Peter Kelley, and Berry Mayall (1996) "Children as Research Subjects: a Risky Enterprise." *Children & Society* 10(2): 117-128.
- Howard League for Penal Reform (2016) *Criminal Care: Children's homes and criminalising children*. London: Howard League for Penal Reform. Accessible at <https://howardleague.org/wp-content/uploads/2016/03/Criminal-care-report-cover.jpg>, last accessed 23/04/19.
- Howard League for Penal Reform (2017) *Ending the criminalisation of children in residential care. Briefing one*. London: Howard League for Penal Reform. Accessible at <https://esmefairbairn.org.uk/userfiles/Documents/Publications/Ending-the-criminalisation-of-children-in-residential-care-Briefing-one.pdf>, last accessed 23/04/19.
- Hughes, Nathan, Huw Williams, Prathiba Chitsabean, Rebecca Davies and Luke Mounce (2012) *Nobody made the connection: The prevalence of neurodisability in young people who offend*. London: Office of the Children's Commissioner. Accessible at <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2017/07/Nobody-made-the-connection.pdf>, last accessed 23/04/19.
- Inch, Heather, Paul Rowlands, and Ahmed Soliman (1995) "Deliberate self-harm in a young offenders' institution." *Journal of Forensic Psychiatry* (6): 161-71.

- Ingram, A, G Johnson, and I Heyes (1997) Self harm and suicide by detained persons: a study. Police Research Award Scheme. Report No: PRAS/106. London: Police Research Group, Home Office.
- Irving, Barrie and Linden Hilgendorf (1980a) *Police interrogation: the psychological approach*. Royal Commission on Criminal Procedure, Research Study No.1. London: HMSO.
- Irving, Barrie, and Linden Hilgendorf (1980b) Police Interrogation: A Case Study of Current Practice. Royal Commission on Criminal Procedure, Research Study No.2. London: HMSO.
- Jacobson, Jessica (2008) *No one knows: police responses to suspects learning disabilities and learning difficulties, a review of policy and practice*. London: Prison Reform Trust. Accessible at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/No%20One%20Knows%20consultation%20event/No%20One%20Knows%20police%20responses%20to%20suspects%20with%20learning%20disabilities%20and%20difficulties.pdf>, last accessed 23/04/19.
- Jacobson, Jessica, Bina Bhardwa, Tracey Gyateng, Gillian Hunter, and Mike Hough (2010) *Punishing disadvantage: A profile of children in custody*. London: Prison Reform Trust. Accessible at www.prisonreformtrust.org.uk/portals/0/documents/punishingdisadvantage.pdf , last accessed 23/04/19.
- Jacobson, Jessica, and Jenny Talbot (2009) *Vulnerable Defendants in the Criminal Courts: a review of provision for adults and children*. London: Prison Reform Trust. Accessible at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/vulnerable%20defendants%20in%20the%20criminal%20courts.pdf>, last accessed 23/04/19.
- Jessiman, Tricia, and Ailsa Cameron (2017) "The role of the appropriate adult in supporting vulnerable adults in custody: Comparing the perspectives of service users and service providers." *British Journal of Learning Disabilities* 45(4): 246-252.
- Johnston, Kate, Kate Prentice, Hannah Whitehead, Lorna Taylor, Rhianna Watts, and Troy Tranah (2016) "Assessing effective participation in vulnerable juvenile defendants." *The Journal of Forensic Psychiatry & Psychology* 27(6): 802-814.
- Jones, Helen Louise (2007) "The pains of custody: How young men cope through the criminal justice system." . Unpublished PhD Thesis, University of Hull, ETHOS e-theses online service. Accessible at <https://ethos.bl.uk/OrderDetails.do?uin=uk.bl.ethos.445298>, last accessed 23/04/19.

- Jovchelovitch, Sandra, and Natalia Concha (2013) *Kids Company: A Diagnosis of the Organisation and its Interventions: Final Report*. London: Kids Company/London School of Economics and Political Science. Accessible at http://eprints.lse.ac.uk/52856/1/Jovchelovitch_Kids_Company_Diagnosis_2013.pdf, last accessed 23/04/19.
- Justice, Benjamin, and Tracey L. Meares (2014) "How the Criminal Justice System Educates Citizens." *The Annals of the American Academy of Political and Social Science* 651(1): 159-177.
- Kassin, Saul M. (2005). "On the psychology of confessions: Does *innocence* put *innocents* at risk?" *American Psychologist* (60): 215-228.
- Kassin, Saul, Steven Drizin, Thomas Grisso, Gisli H. Gudjonsson, Richard Leo, and Allison Redlich (2010) "Police-Induced Confessions: Risk Factors and Recommendations." *Law and Human Behaviour* 34(1): 3-38.
- Katz, Jack (1988) *Seductions of Crime*. New York: Basic Books.
- Kemp, Vicky (2010) *Transforming Legal Aid: Access to Criminal Defence Services*. Nottingham: Legal Reserach Services Centre.
- Kemp, Vicky (2013) "No Time for a Solicitor: Implications for Delays on the Take-up of Legal Advice." *Criminal Law Review* (3):184-202.
- Kemp, Vicky, and Jacqueline Hodgson (2016) "Chapter 4. England and Wales Empirical Findings" in Miet Vanderhallen, Marc van Oosterhout, Michele Panzavolta and Dorris de Vocht eds. *Interrogating Young Suspects: Procedural Safeguards from an Empirical Perspective*. Cambridge: Intersentia.
- Kemp, Vicky, and Nigel Balmer (2008) *Criminal Defence Services: Users' Perspectives: Interim Report*. Legal Services Research Centre.
- Kemp, Vicky, Nigel Balmer, and Pascoe Pleasence (2012) "Whose time is it anyway? Factors associated with duration in police custody." *Criminal Law Review* (10): 736-752.
- Kemp, Vicky, Pascoe Pleasence, and Nigel J. Balmer (2011) "Children, young people and requests for police station legal advice: 25 years on from PACE." *Youth Justice* 11(1): 28-46.
- Kendall, John (2018) *Regulating Police Detention, Voices Behind Closed Doors*. Bristol: Policy Press.

- Kessler, Ronald C., Patricia Berglund, Olga Demler, Robert Jin, Kathleen R. Merikangas, and Ellen E. Walters (2005) "Lifetime prevalence and age-of-onset distributions of DSM-IV disorders in the National Comorbidity Survey Replication." *Archives of General Psychiatry* (62): 593-602.
- Knapp, Martin, Vittoria Ardino, Nicola Brimblecombe, Sara Evans-Lacko, Valentina Iemmi, Derek King, Jon Snell, Silvia Murguia, Henrietta Mbeah-Bankas, Steve Crane, Abi Harris, David Fowler, Joanne Hodgekins, and Jon Wilson (2016) *Youth Mental Health: New Economic Evidence*. London: Personal Social Sciences Research Unit, London School of Economics and Political Science. Accessible at <https://www.pssru.ac.uk/pub/5160.pdf>, last accessed 23/04/19.
- Kroll, L., J. Rothwell, D. Bradley, P. Shah, S. Bailey, and R. C. Harrington (2002) "Mental health needs of boys in secure care for serious or persistent offending: a prospective, longitudinal study." *The Lancet* 359(9322): 1975-1979.
- Kurzon, Daniel (1995) "The right of silence: A socio-pragmatic model of interpretation." *Journal of Pragmatics* (23): 55-69.
- Lamb, Michael E. and Megan P. Y. Sim (2013) "Developmental Factors Affecting Children in Legal Contexts" *Youth Justice* 13(2): 131-144.
- Laming, Lord Herbert *In Care, Out of Trouble: How the life chances of children in care can be transformed by protecting them from unnecessary involvement in the criminal justice system. An independent review chaired by Lord Laming*. London: Prison Reform Trust. Accessible at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/In%20care%20out%20of%20trouble%20summary.pdf>, last accessed 23/04/19.
- Lammy, David (2017) *The Lammy Review. An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System*. Accessible at <https://www.gov.uk/government/publications/lammy-review-final-report>, last accessed 23/04/19.
- Lee, J.A. (1981) "Some Structural Aspects of Police Deviance in relations with Minority Groups" in Clifford D. Shearing *Organizational Police Deviance*. Toronto: Butterworth.
- Leggett, Janice, Wendy Goodman, and Shamim Dinani (2007) "People with learning disabilities' experiences of being interviewed by the police." *British Journal of Learning Disabilities* (35): 168-173.
- Liamputtong, Pranee (2007) *Researching the vulnerable: a guide to sensitive research methods*. London; Thousand Oaks, California: SAGE Publications.

- Liddle, M., G. Boswell, S. Wright, and V. Francis. 2016. Trauma and Young Offenders: A review of the research and practice literature. London: Beyond Youth Custody. Accessible at <http://www.beyondyouthcustody.net/wp-content/uploads/BYC-Trauma-Young-Offenders-FINAL.pdf>, last accessed 23/04/19.
- Liebling, Alison (1999) "Doing Research in Prison." *Theoretical Criminology* 3(2): 147-173.
- Littlechild, Brian (1995) "Reassessing the role of the 'appropriate adult'." *Criminal Law Review* (July): 540-5.
- Littlechild, Brian (1998a) "An end to 'inappropriate adults'?" *Childright* (144): 8-9.
- Littlechild, Brian (1998b) "Appropriate Adult Services." *Childright* (144): 8-9.
- Loader, Ian (1996) *Youth, policing and democracy*. Basingstoke: Macmillan.
- Loucks, Nancy (2007) *No one knows: Offenders with learning difficulties and learning disabilities – a review of prevalence and associated needs*. London: Prison Reform Trust. Accessible at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/No%20One%20Knows%20Nancy%20Loucks%20prevalence%20briefing.pdf>, last accessed 23/04/19.
- Luna, Beatriz, David J. Paulsen, Aarthi Padmanabhan, and Charles Geier (2013) "The Teenage Brain: Cognitive Control and Motivation." *Current Directions in Psychological Science* 22(2): 94-100.
- Lyon, Juliet, Catherine Dennison, and Anita Wilson (2000) 'Tell Them So They Listen': Messages from Young People in Custody, Home Office Research Study 201. London.
- Masson, J. 2004. "The Legal Context" in Sandy Fraser, Vicky Lewis, Sharon Ding, Mary Kellett and Chris Robinson eds. *Doing Research with Children and Young People*. London: SAGE Publications.
- Mayall, Berry (2008) "Conversations with children: Working with generational issues" in Pia Monrad Christensen and Allison James eds. *Research with children: perspectives and practices*. Abingdon: Routledge.
- McAra, Lesley (2010) "Models of youth justice" in David Smith ed. *A New Response to Youth Crime*. Cullompton: Willan.
- McAra, Lesley, and Susan McVie (2010) "Youth crime and justice: Key messages from the Edinburgh Study of Youth Transitions and Crime." *Criminology and Criminal Justice* 10(2): 179-209.

- McAuley, Robert. (2007) *Out of Sight: Crime, Youth and Exclusion*. Cullompton: Willan.
- McConville, Michael, Andrew Sanders, and Robert Leng (1991) *The Case for the Prosecution*. Abingdon: Routledge
- McConville, Michael, and Jacqueline Hodgson (with the assistance of Mark Jackson and Elizabeth MacRae) (1993) *Custodial legal advice and the right to silence*. Royal Commission on Criminal Justice, Research Study No.16. London: HMSO.
- McConville, Michael, Jacqueline Hodgson, Lee Bridges, Anita Pavlovic (1994) *Standing Accused: The Organisation and Practices of Criminal Defence Lawyers in Britain*. Oxford: Clarendon, Oxford University Press.
- McCrory, Eamon, and Essi Viding (2010) "The neurobiology of maltreatment and adolescent violence." *The Lancet* 375(9729): 1856-1857.
- McEwen, Craig A., and Bruce S. McEwen (2017) "Social Structure, Adversity, Toxic Stress, and Intergenerational Poverty: An Early Childhood Model." *Annual Review of Sociology* 43: 445-472.
- McKinnon, Iain G., and Don Grubin (2010) "Health screening in police custody" *Journal of Forensic and Legal Medicine* 17(4):209-212.
- McKinnon, Iain G., and Don Grubin (2013) "Health screening of people in police custody - evaluation of current police screening procedures in London, UK." *The European Journal of Public Health* 23(3): 399-405.
- McKinnon, Iain G., Julie Thorp, and Don Grubin (2015) "Improving the detection of detainees with suspected intellectual disability in police custody" *Advances in Mental Health and Intellectual Disabilities* 9(4): 174-185.
- Medford, Sarah, Gisli H. Gudjonsson, and John Pearse (2003) "The efficacy of the appropriate adult safeguard during police interviewing." *Legal and Criminological Psychology* 8(2): 253-266.
- Medlicott, Diana (2001) *Surviving the Prison Place: Narratives of Suicidal Prisoners*. Aldershot: Ashgate.
- Merikangas, Kathleen R., Jian-Ping He, Marcy Burstein, Sonja A. Swanson, Shelli Avenevoli, Lihong Cui, Corina Benjet, and S et al Avenoli (2010) "Lifetime prevalence of mental disorders in U.S. adolescents: results from the National Comorbidity Survey Replication - Adolescent Supplement (NCS-A)." *Journal of American Academic Child and Adolescent Psychiatry* (49): 980-89.

- Mills, Kathryn L., François Lalonde, Liv S. Clasen, Jay N. Giedd, and Sarah-Jayne Blakemore (2014) "Developmental changes in the structure of the social brain in late childhood and adolescence." *Social Cognitive and Affective Neuroscience* 9(1): 123-131.
- Ministry of Justice (2011) Achieving Best Evidence in Criminal Proceedings Guidance on interviewing victims and witnesses, and guidance on using special measures. Accessible at https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/best_evidence_in_criminal_proceedings.pdf, last accessed 23/04/19.
- Morgan, Rod, and Tim Newburn (2012) "Youth Crime and Justice" in Mike Maguire, Rod Morgan and Robert Reiner eds. *The Oxford Handbook of Criminology*, 5th ed. Oxford: Oxford University Press.
- Morrow, Virginia, and Martin Richards (1996) "The Ethics of Social Research with Children: An Overview" *Children & Society* 10(2): 90-105.
- Moston, S. (1990) "The ever-so gentle art of police interrogation." British Psychological Society Annual Conference, University College, Swansea.
- Moston, Stephen, and Terry Engelberg (1993) "Police questioning techniques in tape recorded interviews with criminal suspects." *Policing and Society* 3(3): 223-237.
- Nacro (2003) *Acting as an Appropriate Adult: A good practice guide*. London: Nacro, the Crime Reduction Charity.
- National Autistic Society (2005) "Autism: A Guide for Police Officers and Staff. London: The National Autistic Society. Accessible at <https://www.autism.org.uk/products/core-nas-publications/autism-a-guide-for-criminal-justice-professionals.aspx>, last accessed 23/04/19.
- Nemitz, Teresa, and Philip.T. Bean (1994) *Out of depth and out of sight*. Loughbrough: University of Loughborough.
- Nemitz, Teresa, and Philip Bean (1998) "The Effectiveness of a Volunteer Appropriate Adult Scheme." *Medicine, Science and the Law* 38(3): 251-257.
- Nemitz, Teresa, and Philip Bean (2001) "Protecting the rights of the mentally disordered in police stations: The use of the appropriate adult in England and Wales." *International Journal of Law and Psychiatry* 24(6): 595-605.
- Newburn, Tim, and Stephanie Hayman (2002) *Policing, Surveillance and Social Control: CCTV and police monitoring of suspects*. Cullompton: Willan Publishing.

- Newburn, Tim, Michael Shiner, and Stephanie Hayman (2004) "Race, crime and injustice? Strip search and the treatment of suspects in custody" *British Journal of Criminology* 44: 677-694.
- Norfolk, Guy A. (1997) "'Fitness to be interviewed' - A proposed definition and scheme of examination." *Medicine, Science and the Law* 37(3): 228-234.
- O'Malley, Pat, and Stephen Mugford (1993) "Crime, Excitement and Modernity" in Gregg Barak ed. *Varieties of Criminology. Readings from a Dynamic Discipline*. Westport, CT: Praeger.
- Oakley, Ann (1995) "Interviewing women: a contradiction in terms" in Helen Roberts ed. *Doing feminist research*. London: Routledge.
- Owusu-Bempah, Abenaa (2018) "The interpretation and application of the right to effective participation" *The International Journal of Evidence and Proof* 22(4): 321-341.
- Oxburgh, Laura, Fiona Gabbert, Rebecca Milne, and Julie Cherryman (2016) "Police officers' perceptions and experiences with mentally disordered suspects." *International Journal of Law and Psychiatry* 49: 138-146.
- Packer, Herbert L. (1964) "Two Models of the Criminal Process." *University of Pennsylvania Law Review* 113 (1): 1-68.
- Palmer, C. (1996) "The appropriate adult." *Legal Action* (May): 6-7.
- Parsons, Sarah, and Gina Sherwood (2016) "Vulnerability in custody: perceptions and practices of police officers and criminal justice professionals in meeting the communication needs of offenders with learning disabilities and learning difficulties." *Disability & Society* 31(4): 553-572.
- Pearse, John, and Gisli H. Gudjonsson (1996) "Understanding the problems of the appropriate adult." *Expert Evidence* 4: 101-104.
- Pearse, John, and Gisli H. Gudjonsson (1997) "Police interviewing techniques at two south london police stations" *Psychology, Crime & Law* 3(1): 63-74.
- Perks, Mark. 2010. *Appropriate Adult Provision in England and Wales. Report prepared for the Department of Health and the Home Office, by Mark Perks, Development Officer, National Appropriate Adult Network, November 2010. National Appropriate Adult Network. Accessible at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/117683/appropriate-adult-report.pdf, last accessed 23/04/19.*

- Peterson-Badali, Michele, and Rona Abramovitch (1992) "Children's knowledge of the legal system: Are they competent to instruct legal counsel?" *Canadian Journal of Criminology* (34): 130-169.
- Peterson-Badali, Michele, Rona Abramovitch, and Juliane Duda (1997) "Young children's legal knowledge and reasoning ability" *Canadian Journal of Criminology* 39 (2): 145-170.
- Peterson-Badali, Michele, Rona Abramovitch, Christopher J. Koegl, and Martin D. Ruck (1999) "Young people's experience of the Canadian youth justice system: interacting with police and legal counsel." *Behavioral Sciences & the Law* 17(4): 455-465.
- Peterson-Badali, Michele, Stephanie Care, and Julia Broeking (2007) "Young People's Perceptions and Experiences of the Lawyer-Client Relationship" *Canadian Journal of Criminology and Criminal Justice* 49 (3): 375-401.
- Phillips, Coretta and David C. Brown (1998) *Entry into the criminal justice system: a survey of police arrests and their outcomes*. London: HMSO.
- Phillips, Coretta and Earle, Rod (2010) "Reading Difference Differently?" *British Journal of Criminology* 50(2): 360-379.
- Pierpoint, Harriet (2000) "How appropriate are volunteers as 'appropriate adults' for young suspects? The 'appropriate adult' system and human rights" *Journal of Social Welfare and Family Law* 22(4): 383-400.
- Pierpoint, Harriet (2004) "A Survey of Volunteer Appropriate Adult Services in England and Wales." *Youth Justice* 4(1): 32-45.
- Pierpoint, Harriet (2006) "Reconstructing the role of the appropriate adult in England and Wales" *Criminology and Criminal Justice* 6(2): 219-237.
- Pierpoint, Harriet (2008) "Quickening the PACE? The use of volunteers as appropriate adults in England and Wales" *An International Journal of Research and Policy* 18(4): 397-410.
- Pierpoint, Harriet (2011) "Extending and professionalising the role of the appropriate adult" *Journal of Social Welfare and Family Law* 33(2): 139-155.
- Pleasence, Pascoe, and Hannah Quirk (2001) "Criminal Case Profiling Study: Final Report. Legal Services Research Centre. Accessible at https://www.researchgate.net/publication/265483925_The_Criminal_Case_Profiling_Study_Final_Report, last accessed 23/04/19.

- Plotnikoff, Joyce, and Richard Woolfson (2002) *Young Defendants Pack: Scoping study, prepared for the Youth Justice Board*. Accessible at <http://www.michaelsieff-foundation.org.uk/content/Relevant%20Report%204%20-%20Young%20Defendants%20Pack%20-%20Scoping%20Study%20Exec%20Summary.pdf>, last accessed 23/04/19.
- Presdee, Mike (2000) *Cultural criminology and the carnival of crime*. London: Routledge.
- Prison Reform Trust (2018) *Bromley Briefings Prison Factfile: Autumn 2018*. London: Prison Reform Trust. Accessible at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/Autumn%202018%20Factfile.pdf> , last accessed 23/04/19.
- Pritchard, Elisabeth (2006) *Appropriate Adult Provision in England and Wales. Report prepared for the Home Office by Elisabeth Pritchard Chief Executive of the National Appropriate Adult Network February 2006*. Accessible at http://library.college.police.uk/docs/homeoffice/NAAN_report_.pdf, last accessed 23/04/19.
- Punch, Samantha (2002) "Interviewing strategies with young people: the 'secret box', stimulus material and task-based activities." *Children & Society* 16(1): 45-56.
- Quinn, Katie, and John Jackson (2003) *The detention and questioning of young persons by the police in Northern Ireland, Northern Ireland Office Research & Statistical Series: Report No. 9*. Belfast: Statistics and Research Branch, Northern Ireland Office.
- Quinn, Katie, and John Jackson (2007) "Of Rights and Roles." *The British Journal of Criminology* 47(2): 234-255.
- Quirk, Hannah (2017) *The rise and fall of the right of silence*. Abingdon: Routledge.
- Rayner, J., T.P. Kelly, and F. Graham (2005) "Mental health, personality and cognitive problems in persistent adolescent offenders require long-term solutions: a pilot study." *The Journal of Forensic Psychiatry & Psychology* 16(2): 248-262.
- Redlich, Allison, Melissa Silverman, Julie Chen, and Hans Steiner (2004) "The police interrogation of children and adolescents" in by G. Daniel Lassiter ed. *Interrogations, confessions and entrapment*. New York: Kluwer Academic.
- Redlich, Allison, and Gail Goodman (2003) "Taking Responsibility for an Act Not Committed: The Influence of Age and Suggestibility." *Law and Human Behavior* 27(2): 141-156.

- Reiner, Robert (2010) *The Politics of the Police*. Oxford: Oxford University Press.
- Reinharz, Shulamit (1992) *Feminist methods in social research*. New York: Oxford University Press.
- Rekrut-Lapa, Tatyana, and Alexander Lapa (2014) "Health needs of detainees in police custody in England and Wales. Literature review." *Journal of Forensic and Legal Medicine* 27: 69-75.
- Revolving Doors Agency (1996) *Barnet Appropriate Adults Panel: An Evaluation* London: Revolving Doors Agency.
- Rice, Marti, and Marion E. Broome (2004) "Incentives for Children in Research." *Journal of Nursing Scholarship* 36(2): 167-172.
- Rivara, Frederick P., J. P. Shepherd, D.P. Farrington, P.W. Richmond, and Paul Cannon (1995) "Victim as Offender in Youth Violence." *Annals of Emergency Medicine* 26(5): 609-614.
- Robin-D'Cruz, Carmen, and Eleo Tibbs (2019) *Mapping Youth Diversion in England and Wales*. London: Centre for Justice Innovation. Accessible at <http://justiceinnovation.org/portfolio/mapping-youth-diversion/>, last accessed 23/04/19.
- Rock, Frances (2007) *Communicating rights: the language of arrest and detention*. Basingstoke: Palgrave Macmillan.
- Rogowski, Steve (2000) "Young offenders: their experience of offending and the youth justice system." *Youth and Policy* (70): 52-70.
- Royal College of Psychiatrists (2006) *Child Defendants: Occasional Paper 56*. Accessible at <http://www.michaelsieff-foundation.org.uk/content/Relevant%20Report%202%20-%20RCP%20-%20Child%20Defendants%20Report%20March%202006.pdf>, last accessed 23/04/19.
- Royal Commission on Criminal Procedure (RCCP) (1981) *The Investigation and Prosecution of Criminal Offences in England and Wales: The Law and Procedure*. (Cmnd 8092). London: HMSO.
- Royal Mencap Society (1997) *Barriers to Justice*. London: Mencap.
- Rusche, Georg and Otto Kirchheimer (1939) *Punishment and social structure*. New York: Columbia University Press.

- Russano, Melissa B., Christian A. Meissner, Fadia M. Narchet, and Saul M. Kassin (2005) "Investigating True and False Confessions within a Novel Experimental Paradigm." *Psychological Science* 16(6): 481-486.
- Ryle, Gilbert (1971) *Collected papers* London: Hutchinson.
- Sanders, Andrew., Lee Bridges, A. Mulvaney, and G. Crozier (1989) *Advice and Assistance at Police Stations and the 24 Hour Duty Solicitor Scheme*. London: Lord Chancellor's Department.
- Sanders, Andrew, Richard Young and Burton, Mandy (2010) *Criminal Justice*. 4th ed. Oxford: Oxford University Press.
- Santo, Alysia (2015) "Sometimes you gotta go in the shower and go knife-to-knife, right?", *This is Rikers*, The Marshall Project & New York Magazine. Accessible at <https://www.themarshallproject.org/2015/06/28/this-is-rikers>, last accessed 23/04/19.
- Sarkar, Sameer P. (2011) "In the twilight zone: adolescent capacity in the criminal justice arena." *Advances in Psychiatric Treatment* 17: 5.
- Saywitz, Karen J., and Carol Jaenicke (1987) "Children's understanding of legal terminology." Annual Meeting of the Society for Research on Child Development, Baltimore, Maryland, April 1987.
- Saywitz, Karen J., and Thomas D. Lyon (2001) "Coming to Grips with Children's Suggestibility" in Mitchell L. Eisen, Jodie A. Quas and Gail S. Goodman eds. *Memory and Suggestibility in the Forensic Interview*. Hillsdale, New Jersey: Erlbaum.
- Saywitz, Karen, Carol Jaenicke, and Lorinda Camparo (1990) "Children's Knowledge of Legal Terminology." *Law and Human Behavior* 14(6): 523-535.
- Scott Elizabeth S., and Steinberg, Laurence (2010) *Rethinking Juvenile Justice*. Cambridge MA: Harvard University Press.
- Scott, Elizabeth, and Thomas Grisso (1997) "The evolution of adolescence: A developmental perspective on juvenile justice reform." *Journal of Criminal Law & Criminology* 88(1): 137-189.
- Scott, Jacqueline (2008) "Children as respondents" in Pia Monrad Christensen and Allison James eds. *Research with children: perspectives and practices*. Abingdon: Routledge.

- Sentencing Council (2017) Sentencing Children and Young People. Overarching Principles and Offence Specific Guidelines for Sexual Offences and Robbery. Definitive Guideline. Accessible at <https://www.sentencingcouncil.org.uk/wp-content/uploads/Sentencing-Children-and-Young-People-definitive-guideline-Web.pdf>, last accessed 23/04/19.
- Sherman, Lawrence W. (1993) "Defiance, Deterrence, and Irrelevance: A Theory of the Criminal Sanction." *Journal of Research in Crime and Delinquency* 30(4): 445-473.
- Signy, D. (1997) *Barnet Appropriate Adults Panel: Third Annual Report, 1 August 1996 - 31 July 1997*. London: Barnet Appropriate Adults Panel.
- Sim, Megan Pei Ying (2013) "*Appropriate Adults' contributions during police interviews with juveniles*." 23rd Conference of the European Association of Psychology and Law, Coventry, UK.
- Sim, Megan Pei Ying, and Michael E. Lamb. (2018) "An analysis of how the police 'caution' is presented to juvenile suspects in England." *Psychology, Crime & Law*: 1-22.
- Simon, Herbert A., (1967) *Models of Man: Social and Rational - Mathematical essays on rational human behavior in a social setting*. London: John Wiley.
- Skinns, Layla (2009a) "'I'm a detainee; Get me out of here': Predictors of access to custodial legal advice in public and privatized police custody areas in England and Wales." *British Journal of Criminology* 49(3): 399-417.
- Skinns, Layla (2009b) "'Let's get it over with': Early findings on the factors affecting detainees' access to custodial legal advice." *Policing and Society* 19(1): 58-78.
- Skinns, Layla (2010) "Stop the clock? Predictors of detention without charge in police custody areas." *Criminology and Criminal Justice* 10(3): 303-320.
- Skinns, Layla (2011a) *Overnight Detention of Children in Police Cells*. Full Report. London, Howard League.
- Skinns, Layla (2011b) *Police custody: governance, legitimacy and reform in the criminal justice process*. Cullompton: Willan.
- Skinns, Layla (2019) *Police Powers and Citizens' Rights: Discretionary Decision-Making in Police Detention*. Abingdon: Routledge.
- Skinns, Layla, Lindsey Rice, Amy Sprawson, and Andrew Wooff (2017) "Police legitimacy in context: an exploration of "soft" power in police custody in England." *Policing: An International Journal* 40(3): 601-613.

- Skinns, Layla, Andrew Wooff, and Amy Sprawson (2017) "Preliminary findings on police custody delivery in the twenty-first century: Is it 'good' enough?" *Policing and Society* 27(4): 358-371.
- Skogan, Wesley, and Kathleen Frydl (2004) *Fairness and Effectiveness in Policing: The Evidence*. Washington, DC: The National Academies Press.
- Smith, David J., and Russell Ecob (2007) "An investigation into causal links between victimization and offending in adolescents." *British Journal of Sociology* 58 (4): 633-659.
- Sommerlad, Hilary (1999) *Legally aided clients and their solicitors: Qualitative perspectives on quality and legal aid*. London: Law Society.
- Soukara, Stavroula, Ray Bull, Aldert Vrij, Mark Turner, and Julie Cherryman (2009) "What really happens in police interviews of suspects? Tactics and confessions." *Psychology, Crime & Law* 15(6): 493-506.
- Spivak, Gayatri Chakravorty (1988) "Can the Subaltern speak?" in Cary Nelson and Lawrence Grossberg eds. *Marxism and the interpretation of culture*. Chicago: University of Illinois Press.
- Staines, Jo (2016) *Risk, Adverse Influence and Criminalisation. Understanding the over-representation of looked after children in the youth justice system*. London: Prison Reform Trust. Accessible at http://www.prisonreformtrust.org.uk/Portals/0/Documents/risk_adverse_influence_criminalisation_lit_review_lo.pdf, last accessed 23/04/19.
- Steinberg, Laurence, Grace Icenogle, Elizabeth P. Shulman, Kaitlyn Breiner, Jason Chein, Dario Bacchini, Lei Chang, Nandita Chaudhary, Laura Di Giunta, Kenneth A. Dodge, Kostas A. Fanti, Jennifer E. Lansford, Patrick S. Malone, Paul Oburu, Concetta Pastorelli, Ann T. Skinner, Emma Sorbring, Sombat Tapanya, Liliana Maria Uribe Tirado, Liane Peña Alampay, Suha M. Al-Hassan, and Hanan M. S. Takash (2018) "Around the world, adolescence is a time of heightened sensation seeking and immature self-regulation." *Developmental Science* 21(2): e12532.
- Steiner, Hans, Ivan G. Garcia, and Zakee Mathews (1997) "Post traumatic stress disorder in incarcerated juvenile delinquents" *Journal of the American Academy of Child Psychology and Psychiatry* (36): 357-365.
- Stuart, Marian, and Catherine Baines (2004) *Safeguards for Vulnerable Children: Three studies on abusers, disabled children and children in prison*. York: Joseph Rowntree Foundation. Accessible at <https://www.jrf.org.uk/report/safeguards-vulnerable-children>, last accessed 23/04/19.

- Sykes, Gresham M (1958) *The society of captives: a study of a maximum security prison*. Oxford University Press: Oxford.
- Taylor, Charlie (2016) *Review of the Youth Justice System in England and Wales*. (CM 9298). London: Ministry of Justice, HMSO.
- Thomson, L. D. G., V. Galt, and R. Darjee (2007) "Professionalizing the role of appropriate adults." *Journal of Forensic Psychiatry & Psychology* 18 (1):99-119.
- Tobey, Ann, Thomas Grisso, and Robert Schwartz (2000) "Youth's trial participation as seen by youths and their attorneys: An exploration of competence-based issues" in Thomas Grisso and Robert Schwartz eds. *Youth on Trial: A Developmental Perspective on Juvenile Justice*. Chicago: University of Chicago Press.
- Tyler, Tom R. (1990) *Why people obey the law*. London: Yale University Press.
- Tyler, Tom R. (2000) "Social Justice: Outcome and Procedure." *International Journal of Psychology* 35(2): 117-125.
- Tyler, Tom R. (2003) "Procedural Justice, Legitimacy, and the Effective Rule of Law." *Crime and Justice* 30: 283-357.
- Tyler, Tom R., and Yuen J. Huo (2002) *Trust in the Law: Encouraging Public Cooperation with the Police and Courts*. New York: Russell Sage Foundation.
- Ugelvik, Thomas (2011) "The Hidden Food: Mealtime resistance and identity work in a Norwegian prison." *Punishment & Society* 13(1): 47-63.
- United Nations (2016) *United Nations Committee on the Rights of the Child: Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*. New York City, NY: United Nations.
- Vaswani, Nina (2014) "The Ripples of Death: Exploring the Bereavement Experiences and Mental Health of Young Men in Custody." *Howard Journal of Criminal Justice* 53(4): 341-359.
- Veale, Angela (2005) "Creative methodologies in participatory research with children" in Sheila Greene and Diane Hogan eds. *Researching Children's Experience: Approaches and Methods*. London: SAGE Publications.
- Ventress, Michael A., Keith J.B. Rix, and John H. Kent (2008) "Keeping PACE: fitness to be interviewed by the police." *Advances in Psychiatric Treatment* 14: 369-381.

- Viding, Essi, Nathalie M. G. Fontaine, and Eamon J. McCrory (2012) "Antisocial behaviour in children with and without callous-unemotional traits." *Journal of the Royal Society of Medicine* 105(5): 195-200.
- Wacquant, Loic (2011) "From 'Public Criminology' To The Reflexive Sociology of Criminological Production and Consumption." *The British Journal of Criminology* 51(2): 438-448.
- Walford, Geoffrey (2005) "Research ethical guidelines and anonymity" *International Journal of Research & Method in Education* 28(1): 83-93.
- Weaver, Vesla M., and Amy E. Lerman (2010) "Political Consequences of the Carceral State" *American Political Science Review* 104(4): 817-833.
- White, Ciaran (2002) "Re-assessing the social worker's role as an appropriate adult." *Journal of Social Welfare and Family Law* 24(1): 55-65.
- Wigzell, Ali, Amy Kirby, and Jessica Jacobson (2015) Youth Proceedings Advocacy Review: Final Report. London: Bar Standards Board, Cilex Regulation, Institute for Criminal Policy Research.
- Williams, John (2000) "The inappropriate adult" *Journal of Social Welfare and Family Law* 22(1): 43-57.
- Williamson, Thomas M. (1993) "From interrogation to investigative interviewing; strategic trends in police questioning." *Journal of Community and Applied Social Psychology* 3(2): 89-99.
- Woodhead, Martin, and Dorothy Faulkner (2008) "Subjects, Objects or Participants? Dilemmas of Psychological Research with Children" in Pia Monrad Christensen and Allison James eds. *Research with children: perspectives and practices*. Abingdon: Routledge.
- Wooff, Andrew, and Layla Skinns (2018) "The role of emotion, space and place in police custody in England: Towards a geography of police custody." *Punishment and Society* 20(5): 562-579.
- Woolard, Jennifer L., Samantha Harvell, and Sandra Graham (2008) "Anticipatory injustice among adolescents: age and racial/ethnic differences in perceived unfairness of the justice system." *Behavioral Sciences & the Law* 26(2): 207-226.
- Woolard, Jennifer, Hayley Cleary, Samantha Harvell, and Rusan Chen (2008) "Examining Adolescents' and their Parents' Conceptual and Practical Knowledge of Police Interrogation: A Family Dyad Approach" *Journal of Youth and Adolescence* 37(6): 685-698.

- Yin, Robert K (2014) *Case study research: design and methods*. 5th ed. Thousand Oaks, California: SAGE Publications.
- Young, Susan, Emily J. Goodwin, Otilie Sedgwick, and Gisli H. Gudjonsson (2013) "The effectiveness of police custody assessments in identifying suspects with intellectual disabilities and attention deficit hyperactivity disorder." *BMC Medicine* 11: 248-258.
- Young, Susan, Marios Adamou, Blanca Bolea, Gisli H. Gudjonsson, Ulrich Muller, Mark Pitts, Johannes Thome, and Philip Asherson (2011) "The identification and management of ADHD offenders within the criminal justice system: a consensus statement from the UK Adult ADHD Network and criminal justice agencies." *BMC Psychiatry* 11: 32.
- Youth Justice Board (2007) *Accommodation needs and experiences of young people who offend*. London: Youth Justice Board.
- Youth Justice Board (2009) *Fine art or science? Sentencers deciding between community penalties and custody for young people*. London: Youth Justice Board.
- Youth Justice Board and Ministry of Justice (YJB/MOJ) (2018) *Youth Justice Statistics 2016/17, England and Wales*. London: National Statistics.
- Youth Justice Board and Ministry of Justice (YJB/MOJ) (2019) *Youth Justice Statistics 2017/18, England and Wales*. London: National Statistics.
- Zander, Michael, and P. Henderson (1993) *Crown Court Study*, Royal Commission on Criminal Justice. Research Study No.19. London: HMSO.

Appendix A

Interview Materials

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NEXT STEPS

Any questions?

If you have any questions at any time about this research please do ask.

If you can't speak to me in person, please contact me at: m.j.bevan@lse.ac.uk.

What to do if you want to take part in the research

Let me know in person, or you can contact me by:

Email: m.j.bevan@lse.ac.uk

Mobile/text: 07845 969266

Consent form

If you are aged 10-15 you will need to get a parent/guardian/carer to sign the consent form over the page and bring it with you to the interview.

PARENT/GUARDIAN/CARER CONSENT FORM (10-15 YR OLDS ONLY)

	TICK IF YES
1. I have read through this leaflet and I understand what it says.	
2. I have been able to ask any questions that I want about the research project and the	
3. I understand that all participation in this research project is voluntary.	
4. I understand that any participant can decide not to be involved, to stop an interview, or to withdraw from the project at any time, without giving any reasons. I understand that I can withdraw my consent at any time.	
5. I understand that the researcher will keep confidential any personal information provided during the research. I also understand that none of the young people or adults who participate in the project will be named or identified in any document produced as part of the project.	
6. I am happy for the interview to be audio-recorded and understand what will happen to that recording.	
7. I am the parent/carer/guardian* of I am happy for him/her* to take part in the interview. *delete as applicable	

Signed:

Date:

CHILDREN and YOUNG PEOPLE in the POLICE STATION

A RESEARCH PROJECT



- Are you aged 10-18?
- Have you been arrested and held in a police station in the last 12 months?
- Would you be willing to talk about your experience — and be rewarded for your time?

CHILDREN AND YOUNG PEOPLE IN THE POLICE STATION – A RESEARCH PROJECT

Who is doing this research?

My name is Miranda Bevan. I work at a university in London called the London School of Economics.

I am independent. I have no connection to the police or the government.

What is this research about?

This research project aims to find out how it feels for young people to be held in a police station after being arrested, and how they cope with what happens there.

I am interested in talking to young people about their experiences from the time when they are brought to the police station after being arrested, until they are released.

Why do this research?

There is not very much information about how young people experience being detained in the police station.

Without that information it is difficult for the people who make the rules to know if the rules need to be changed to make that experience better.

I am interested in speaking to you if:

- You have been arrested and held in a police station in the last 12 months, and.
- When that happened you were 10-17 years old.

Or-

If you are a parent/guardian/carer who supported a young person at the police station as an Appropriate Adult.

What will the interview be like?

It will be:

- Informal
- 30-60 minutes long, depending on your interest. You can leave at any time.
- At a time and place that suits you.

Will it be audio-recorded?

Yes – if you agree. Otherwise I will take notes.

Any recording or notes will be stored confidentially and destroyed once the research has been completed and written up.

This research is:

Voluntary

You don't have to take part in the research. Even if you decide to be interviewed, you can stop at any time without giving me any reasons.

Anonymous

You don't have to give your full name, and when the research is written up it will not name you or the police station you talk about.

Your personal details will be kept confidential.

Is there any reward for taking part?

Yes. Your time is valuable and by taking part you will be helping me and the research project.

As a thank you, each person interviewed will receive a **£15 download or mobile phone top-up voucher** at the end of the interview.





RESEARCH INTO THE EXPERIENCE OF CHILDREN AND YOUNG PEOPLE IN POLICE CUSTODY

YOUNG PARTICIPANT INFORMATION SHEET

This information sheet aims to answer questions which you may have about this research study:

Who is doing this research?

My name is Miranda Bevan. I work at a university in London called the London School of Economics. I am independent. I have no connection to the police or the government. If you have any questions at any time about this research you can email me at: m.j.bevan@lse.ac.uk

What is this research about?

This research project aims to find out how it feels for young people to be held in a police station after being arrested. So I am interested in talking to young people about their experiences from the time when they are brought to the police station after being arrested, until they are released.

Why are you doing this research?

There is not very much information about how young people feel about being detained in the police station. Without that information it is difficult for the people who make the rules to know if the rules need to be changed to make that experience better.

Do I have to talk to you?

No. It is entirely up to you whether you take part in an interview or not. That means you do not have to talk to me at all. Or, once started you can stop the interview at any time. You don't need to say why or give me any reasons.

How long will the interview go on for?

Probably between 30 and 60 minutes, but that depends on how interested you are in talking about your experiences. You can end it whenever you don't feel like talking any longer.

Is the interview going to be recorded?

So that I can look carefully at what you say I would like to make an audio recording of the interview. This would mean that I would have a record of your exact words. If you are not happy for the interview to be recorded I can make notes on paper instead, but I may not be able to note down everything that you say.

What happens after the interview?

I am talking to lots of other young people about their experiences in police custody. I am also spending time in police stations and talking to adults who work there. When all the interviews are finished, I will write about what the young people have told me and what I have found out about young people's experiences.

Will I be named?

No. What I write may be published, but it will not name you, the police station or the police officers or other people that you tell me about. It will not be possible for a person reading my report to identify you from any of the details in it.

Will my personal information be kept confidential?

Yes. Your personal information (your name and anything you tell me which might identify you) will be treated as strictly confidential. That means the information will be stored securely and will not be made public. In particular I will not tell the police, prosecutors or your lawyers any information which might identify you or your personal experiences.

What if I talk about something criminal that I have done?

This is important. I am interested in what happened to you in the police station, not whether you have committed a crime. But if you do choose to talk about any offending behaviour, or accidentally talk about it, what you say remains strictly confidential. I will not tell anyone (police or prosecutors) about any offending that you might talk about, unless what you say makes me worried that someone might be in immediate danger of being physically harmed.

Can I see what you write?

Yes. Just let me know if you want to see what I write, or a summary of it, when it is finished.

Is there any reward for taking part?

Yes. Your time is valuable and by taking part you will be helping me. As a thank you, each person interviewed will receive a £15 voucher at the end of the interview.



RESEARCH INTO THE EXPERIENCE OF CHILDREN AND YOUNG PEOPLE IN POLICE CUSTODY

PARTICIPANT INFORMATION SHEET (FAMILIAL APPROPRIATE ADULTS)

This information sheet aims to answer questions which you may have about this research study:

Who is doing this research?

My name is Miranda Bevan. I work at the London School of Economics, which is a university in Central London. I am independent. I have no connection to the police or the government. If you have any questions at any time about this research you can email me at: m.j.bevan@lse.ac.uk

What is this research about?

This research project aims to find out how it feels for young people to be held in a police station after being arrested. As part of the project, I am also looking at how young people are looked after and supported whilst they are detained in the police station.

So as well as talking to young people about their experiences being held in the police station, I am also keen to talk to **adults (family members, parents or carers) who acted as appropriate adults** for young people in the police station, supporting them whilst they were detained and in interview.

Why are you doing this research?

There is not very much information about how young people feel about being detained in the police station. Nor do we know much about what it is like as an adult to support a young person in custody and what your views are of the process. Without that information it is difficult for the people who decide how young people should be treated in the police station to know if the procedures need to be changed.

Do I have to talk to you?

No. It is entirely up to you whether you take part in an interview or not. That means you do not have to talk to me at all. Or, once started you can stop the interview at any time. You don't need to say why or give me any reasons.

How long will the interview go on for?

Probably between 30 and 60 minutes, but that depends on how interested you are in talking about your experiences. You can end it whenever you don't feel like talking any longer.

Is the interview going to be recorded?

So that I can look carefully at what you say I would like to make an audio recording of the interview. This would mean that I would have a record of your exact words. If you are not happy for the interview to be recorded I can make notes on paper instead, but I may not be able to note down everything that you say.

What happens after the interview?

I am talking to lots of young people about their experiences in police custody, and to other adults who supported them. I am also spending time in police stations and talking to professionals who work there. When all the interviews are finished, I will write about what I have been told and what I have found out about young people's experiences.

Will I be named?

No. What I write may be published, but it will not name you, any young person or the police station, police officers or other people that you tell me about. It will not be possible for a person reading my report to identify you or any other person involved from any of the details in it.

Will my personal information be kept confidential?

Yes. Your personal information (your name and anything you tell me which might identify you or anyone else) will be treated as strictly confidential. That means the information will be stored securely and will not be made public. In particular I will not tell the police, prosecutors or lawyers any information which might identify you or anyone you talk about.

What if I talk about something criminal that a young person, or anyone else, has done?

This is important. I am interested in what happened to you, or a young person you supported, in the police station, not whether that young person, or anyone else, has committed a crime. But if you do choose to talk about any offending behaviour, or accidentally talk about it, what you say remains strictly confidential. I will not tell anyone (police or prosecutors) about any offending that you might talk about, unless what you say makes me worried that someone might be in immediate danger of being physically harmed.

Can I see what you write?

Yes. Just let me know if you want to see what I write, or a summary of it, when it is finished.

Is there any reward for taking part?

Yes. Your time is valuable and by taking part you will be helping me. As a thank you, each person interviewed will receive a £15 voucher at the end of the interview.



RESEARCH INTO THE EXPERIENCE OF CHILDREN AND YOUNG PEOPLE IN POLICE CUSTODY

PARTICIPANT INFORMATION SHEET (PROFESSIONALS AND TRAINED VOLUNTEERS)

This information sheet aims to answer questions which you may have about this research study:

Who is doing this research?

This is a doctoral research project supported by the Social Policy Department of the London School of Economics, in Central London. The project is independent, and not affiliated to the police or any government department. If you have any questions at any time about this research you can email the researcher, Miranda Bevan, at: m.j.bevan@lse.ac.uk

What is this research about?

The purpose of this research project is to explore how children (aged 10-17) experience being detained as suspects in the police custody suite. The project aims to answer the following research question: How is policy regarding the detention of children as suspects in the police custody suite implemented, and experienced by children?

The research involves semi-structured interviews with children who have recently been detained in police custody. These interviews are being supplemented by observations in police custody suites and semi-structured interviews with professionals working within police custody.

Why are you doing this research?

Both Her Majesty's Inspectorate of Constabulary's recent inspection report, *The Welfare of Vulnerable People in Custody*, and the All Party Parliamentary Group for Children's report on children and the police, identified concerns about the effectiveness of measures to support children detained by the police and the appropriateness for young suspects of the adult custody suite environment.

No previous research has focused on how policy with regard to child suspects is implemented, looking at the police custody process as a whole from reception to release or charge. Nor has research been conducted focusing on how child suspects themselves experience that process, and the extent to which they are able to participate effectively in the process as a result.

Voluntary participation

Taking part in this project is entirely voluntary. Any participant is entitled to decline to be involved and to withdraw from the project at any stage, including before or during any interview. There is no requirement to give reasons for any withdrawal.

How long will the interview last?

It is anticipated that any interview will last between 45 minutes and 1 hour, depending on the preferences of the participant.

Is the interview going to be recorded?

Ideally the interview will be digitally audio-recorded so that an accurate record of the discussion can be generated for analysis. However, any participant is free to decline to be recorded, in which case the researcher will take handwritten notes of the interview.

What will the interview be about?

Depending on the particular role of the participant, the interview will explore how custody policy (legislation, PACE Codes of Practice, Authorised Professional Practice and other guidance) is implemented with regard to child suspects. The intention is to build an understanding of how the custody process functions in practice for young suspects. Where appropriate, the participant may be invited to reflect on their observations of how child suspects respond to the police custody process.

What will be the output of the project?

The research findings will be set out in a thesis, but other papers or journal articles may also be published. A summary of the findings in a format accessible to children and young people will also be produced. Please let the researcher know if you would like to receive copies of/access to any publications.

Anonymity and confidentiality

Interviews will be anonymised when transcribed. Any publications and other material produced will be anonymised, and will contain no information which could lead to the identification of the participating forces, custody suites or individuals.

All personal data will be treated confidentially. Original data including personal and identifying information will be stored in accordance with the principles of the Data Protection Act 1998. Hard copies of materials containing personal data will be kept in a locked cupboard, and electronic files containing personal data (eg interview soundfiles) will be stored on a secure network and transferred, where required, on removeable media which is password protected.



**RESEARCH INTO THE EXPERIENCE OF CHILDREN AND YOUNG PEOPLE
IN POLICE CUSTODY**

YOUNG PARTICIPANT CONSENT FORM

My name is:

I am years old.

		Tick if Yes
1.	I have been through the 'Young participant information sheet' with the researcher (Miranda Bevan). I understand what that sheet says.	
2.	I have been able to ask any questions that I want about the interview.	
3.	I understand that I do not have to take part in the interview.	
4.	I know that I can stop the interview at any time without giving the researcher any reasons.	
5.	I understand that the researcher will keep personal information about me confidential and that I will not be named or identified in any document she produces.	
6.	I am happy for the interview to be audio-recorded and understand what will happen to that recording.	
7.	I am happy to take part in the interview.	

Signed:

Dated:.....



**RESEARCH INTO THE EXPERIENCE OF CHILDREN AND YOUNG PEOPLE
IN POLICE CUSTODY**

**PARTICIPANT CONSENT FORM
(FAMILIAL APPROPRIATE ADULTS)**

My name is:

		Tick if Yes
1.	I have been through the 'Participant information sheet' with the researcher (Miranda Bevan). I understand what that sheet says.	
2.	I have been able to ask any questions that I want about the interview.	
3.	I understand that I do not have to take part in the interview.	
4.	I know that I can stop the interview at any time without giving the researcher any reasons.	
5.	I understand that the researcher will keep personal information about me and anyone else I may talk about confidential and that we will not be named or identified in any document she produces.	
6.	I am happy for the interview to be audio-recorded and understand what will happen to that recording.	
7.	I am happy to take part in the interview.	

Signed:

Dated:.....



**RESEARCH INTO THE EXPERIENCE OF CHILDREN AND YOUNG PEOPLE
IN POLICE CUSTODY**

**PARTICIPANT CONSENT FORM
(PROFESSIONALS AND TRAINED VOLUNTEERS)**

My name is:

		Tick if Yes
1.	I have been through the 'Participant information sheet (Professionals and Trained Volunteers)' with the researcher (Miranda Bevan). I understand what that sheet says.	
2.	I have been able to ask any questions that I want about the interview.	
3.	I understand that I do not have to take part in the interview.	
4.	I know that I can stop the interview at any time without giving the researcher any reasons.	
5.	I understand that the researcher will treat my personal identifying information confidentially and in line with Data Protection Act 1998 principles.	
6.	I understand that all materials produced as part of this project will be anonymised, and will contain no information which could lead to the identification of the participating forces, custody suites or individuals.	
7.	I am happy for the interview to be digitally audio-recorded and understand what will happen to that recording.	
8.	I am happy to take part in the interview.	

Signed:

Dated:.....

SUPPORT

childline

ONLINE, ON THE PHONE, ANYTIME

Childline helps anyone under 19 in the UK with any issue they're going through - a free, private and confidential service.

www.childline.org.uk

Call free on 0800 1111



'Talk to us any time you like, in your own way, and off the record - about whatever's getting to you. You don't have to be suicidal.'

www.samaritans.org

Call free on: 116 123

Email: jo@samaritans.org



Mind can provide information on diagnoses, treatment, and help you to understand your rights or reach out to sources of support.

<http://www.mind.org.uk>

0300 123 3393

info@mind.org.uk

Text: 86463

ADVICE & YOUR RIGHTS



For information about your rights, including your rights on arrest, and stop and search.

Also information about how the police can help if you or someone you know has been the victim of crime.

<http://safe.met.police.uk/>



For friendly, confidential drugs advice.

www.talktofrank.com

Text: 82111

Tel: 0300 123 6600

Shelter

Housing advice and support.
Free housing advice helpline:
0808 800 4444

<http://england.shelter.org.uk>



Guidance and information for appropriate adults, visit

www.appropriateadult.org.uk/index.php/practice/guidance

