



**CONFERENCE REPORT:
OBTAINING BEST EVIDENCE FROM CHILD
SUSPECTS IN POLICE CUSTODY:
CHALLENGES AND OPPORTUNITIES
ISPER Research Institute, 30 November 2018**

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It has been recognised, from a legal perspective, that the questioning of child suspects is an underdeveloped area, compared with the provisions relating to the care and protection required to be given to children who are a witness or victim during the interviewing process. A symposium was held at the University of Plymouth on 30 November 2018 to explore and investigate the obstacles to obtaining reliable evidence from child suspects and what opportunities existed to tackle them. It was organised by Piers von Berg of the School of Law, Criminology and Government, a former practising barrister who has undertaken research in the field.² The symposium brought together a wide variety of professionals including lawyers, police officers, academics, psychologists and other youth justice professionals. Several notable experts attended including Professor Ray Bull and Professor Becky Milne who helped develop the investigative interview model used by police forces in England and Wales. They agreed that there was a need to reform policy for interviewing child suspects due to a number of specific issues relating to inadequate assessment of children, insufficient training of interviewers and porous legal safeguards. This report will discuss the issues they raised and the possible solutions proposed for the future.

¹ Rebecca is currently undertaking an MPhil, 'Marine Spatial Planning: A tool for reconciling competing demands of recreational uses and conservation in the South West of England' but also has a personal interest in the subject. ISPER is the Institute for Social Policy and Enterprise Research based in the Faculty of Business. She would like to thank Piers von Berg for the opportunity to attend the symposium and for providing further information for this report.

² Kate Gooch and Piers von Berg, 'What Happens in the Beginning, Matters in the End: Achieving Best Evidence with Child Suspects in the Police Station' (forthcoming); Piers von Berg, 'Children, Young Persons and Juveniles', in von Berg (ed) *Criminal Judicial Review* (2014, London: Hart Publishing).

1 Research Presentations

The first session involved presentations from ongoing or very recent research from law, psychology and policing. The first presenter was Miranda Bevan, a former criminal barrister who worked at the Law Commission on their fitness to plead paper. Her PhD research focused on the different factors that may make a young person vulnerable, including mental health, learning difficulties, immaturity, adverse experiences and situational vulnerability. Her study was based on interviews of young suspects in custody. She argued that child suspects are not always assessed fairly and some young people found the whole detention experience quite distressing. In particular, Annex G of Code of Practice C of the Police and Criminal Evidence Act 1984 (PACE) which contains criteria for assessment of fitness for interview, was hardly mentioned at all. Unsurprisingly, the interviewees were very negative about their experiences and felt very alienated.

She was followed by Martin Vaughan, a former police officer and interview trainer for the police who is completing a PhD on the role of interview managers with vulnerable suspects. He explained that there is currently no research at all on the links between interview planning and problems of young suspects. It was surprising to hear that there is no training provided at all for interview managers.³ After examining the Authorised Professional Practice (APP) provided by the College of Police, he concluded that there is no specific guidance for officers when interviewing child suspects.⁴ He demonstrated that the current processes in place for establishing whether a child suspect is fit for an interview can be brief due to time pressures and a lack of manpower.

Lesley Laver, a teacher of psychology at Bournemouth University, then focused upon how vulnerability is assessed in custody. The custody officer is responsible for the safe and appropriate detention of a young person. Under Code C of PACE, the custody officer has a duty to make sure that a detainee receives appropriate clinical attention as soon as reasonably practical, if the person is suffering from a physical or mental illness.⁵ Lesley argued that a young person's vulnerability is not necessarily diagnosable or immediately apparent, it can in fact be as a result of impulsivity leading to a lack of confidence in memory. It can also be as a result of situational vulnerability. Impulsivity and anxiety can combine to relate to suggestibility. There are almost no resources and trained persons to accurately and competently assess children in police custody and how these factors might affect a child's ability to communicate in an interview.

³ Vaughan et al 2018.

⁴ <https://www.app.college.police.uk/app-content/investigations/investigative-interviewing/#interviewee>

⁵ Police and Criminal Evidence Act 1984 Code C Para 9.5

Piers von Berg gave the final research presentation of the morning. He focused on the legal safeguards under PACE governing the interview of a child suspect. Using statutory provisions, case law and Code C Piers demonstrated how the current system provides very little guidance to interviewers. This was set against his research using Freedom of Information requests to all police forces in England and Wales that showed they were dependent on the same guidance. It also showed that most, if not all, police forces did not consider interviewing a child a specialist skill assuming that all officers are competent. This echoed Bevan's research that many children were in police custody for non-serious offences and interviewed by junior officers. As a result, the legal safeguards under PACE are hugely problematic. This was illustrated with case law where children had been convicted on the basis of confused or highly suggestible responses in interview. Consequently, Piers argued that the principle of effective participation established in human rights law that has helped to improve the questioning of defendants should be applied to the questioning of suspects.

Both Laver and Bevan highlighted the need to change the process in relation to liaison and diversion. The main issue was that the assessment of establishing if a young person is fit for interview and the problem that in most cases this is not appropriately done. The liaison and diversion happens only after the interview and this results in horrific prolonged experiences in custody. The argument was that young people should go straight through the liaison and diversion process rather than going through the custody process unnecessarily. The panel agreed with Professor Penny Cooper's question of whether we should think in terms of effective participation rather than vulnerability. Von Berg tried to summarise the issues facing the police when a child enters custody for an interview as knowing what kind of child one is dealing with. This involves having the tools and resources to determine how a child should be interviewed, recognising when additional expertise is needed and the presence of effective incentives and requirements for custody officers and investigating officers to make such assessments prior to interview.

2 Plenary Discussion

The research presentations generated a lot of questions during the plenary discussion chaired by Professor Ray Bull. The key issues that arose were: the use of an appropriate adult; training (or lack of it) for the police; legal requirements and safeguards; the age of criminal responsibility and the assessment of vulnerability. Professor Miet Vanderhallen recognised that currently there are no training packages available from the College of Policing regarding child suspects. This raised a question as to whether there was an ideal model that could be used. Chris Bath, Chief Executive of the National Association of Appropriate Adults, explained

that the NSPCC is working on a risk assessment on self-harm and suicide, although the principle of a single assessment is a good idea. Bull commented on how the UK is admired for having an Appropriate Adult(AA) system. He also argued for the advantage of something simple that is easier to run and less catastrophic when it goes wrong. In other words, currently there is a very complex system in England and Wales that can be seen as world leading and so may not need further complication. It is more challenging to agree or establish a process which could work globally and Bull talked about his work with the United Nations to agree such a simple worldwide model.

An issue was raised during the discussion with regard to non-native speakers and how having an interpreter present during the interview changes the dynamic. It was pointed out that there was more research needed in this area. However, it has become a problem when the suspect's interpreter has played a role in the crime, for example in cases involving human trafficking. I was concerned with how situations like this were even possible, especially when interpreters can be the keyholders to the investigation. It made me question what happens if a young person cannot read or write. This raised the issue relating to the use of AA's (who sometimes need an interpreter and may rely on the suspect to act as one). It was recognised that when family members such as parents are the AA's during the interview, they do not always know their child's legal rights and most do not read the Codes of Practice. It was agreed that not all AA's are good or appropriate. In order to provide a solution, it was necessary to identify the role of the AA. Bath argued that they work well as an independent warning system in the closed environment of police custody.

3 Roundtable Discussion

The afternoon was devoted to defining some of the obstacles identified by the presenters and any corresponding reforms of the system. It began with a broad perspective on developments in the youth justice system by Dr Patricia Gray of the School of Law, Criminology and Government. She explained that statistics show a dramatic shrinkage in youth justice based on a lack of cautions and convictions. This led to two possible reasons for such a dramatic drop, either it is a response to research, or it is a fluke due to the cuts in public spending as it is expensive to prosecute. She established that there were five factors to consider including, diversions and higher levels of personal and social problems. In 2016, the UN condemned the UK for its lack of compliance with the UN Convention on the Rights of the Child (UNCRC). These statistics produced a lot of discussion surrounding the low age of criminal responsibility and how compared to European countries we are seen as a 'laughing stock'. Gray mentioned the 'Child First' movement that sought to regard and treat children in the criminal justice

system as children first and offenders second. Using a 'child friendly' approach to youth justice, von Berg made the point that under the UNCRC children have a right to be heard and not to be discriminated against, among other rights. Some of the practices already discussed in police custody could be construed as discriminatory, for example, not tailoring the interview for a disability. Other practices in police custody such as strip searching of girls and placing children in adult cells could be said to be adverse treatment on account of protected characteristics or failures to make reasonable adjustments.

This then led into a roundtable discussion facilitated by Professor Becky Milne. The group established the main issues that need to be dealt with to improve the current system. It was identified by police officers and other professionals that there was a clear need to provide, or improve training with regard to assessing vulnerabilities, and determining if a young person is fit for interview. In order to be able to assess vulnerabilities, it becomes necessary to identify what it is we mean by 'vulnerability', and what this includes. It was established that the Achieving Best Evidence (ABE) model provides another issue as there is currently no specific interview model for child suspects which might consider or be sensitive to potential vulnerabilities.

4 Groupwork

The final session allowed separate groups to focus on identifying problems and demonstrating ideas which could provide solutions in respect of the following issues:

Training

It was discussed at length the need for more effective training for interviewing child suspects. This includes training on how to deal with different vulnerabilities and what to look out for. Not all vulnerabilities are obvious and can be situational. It was also apparent that the more serious the crime the more experienced the interviewing officer should be. The need for cooperation from police forces nationally is vital in making the training effective. During the discussion it was suggested that the police do not read or know PACE as well as they should. Potential solutions included, where possible, to ensure that an officer with the required training carries out the interview. It was also deliberated that the training would need to be easily transferrable, practical and not just theoretical. It was suggested that the principles of the ABE and PEACE could be applied to child suspects and adults with vulnerabilities. Another notion was to triage suspects on arrival, so they are interviewed by a specifically trained officer. It was considered that there may be issues regarding funding for more training.

Interpreter and Translator

Concerns arose surrounding the potential issues regarding interpreters, particularly in child trafficking cases, where the interpreter is also party to the crime. Possible steps forward included ensuring that there is no evidence of upgrading the child's language. Another suggestion was to include how to deal with interpreters and translators during training for officers and if possible, try and ensure native speakers, in relation to police officers and lawyers.

Appropriate Adults

The AA framework generated a lot of debate. One of the main issues was that not all AA's are effective or appropriate. There were systematic issues with the process and insufficient guidance in PACE with regard to the role of an AA. It was concerning to learn that in Liverpool gang leaders became the child's AA. With so many different perspectives it also becomes impossible to have just one person in the interview room. Potential solutions discussed included, excluding parents from interviews while keeping them fully informed and ask them for any information that may be relevant to the child's needs. It was also proposed to make legal advice compulsory for child suspects. It was considered that when a child is arrested and taken to the police station an AA is called immediately, so children do not have to be detained any longer than they have to. In order to achieve any of this, it is important to provide a greater clarity of the role of the AA for the police and ensure they are aware that an AA is not just for interview but for the whole period of detention. It was thought that a national standardised system is possible.

After the conference, Chris Bath provided a thoughtful note about the role of the AA. He believes that we need to do more to inform and advise untrained AA's so that they understand their purpose, and that they have a choice as to whether to take on the role and they are not reliant on the police for an explanation of how to safeguard the child. The key risks in interview are more subtle than in the 1970s. This requires us to reconsider the skills levels of the people responsible for mitigating these risks. More needs to be done to ensure that everyone, including the police, provider organisations, funding organisations and AA's understand that the role of the AA is much more than being present for the interview. The strongest argument for the AA role is that they are present during custody, in a way that a professional realistically cannot be. If AA's only turn up shortly before interview like lawyers often do, there is a real question about what impact they are having. We should more clearly spell out that the risks are for all children, particularly those who do not have a mental disorder.

What is vulnerability?

It is difficult to explain vulnerability and pin down. A young person's vulnerability may be situational and not immediately obvious. Possible solutions included to provide a multi-level

screen process for mental, physical, situational vulnerabilities. We also need to identify who identifies the vulnerability and who decides to take action.

Legal Safeguarding

The legislation has been described as having no teeth. PACE safeguards are also routinely ignored. Legal advisors are not always reliable or available. Judicial oversight of authorisation of detention, review and extension should be put in place. The custody record should no longer be the preserve of the custody officer. Suspects, AA's and legal advisors should be allowed to make entries on it. A rather intriguing idea with regard to the custody record and the amount of time it takes an officer to log everything. The idea was that a tablet-like device be made available in the cells for the young person to ask for a drink, speak with their lawyer etc. Then this would automatically be logged on the custody record. However, some said that suspects have a tendency to keep pushing the button for attention, so this may not be practical. Although I am optimistic about the idea.

Observations and Conclusions

Overall, I left the conference with a good feeling that progress had been made. All points were discussed diplomatically and promptly, it was all rather refreshing. However, I was concerned at what I had discovered about the interview process (or lack of) involving child suspects. It was troubling to think that there are currently no specific guidelines setting out how to interview child suspects and the potential vulnerabilities they suffer, and the harmful effects such an event can cause. Throughout the day, I noted several observations, including the possibility that some young people may not be able to read and write, how would they understand what they are being told to read (such as the Codes of Practice governing their detention). I was made aware that people can volunteer to become an AA, however I was concerned that even if there is an interest whether the volunteer is capable of dealing with these types of situations. It became apparent that we need to establish what it is we mean by the term vulnerable. This made me think about what it can mean to young people. The term vulnerable has a negative connotation and can be portrayed as a weakness. I can see how it can be quite disempowering for a young person. Therefore, using a more positive phrase such as sensitive, or susceptible, might change general attitudes. With regard to the issues raised concerning the AA, I am not entirely sure that we resolved the issue of building a relationship through the use of the AA with regard to the young person.