

*Digital Legal Rights for Suspects:  
Users' Perspectives and PACE Safeguards*

Dr Vicky Kemp



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**By**

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## **Introduction**

The most important statute governing the investigation of crime and the rights of suspects held in custody is the Police and Criminal Evidence Act (PACE) 1984. There are detailed Codes of Practice, with Code C setting out the requirements for the detention, treatment and questioning of suspects not related to terrorism in custody. This study explores safeguards relating to the processing of detainees, access to legal advice and the potential for technology to help improve suspects' legal rights.

Dr. Vicky Kemp, a Principal Research Fellow in the School of Law at the University of Nottingham, the Principal Investigator (PI), has extensive experience of undertaking research into police station legal advice and, over the years, she has observed suspects struggling to understand their legal rights. To assist people to better understand those rights, she came up with the idea of developing a Police Station App through which to provide information to help people make informed decisions when exercising their legal rights, particularly in relation to the waiver of legal advice.

It was agreed with the police, both nationally<sup>1</sup> and locally, that a prototype of the App would be tested with detainees in two large custody suites. In order to maintain anonymity, one area has been given the pseudonym Garrick, and the other Kingsley. The PI and Dr. Emma Oakley, a Lecturer from the School of Law at the University of Birmingham, conducted the research interviews during June and July 2017. This study was only possible with the support of the police in the two areas involved, both at a senior level in granting access, and on the ground where we were assisted by custody staff facilitating the research interviews. There were 100 detainees involved in this study – 46 in Garrick and 54 in Kingsley.<sup>2</sup> The study also draws on the researchers' observations while based in the two custody suites and from informal conversations held with custody staff. A local duty solicitor was also interviewed in one of the areas studied.

## **Background**

The police have been supportive of testing a prototype App to help inform suspects of their legal rights. Without funding for videos and graphics, however, the App was heavily text-based and the researchers were conscious that the prototype was not user-friendly and so the information explored tended to focus on the section dealing with access to legal advice. Research participants were also asked questions about their experience in police custody, as this information will assist in exploring the potential for a digital feedback form to be incorporated into the App.

While the purpose of this study was to test out a prototype App, a critical approach was adopted when considering the processing of detainees and access to legal advice. It is important to point out, however, that there have been positive developments initiated by the police over recent years. In both custody suites, for example, the police have funded improvements to the custody facilities and changes in the processing of cases has led to a significant reduction in the number of people brought into police custody, particularly children and young people.<sup>3</sup> Such achievements have taken place in these times of austerity, with budget cuts leading to a significant reduction in the number of police officers available in the two areas.

The study has been conducted at two sites, but the findings tend to resonate with a number of issues arising out of inspections conducted by HM Inspectorate of Constabulary and Fire and Rescue Service (HMICFRS) when undertaking inspections of police custody. To help maintain anonymity, this study draws on the findings presented in the ten most recent inspection reports, published by HMICFRS during 2017 and up to the end of March 2018 (referred to collectively as HMICFRS, 2017 and 2018). In addition, while this study has taken place in two large police custody suites, reference is made to other studies where similar issues have been found.

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<sup>1</sup> The national steering group for this project, chaired by Lord Carlile QC, includes representatives from the National Police Chief's Council and the College of Policing.

<sup>2</sup> There were sixteen days of fieldwork in total; eight at each custody suite.

<sup>3</sup> There has been an increase in the police use of voluntary interviews as an alternative to detaining suspects and using out-of-court disposals to divert people from court.

## **Key Findings**

A number of findings arising out of this study are explored around the themes of police decision-making and the processing of cases, access to legal advice, users' perceptions of fairness in the criminal process, the complaints procedure and the potential use of technology in helping to advance procedural safeguards.

### **1. Police decision-making and the processing of cases**

The police are responsible for making decisions in the criminal process, including authorising detention and reviewing the time people are held in custody.

#### **1.1 Authorising detention**

PACE requires an independent custody officer, at least of the rank of a sergeant, to have specific responsibility and authority for the custody and protection of detainees. This includes authorising the detention of people brought into custody, overseeing progress made in cases and looking after the welfare of detainees. In the past, there had been just one or two custody sergeants looking after a small number of detainees, which meant that such oversight was possible. However, with the tendency of police forces to centralise custody facilities, it is now not uncommon to have large custody blocks with 50 or more cells, requiring oversight by five to six custody sergeants.

The custody sergeant is responsible for authorising detention and, in the two custody suites observed, they can be assisted by Detention Escort Officers (DEOs) when booking people into custody and carrying out some of the routine tasks involved in processing cases. It was not possible in this study to observe custody sergeants when booking suspects into custody and we did not discuss with participants details of the alleged offence during the research interview. However, it was evident from our discussions that not all detainees held for a long time were being dealt with for serious offences:

- Two female co-accused had been arrested for the first time for a shoplifting offence and, when seen by the researcher, they had been held for over 18 hours (A.7 and A.8).<sup>4</sup>
- In another case, highlighting the minor nature of the offence, a participant said, "I shouldn't be in here for a broken window" (B.66).

While the number of people detained by the police in the two areas studied has decreased significantly over recent years, it was acknowledged that custody sergeants rarely refused detention and that suspects could be detained for minor matters. Indeed, a custody officer commented that detention was refused in less than one per cent of cases. It was also noted that, while being detained for minor matters, there could be long delays as suspects were brought into a protracted criminal process.

It has been noted in other studies that custody sergeants are generally willing to support police colleagues by authorising detention, including in cases involving minor offences and borderline criminal activity (Skinns, 2011; Kemp, 2012, pp. 35-40). Since then, the police have significantly reduced the number of people brought into police custody by increasing the number of voluntary interviews.<sup>5</sup>

HMICFRS (2017 and 2018) inspection reports note that custody sergeants book detainees into custody competently, with arresting officers providing good explanations for the reasons for the arrest. However, in some areas, custody sergeants told the inspection teams that they rarely refuse detention. In addition, when dealing with the welfare of vulnerable detainees, an HMIC (2015) inspection of six custody suites noted that the police are working proactively to divert people away from custody, although problems were also seen to arise. For example, detention was authorised inappropriately when dealing with people with mental health problems. It was also noted that, in many cases, the responding police officer saw no option other than to detain or make an arrest because they were unable to secure the help they needed from health or social care

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<sup>4</sup> Comments made by research participants in Garrick and Kingsley custody suites are distinguished by being given the code A and B, respectively.

<sup>5</sup> A revision to Code G of PACE and the 'necessity test' of detaining suspects, in November 2012, requires custody sergeants to be more challenging of the police when authorising detention.

services (HMIC, 2015, p. 18). There have subsequently been improvements, which are reflected in more recent HMICFRS (2017 and 2018) inspection reports, particularly with the introduction of mental health protocols in police custody helping to reduce the number of vulnerable people detained. There have also been set up Liaison and Division Teams in a number of custody suites, including in the two sites studied. These teams assist the police by helping to identify and support people with mental health problems and learning disabilities.

The HMIC (2015, p. 18) inspection report also noted that, while children are vulnerable by virtue of their age, some police officers did not regard all children as vulnerable. Indeed, some officers tended to see the offence first, and the fact that it involved a child as secondary (HMIC, 2015, p. 18). Once again, recent HMICFRS (2017 and 2018) inspection reports have commented on the effectiveness of diversionary policies and practices helping to keep children and young people out of police custody. Without increased legal protections, however, this trend could be reversed if there were changes to policy and practice. In 2002, for example, a police target was introduced to increase the number of detections and this had a netwidening effect which led to a significant increase in the number of children and young people arrested and detained by the police (Kemp, 2014).

While there are variations in practice, both between police stations and different force areas, it would be helpful if statistics on authorising detention could be published so that there can be some oversight of this important gatekeeping decision.

### **1.2 Voluntary interviews and detention**

There were facilities outside of the custody suite in the two police stations observed to interview suspects attending for a voluntary interview. It was not until later on in this study that we noticed a number of research participants had attended at the station in time for a voluntary interview, but they were then arrested and held in custody. It seems that this step was taken because the investigating officers were not ready to proceed. Custody officers explained that it was due to the pressure of work that the officers would often read the file just prior to conducting the voluntary interviews. If further investigations were required, including taking a statement from the complainant, there could be a long delay while such tasks were undertaken. Instead of re-arranging a new time for the voluntary interview, it seems that a decision can be made to detain a suspect to help protect the victim, particularly in cases involving domestic violence. If the suspect has turned up at the police station in time for a pre-arranged appointment, however, it can be contrary to PACE safeguards if they are then arrested and held in custody. Such practices may also give rise to civil liabilities and risk an increase in the number of people feeling suicidal when held in police custody.

The following comments from research participants help to highlight some of the situations arising when they were detained after having attended for a voluntary interview.

- One participant said that he had been asked to attend the police station to be interviewed about an incident that had occurred over three weeks ago. Having arrived at the appointed time, he was arrested and held in custody. He said, "I am really shocked to be in here [a cell] today. I only came to be interviewed and to find out what was happening" (B.78).
- Another research participant said his solicitor had liaised with the police and arranged for him to attend at the station at 8.30am that morning. He arrived on time, but he was arrested and detained; he was still waiting to be interviewed over five hours later (B.83).
- Similarly, after having attended at the station for a pre-arranged interview, a participant had been waiting for four hours when he was seen by the researcher. He queried the efficacy of the process when saying, "I arrived and they put me in a cell. What's the point?" (B.79).

While the HMICFRS (2017 and 2018) inspection reports note that there has been a significant increase in the police use of voluntary interviews, which is to be welcomed, it

is not known to what extent suspects arriving in time for a voluntary interview are arrested and held in custody.

### **1.3 Average length of detention**

It was concerns over long delays that were raised by both research participants and custody staff as being the main problem in the criminal process. From analysis of electronic custody records in the two areas studied, the police confirmed that the average time people spend in custody is steadily increasing to over 17 hours.<sup>6</sup> This compares to an average duration of nine hours and 18 minutes identified in a study based on over 30,000 electronic custody records drawn from 44 police stations in 2009 (Kemp, Balmer and Pleasence, 2012).<sup>7</sup> At that time, concerns were raised over such long delays in police custody, which then raised questions about the effectiveness of PACE in seeking to regulate police detention. The HMICFRS (2017 and 2018) reports indicate that detainees are being held in custody for longer, with some police force areas reporting an average duration of over 15 hours, and with one area being over 17 hours.<sup>8</sup>

PACE safeguards require the police to deal with cases expeditiously and any delays have to be justifiable and reasonable steps taken to prevent unnecessary delays (Code C, para 1.1). In the majority of research interviews, however, people complained about being held for many hours in custody. It is important to note that all but one of the 16 research visits took place in the morning and, by the time we spoke to research participants, many had been detained overnight, or had been brought into custody during the early hours of the morning.<sup>9</sup> Not surprisingly, after such long delays, detainees were anxious to know what was happening in their case and, more specifically, when they would be released. On the one occasion when the research visit took place in the afternoon, all five participants interviewed complained about the length of time taken by the CPS in making a charging decision. The following comments help to highlight some of the issue raised by detainees:

- Having been arrested in the early hours of the morning, there were some detainees who said that they had been told by the arresting officers that they would be dealt with quickly, but this was not the case. One remarked, "I was told I'd be in and out in a couple of hours, but that was a long time ago" (A.97).
- When commenting on delays, one participant said, "The process takes so long. The police tell you they have 24 hours to hold you and that's all you think about ... You have to wait for the interview, which can be eight or nine hours later. After that, you have to wait for the CPS, which can take it up to 14 or 15 hours" (B.83).
- In a similar vein, another said, "It's scary when they tell you they can keep you for 24 hours" (B.63).
- One participant said, "I was brought in at 2am and told I'd be dealt with by 8am, so I didn't bother having a solicitor. It's now 12 hours later and I still haven't been interviewed" (B.66).

It seems that, when making an arrest in the early hours of the morning, the arresting officers will sometimes try to assure suspects that they will be dealt with quickly in an attempt to calm them down, but knowing that this is unlikely to be the case. In one case, after the research interview, the PACE Inspector came to review the suspect's time in detention (as he had been held for six hours). The suspect complained that the arresting officers had promised he would only be at the station for a couple of hours at the most. In

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<sup>6</sup> The average detention in Garrick was 17 hours and 46 minutes and in Kingsley it was 17 hours and 14 minutes.

<sup>7</sup> The average duration calculated both by the police in the 2009 study and, in this study, was taken from the time detention was authorised until the time detainees were released from police custody.

<sup>8</sup> When considering average duration, however, some HMICFRS sample sizes are statistically too small for this task - ranging from 14 in one area and 168 in another. The average duration is also not mentioned in all the inspection reports.

<sup>9</sup> There were 35 participants who had been held for more than 12 hours and five detainees held in excess of 20 hours.

response, the Inspector said that he<sup>10</sup> had heard this before as officers use this as a tactic to try to calm people down. He said, "They know it's a lie because the officers conducting the interviews don't come on duty until 8am" (A.27).

There were a couple of research participants who commented on the lack of availability of solicitors during the night as being the main cause of the delay. This research participant commented, for example, "It's the first time I've known solicitors not to work through the night. It used to be a 24-hour service" (B.47).

Custody staff complained that long delays are mainly due to changes in the processing of cases. Instead of the police officers who arrested the suspect conducting the interview, particularly when dealing with non-serious offences, it seems that they now hand cases over to investigators based in policing units. With budget cuts reducing the number of policing staff, the problem is that there are too few investigating officers available to conduct the police interviews. While some DEOs were critical of long delays due to investigating officers delaying the interview, they were also of the view that the police routinely have 24 hours to deal with cases, which is not the case.

The HMICFRS (2017 and 2018) inspection reports highlight similar issues arising in some areas, with long delays in progressing cases being due to the unavailability of investigating officers, the late allocation of cases and with the CPS taking too long to make charging decisions. Also impacting on delays, HMICFRS (2017 and 2018) comment on changes to pre-charge bail arrangements under the Police and Crime Act 2017 (limiting bail to 28 days in most cases). Instead of bailing suspects to return to the police station where further investigations are required, the police are now encouraged to conduct as much of the investigation as possible during the first period of detention. This has led to suspects being held in custody for longer while the police gather evidence prior to the first interview.

#### **1.4 Inspectors' reviews of detention**

PACE requires the police to deal with all persons in custody expeditiously and to charge suspects as soon as there is sufficient evidence to do so. To help regulate how long people are held in custody, and to try to avoid unnecessary delays, PACE requires an inspector to 'diligently and expeditiously' carry out regular reviews of detention. The first review is to take place no later than six hours after the detention was first authorised and the second no later than nine hours after the first review.<sup>11</sup>

In a small number of cases where there had been long delays (in excess of 12 hours), the PI was shown by custody officers a blank page in the custody record where details of the officer dealing with the case should have been noted, alongside any progress made. There were criticisms made of investigating officers for taking a long time before completing these details, which meant that there is no one allocated to the case to whom custody staff can speak about the delays. A custody sergeant was critical of the PACE inspectors for not being sufficiently robust at the time of the reviews to challenge investigating officers over long delays. When having dealt with suspects in smaller custody suites, he said that they had been more challenging of delays, which included telling investigating officers that a suspect would be released if no progress was made within a certain time frame. Another custody sergeant complained that, in the larger custody suites, they no longer have the power to protect suspects in the criminal process. He said that custody sergeants were now nothing more now than 'babysitters' and he was concerned that no one, including the PACE inspectors, were taking responsibility for how long people were detained or what was happening to them. In relation to the custody process, he said, "It has broken down massively."

It was not possible to examine the efficacy of the reviews conducted by inspectors, but, with the average duration being in excess of 17 hours, this suggests that the reviews are not effective in helping to reduce the time suspects are held in custody. Over the years, research has found the reviews to have little or no impact on the length of detention, with no clustering effect of release times around the detention reviews. Instead, with

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<sup>10</sup> References are made in this report to both male and female custody officers, but, for reasons of confidentiality, they are referred to in the masculine.

<sup>11</sup> Subsequent reviews must be at intervals of no more than 12 hours (PACE s.40 (3) (b)-(c)).

detainees being released at multiple points throughout the detention period, such reviews have been described as a 'perfunctory exercise' (Skinns, 2011, pp. 124-127; Kemp, Balmer and Pleasence, 2012, p. 747).

Similar concerns have been raised in HMICFRS (2017 and 2018) inspection reports, with the reviews being carried out 'inconsistently', 'inappropriately' and often too early, for the convenience of the inspectors. While HMICFRS (2017 and 2018) did find good practice taking place in some areas, this was noted to be due mainly to the commitment of the individual officers concerned.

## **2. Access to legal advice**

There are standard procedures in police custody through which suspects are advised about their right to legal advice. Section 58.1 of PACE, for example, requires that access is provided to free and independent legal advice, which includes suspects being able to consult *privately* with a solicitor *at any time and as soon as practicable* following a request, subsequent to certain exceptions (emphasis added). Code C of PACE requires that all detainees must be informed that they may at any time consult and *communicate privately* with a solicitor, whether in person, in writing or by *telephone* (para. 6.1: emphasis added). As noted below, however, not all practices observed were compliant with these requirements.

### **2.1 The take-up of legal advice**

The proportion of detainees requesting legal advice at Garrick and Kingsley custody suites was 51% and 44%, respectively.<sup>12</sup> It was evident from seeing detainees being booked into custody, and when talking to research participants, that they are routinely given their legal rights, which includes the right to legal advice.<sup>13</sup> There are also notices displayed in each bay area where people are booked into custody, stating that they have access to free and independent legal advice. A written notice of their rights is handed to detainees.

In this study, 44 out of 90 detainees had refused legal advice and, when asked why, the following reasons were given:

- 39% (of 44) said that they did not need a solicitor - another 30% said that they had done nothing wrong and a further 7% said they were guilty.
- 30% said that they declined legal advice because they were concerned that having a solicitor would lead to delays (as it would take time the solicitor to get to the station).<sup>14</sup>

There was some confusion expressed by a small number of participants over whether to have legal advice or not. Some had requested advice when first booked into custody, but, as they had not spoken to a solicitor many hours later, they assumed that the request had been declined. One participant asked whether he had to pay for such advice.

The intention of the Police Station App is to provide people with information that helps them make informed decisions about their legal rights, particularly over the waiver of legal advice. In this study, however, we were conscious that research participants had already made a decision over legal advice and their case was still being dealt with by the police. It was important when going through their legal rights, therefore, not to make people feel unsure about the decision made. Nevertheless, there were some suspects who had declined legal advice who said they would have a solicitor when looking at the options set out in the App, but this was only if we could assure them that this would not cause a delay. As we did not know when the police interview was to take place, we were unable to provide such an assurance.<sup>15</sup> We did suggest that participants could speak to a solicitor over the

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<sup>12</sup> This information was provided by the police forces involved. In 2009, the average request rate identified in the analysis of 30,000 custody records was 45% (see Pleasence, Kemp and Balmer, 2011).

<sup>13</sup> The reading of such rights can be delayed if the detainee is intoxicated or otherwise in no fit state to listen to their rights when booked into custody.

<sup>14</sup> There were a small number of participants who gave more than one answer, so that the total rounds up to more than 100%.

<sup>15</sup> It would evidently have caused a delay if the police were ready to interview and a late request required the solicitor to attend at the station.



telephone to see how long it would take them to get to the station, but no one pursued this option. Overall, we were aware of just two participants who changed their mind about having legal advice after having gone through the App, although others may have done so later on.

These findings over the take-up of legal advice are similar to those identified in recent research studies (Kemp, 2010; 2013a; Skinns, 2011). In seeking to address potential obstacles to legal advice, and particularly concerns expressed by detainees that having legal advice would cause a delay, Code C of PACE was revised and it now requires that, if a detainee declines legal advice, the officer should point out that this includes the right to speak to a solicitor over the telephone (para. 6.5). From our observations, and according to research participants, this right was not routinely offered to detainees. In addition, the solicitor said that he does not receive such telephone calls from the police and the PI has noted this omission in custody suites in other police force areas (Kemp, 2013a, p. 194). This suggests that revisions to PACE are not always being communicated effectively to front-line staff. Interestingly, while HMICFRS (2017 and 2018) comment that suspects are advised of their right to legal advice, there is no reference made to this additional safeguard in the inspection reports.

## **2.2 Delays in accessing legal advice**

While the request rate for legal advice at the two stations observed was similar to that found in a recent study,<sup>16</sup> and being slightly higher than average at Garrick, the problem identified was in relation to suspects having to wait a long time to receive such advice. This seems to be due to the practice of some solicitors in not speaking to their clients until they attend in person at the police station in time for the interview, which can be many hours following a request for legal advice. Such practices are contrary to PACE, which requires suspects to receive legal advice 'as soon as practicable' after a request has been made. It is also contrary to the Legal Aid Agency contract specification, which requires legal advisers to contact their client within 45 minutes of receiving a referral.

There were a small number of research participants who had experience of being in the criminal process, having been arrested on numerous occasions, and they had spoken to their solicitor over the telephone. Interestingly, while some legal advisers might be reluctant to speak to clients prior to the police interview, research suggests that they will be more likely to make telephone contact when dealing with regular clients, because they bring work to the firms and their needs are prioritised to try and keep them happy (Newman, 2013). However, there were also a number of research participants who did not know that it was possible to speak to their legal adviser over the telephone. There were others who, after waiting for hours to talk to their legal adviser, changed their mind because they thought it was their solicitor who was causing the delay.

The following comments help to highlight some of the issues raised from the perspective of those involved in the criminal process:

- Having declined legal advice, one participant's response resonated with others when she said, "I'd have spoken to a solicitor over the phone if I'd known it was an option" (A.8).
- Another said that he had asked for a solicitor but later changed his mind saying, "I don't want it to delay things. I don't want one. I just want to get out of here" (B.46).
- In one case, the participant said he had requested legal advice when first detained at 9.30pm, but changed his mind in the morning. He said, "I was peed off this time because I came in and asked for a solicitor, but, at 10.30 this morning, nothing had happened and so I said I didn't want one [a solicitor] and I was interviewed straight away" (B.47).

From the PI's experience of conducting observations in large custody suites, there are many legal advisers who do not try to speak to their client over the telephone after having

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<sup>16</sup> Pleasence, Kemp and Balmer. (2011).

received a referral for legal advice.<sup>17</sup> While this seemed to be the situation in the two custody suites observed, such practices then led to custody staff advising detainees that they have to wait until the police interview before speaking to their solicitor. Following the research interview in one case, for example, after the research participant had gone through his rights on the App, he had the following exchange with a DEO:

- The suspect asked if he could speak to his solicitor over the telephone, but this request was refused and the suspect was told that he could talk to him when he arrived in time for the interview. The suspect then held up the written notice of rights, provided by the police, and pointed to where it states that he is allowed to speak to his solicitor at any time. The DEO said it does not happen like this in practice and, when the suspect persisted, he was told to take it up with the PACE Inspector (B.41).

It is contrary to Code C of PACE for a police officer to say or do anything with the intention of dissuading any person to obtain legal advice (para. 6.4). However, if the common response received by custody officers when contacting legal advisers is that they will wait until the police interview before speaking to their client, then this situation seems to have been accepted as the norm by some custody staff.

The solicitor said that he was “horrified and shocked” to hear that not all solicitors were complying with the contractual requirement to speak to their client within 45 minutes of receiving a referral for legal advice. Commenting on practice in his firm, the solicitor said that this would not be tolerated and legal advisers would be disciplined for not trying to speak to clients over the telephone. However, he did accept that it can be difficult and time-consuming for solicitors to try and talk to a client in custody, which could deter them from making the effort to do so. When describing the process involved, for example, the solicitor said that they have to use the police 101 national number and listen to an automated message before entering the eight-digit extension for the custody suite. They then have to wait for the phone to be answered and, having got through, they are invariably told that custody staff are too busy to arrange for the client to be brought to the phone. He would be given a direct number and told that the police would call him back shortly. After 10 minutes or so, without receiving the call, the solicitor said he would dial the number given, but, generally, the call was not answered. He then had to start the process all over again by calling 101.<sup>18</sup>

### **2.3 Solicitors’ delays when attending the police interview**

From the perspective of custody officers, concerns were raised over solicitors sometimes taking on too many cases and this can then lead to long delays, with the police having to wait for a legal adviser to attend the police interview. The solicitor acknowledged that there can be such problems, particularly when acting as the duty solicitor. This is because a number of referrals can be received and it is not uncommon for the police to be ready to interview suspects at the same time. In response to this problem, the solicitor said that, when acting as the duty solicitor, he would welcome the opportunity to liaise with the police early on so that he could discuss how best to deal with a number of cases simultaneously. With advance notice, for example, the solicitor said that he could arrange for several legal advisers to attend at the station at the same time and, if further support was required, he would use agents.

There have been similar findings in an earlier study, with the police being critical of solicitors for ‘stacking cases’ and with legal advisers then being busy in other cases when the police were ready to conduct an interview (Kemp, 2013a, pp. 190-191). With recent cuts in public spending, reducing both the number of police officers and legal advisers available to deal with cases, it is not surprising if this has contributed to an increase in the time it takes to deal with cases.

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<sup>17</sup> Research has shown how practice varies between police stations and so it is not known to what extent this might be a problem nationally.

<sup>18</sup> Research has highlighted similar problems with custody telephones not always being answered (Kemp, 2010, pp. 47-50; 2013a, pp. 195-196).

The LAA has arrangements in place for a back-up duty solicitor to be deployed if the first duty solicitor is unable to cope with a high volume of cases. However, the solicitor accepted that firms are reluctant to pass cases on to another firm of solicitors, even if it means that there will be long delays in dealing with the allocated cases. To help alleviate this problem, the solicitor suggested that the Defence Solicitor Call-Centre (which deals with referrals of legal advice) should be required to utilise the back-up duty solicitor if the first duty solicitor is unable to cope with the cases referred within a reasonable timeframe.

#### **2.4 Suspects changing their mind about having legal advice**

Under PACE Code C, if a suspect wants to change their mind about having legal advice, this is a decision that has to be reviewed by a police inspector. With research having identified that some suspects decline legal advice because they think their solicitor is the main cause of the delay, and with the police sometimes encouraging that perception, Code C was recently revised (Kemp, 2013a, pp. 198-201). This change means that, when the PACE inspector makes enquiries of the detainee about the reasons for their change of mind, he also has to take reasonable efforts to ascertain the expected time of arrival of the solicitor. In addition, the inspector has to inform the solicitor that the suspect has stated that they wish to change their mind and the reason, if given (para. 6.6 (d) (i)). The inspectors we spoke to at the two custody suites were not aware of this provision and the defence solicitor interviewed said that he had never been contacted by the police when a client had changed their mind about having legal advice. This recent revision to PACE Code C is also not mentioned by HMICFRS (2017 and 2018).

#### **2.5 PACE and confidential legal advice**

PACE requires that detainees have a right to communicate with a solicitor in private, but there were no facilities available to provide for a confidential conversation at the two stations observed. Instead, suspects were either required to speak to their solicitor over the telephone, either at the custody desk or in the corridor, which could be overheard by custody staff. A research participant made the following comment about the lack of privacy when talking to his solicitor over the telephone:

“They supervise the call so you can’t have a private conversation. When I was talking to my solicitor he [the DEO] was right there in front of me. There’s no privacy whatsoever” (B.71).

The solicitor said that his firm covers a number of local police stations and at all of them he can hear people speaking in the background when he talks to his client over the telephone.

This lack of privacy is highlighted in the HMICFRS (2017 and 2018) reports, with most stations not having facilities to accommodate a private telephone call between solicitors and their clients, including at recently built custody suites. It is also noted that, because of the lack of privacy, suspects are unable to talk to their legal adviser about the alleged offence, which undermines access to legal advice.<sup>19</sup>

### **3. Users’ perceptions of fairness in the criminal process**

Research studies have found that it is more important to people when being dealt with by the police that they are treated fairly than whether the outcome is favourable to them (Sunshine and Tyler, 2003; Skinns, 2011, pp. 35-43). It was for this reason that research participants were asked questions about their experience in police custody. Overwhelmingly, the majority said that they were treated well by the police or very well. However, there were issues arising where participants were dissatisfied with the criminal process and/or where problems were seen to arise.

#### **3.1 Arresting suspects**

There were complaints made by a number of suspects over the police being too quick to accept the complainant’s version of events when making an arrest:

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<sup>19</sup> Pattenden and Skinns (2010) also highlight the lack of privacy for many suspects when talking to their legal advisers in police custody.

- One participant commented, "I've got myself into a mess, but I haven't done anything wrong. It's not fair because there's a procedure the police have to follow, but whoever picks up the phone and dials 999, the police always favour them" (B.61).
- In another case, the research participant had tried to intervene when someone was making threats to kill people on the street, but, when doing so, he was struck in the face. His assailant ran off, but later called the police saying that he was the one who had been assaulted and, unquestioningly, this version of events was accepted and the suspect was arrested. When seen by the researcher, the suspect had been held for over 13 hours without having been questioned because the police were, not surprisingly, having difficulties in locating the complainant. Remarking on the unfairness of his situation the participant said, "My job is at risk and everything. I've been dragged down here when I just went out to try to calm things down. I've ended up with stitches and the police officer said 'The first one who rings wins'. How does that work? I don't believe it" (A.97).
- In a third case, the research participant accepted that he should have been arrested for damaging property, but he was annoyed that the police ignored the fact that he was being assaulted when they arrived. He asked the officer if he saw the assault and was told, "Yes I saw him hit you and I'll put in a good word for you." His reply to the researcher was, "I don't want him to put in a word, I want him to be fair. I'm the one who's in custody, but not the one who beat me up. It isn't fair. I haven't been treated fairly" (B.80).

### **3.2 Booking into custody**

There were criticisms made by a small number of research participants over the way they were booked into custody.

- Some complained about having been handcuffed for too long when brought into custody. One participant said that his wrists were hurting because he was handcuffed from behind for over 45 minutes while waiting to be booked into custody (B.69).
- Another participant said, "The process is so wrong. I was handcuffed and my wrists are so bruised, it was so unnecessary. They dragged me across to the cell and said that I was shouting but I wasn't" (A.90).

It is clearly a stressful time for people when being brought into custody and, if they try to resist detention by using physical force, then the police can keep the handcuffs in place until they are taken through to a cell. HMICFRS (2017 and 2018) have noted, however, that, while handcuffs are frequently used on detainees when brought into custody, these are not removed quickly enough when dealing with those who were compliant.

### **3.3 Experiences of being in a cell**

Police custody is a place of sanctioned isolation, where detainees are legally held in separation from the public and from each other (Skinns, 2011). Safeguarding those held in custody is a priority for the police and this can be extremely difficult, particularly as people detained are vulnerable and in an extremely stressful situation. There are also many people in custody who are not well, and others who want to self-harm or are suicidal.<sup>20</sup> To make the cells safe, these are bare and clinical, with nothing to distract people, not even a watch. Within such an environment, and without stimulation, time passes slowly for people who have nothing to do, and who can be held in a cell for many hours. Not surprisingly, therefore, most research participants said that being held in a cell for a long time was 'horrible' and, by far, the worst thing about being in custody. The following comments highlight a number of issues raised by research participants:<sup>21</sup>

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<sup>20</sup> It is for this reason that the police in some areas are working with the Samaritans to provide support to vulnerable detainees.

<sup>21</sup> Similar issues have been highlighted by Wooff and Skinns (2017) when examining the role of emotion, space and place in police custody in England.

- “There should be something better to do than look at the wall because it’s mind blowing” (B.66).
- “It’s about treating you as a human being, but they don’t give you anything. I know I can have a book, which helps, but there’s nothing to do. It’s dehumanising” (B.83).
- To help alleviate boredom, suspects are entitled to ask for reading materials, but, while some knew this, others did not. In one case, having gone through suspects’ legal rights on the App, the participant remarked, “I didn’t know I can ask for a book to read. It’s really boring in here. I’ve counted the number of blocks in the wall from this side to the other I’m so bored” (B.49).<sup>22</sup>
- “All your human rights go out of the window. Nothing else matters, no one cares, even if it’s for a minor matter. I’ve been arrested and I’ve done nothing at all. I’m being kept in a cell and I’ll lose my job over this” (B.71).
- “It’s like being in a dog pound. No one is telling you anything. I’ve been thrown in here since 10 o’clock last night. They keep opening the hatch and I get things to eat and drink, they keep me safe, but I don’t know what’s happening. They don’t think that I need to work and that people are relying on me” (A.97).
- “I’ve been in a cell a few times and I go crazy sometimes – it’s the boredom and you can’t sleep. You have nothing to do. It plays with your mind, you think about all sorts. They have 24 hours and it’s so emotional – I don’t like it. People bang the doors. Last night there was a guy opposite me and he tried to kill himself – he was going berserk, screaming, ‘I’m going to die’ and they [the police] had to sit there all night and watch him. It was very upsetting” (A.86).

When being held for a long time in a cell with nothing to do, a number of research participants complained of feeling unwell, particularly older participants:

- “You can’t feel comfortable inside the cell ... It’s the waiting that’s worse. There’s nothing to do and I feel like I can’t breathe, like I’m going to have a heart attack or something. I’m 58 now and on tablets” (B.63).
- “I’m locked away in here like a psycho or something. I can’t breathe properly. I want to know why my heart’s beating so much faster. It’s really stressful being in here. I’m too old for all of this now” (B.65).
- “I’ve almost been her for 24 hours and I don’t think I can do another 12 hours. It’s the nausea, the dizziness; I’ve been feeling dizzy all day, ever since I’ve been in here. I keep asking if I can use the exercise yard to get some fresh air, but it hasn’t happened yet” (B.69).<sup>23</sup>

While people are ‘fed and watered’, custody staff were seen to be under pressure at times, particularly when dealing with a high volume of detainees. There were also concerns raised by custody officers in both sites over recent budget cuts, which had led to a reduction in the number of custody staff. While safeguarding is the police priority for those held in custody, this meant that it was not always possible to give detainees the attention they wanted.

### **3.4 Being held incommunicado**

It is the boredom and being left with thoughts of what is happening, both in relation to the alleged offence and also in their personal lives, which can be extremely stressful and upsetting for detainees, particularly when having caring, work or other responsibilities.

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<sup>22</sup> HMICFRS (2017 and 2018) inspection reports note that only a small number of detainees are offered something to read – varying from around 4 to 15 per cent.

<sup>23</sup> HMICFRS (2017 and 2018) inspection reports show that detainees are not always given access to the exercise yards, with some being in a poor condition due to lack of use. In Skinns’ (2011, p. 97) study it is noted that there are no exercise facilities at many London police stations.

Such concerns can also heighten their fears and anxieties. Suspects have a right not to be held incommunicado, which means that they can ask the police to inform someone who has an interest in their welfare or their whereabouts. The police will often allow detainees to talk to someone over the telephone, and they will try to assist those who need help with child-care and other caring responsibilities. However, some research participants were anxious because they had not been able to sort out their problems. The following issues were raised by participants when considering their caring responsibilities:

- Having been arrested on a warrant, a research participant was upset because he was to be held in custody overnight. He said, "I look after my mum. She's in a wheelchair and blind. I get her tea every day and I don't know who's going to look after her" (A.3).
- This participant was brought into custody at 3am in relation to a domestic violence incident. He was desperate to be released in the morning so that he could attend a hospital appointment with his daughter, as she was in care and seriously ill with a heart problem. He was unable to contact the child's mother and, in a distraught state, he said, "I'm supposed to be at the hospital at 11.30am. I might not see her again, but they are keeping me here. I've told them I'll come back for an interview. I'm desperate to see my daughter before she dies" (B.71).
- It was just before 9am that a detainee was brought into custody for the first time and the research interview took place at midday. She was very upset because she had not been able to make a telephone call to let her family know what was happening. After the research interview, the DEO was asked if she could phone home and, while he said he would arrange it straightaway, this decision was overruled by the custody sergeant who said, "There are four others wanting to make a call and they'll all have to wait because we're too busy" (A.99).

A small number of participants were concerned over who would take care of their animals. This was the situation for one participant who had been held for over 12 hours:

- "I have cattle and horses that need watering. There's no one I can get in touch with. I didn't think I'd be here for so long, that's why I haven't been panicking, but now I'm getting worried. I need my blood pressure tablets, I have diabetes and I'm getting a blocked up nose. So, I'm getting into a bit of a state now" (A.87).

As noted above, there were cases where participants raised concerns that detention was having a negative impact on their job. In one case, the research participant said that being locked up meant that he would lose his job because he had been late on a previous occasion and been told that if there were any other problems, he would be sacked (B.71). This was the comment from another participant:

- "I'm a crane driver and I have seven or eight blokes who rely on me. They will be sent home today and won't get paid. They have kids, families and mortgages, and this is all because I'm stuck in here, and for what?" (A.97).

There is also the anxiety for detainees of not knowing what is happening in their case. This is where having early contact with a legal adviser could assist. While the legal adviser might not be in a position to provide information about what is happening in the investigation, having early contact with their client can help to assure them that they are involved. The legal adviser can also discuss with clients any concerns they might have and help to address these; either by talking to the police to see what action has been taken, or for the lawyer to make contact on behalf of their client with family, friends and/or employers.

### **3.5 Receiving medical attention**

A number of participants complained about having to wait for a long time to receive attention after having requested medical assistance.

- One participant said that he asked to see the nurse when he was booked into custody at 10.30pm because he had a cut to his mouth. When seen by the nurse at 5.30am, he was sent to hospital where he received stitches (A.97).

- Another participant said, “I asked to see the nurse at 10.30pm because I was in a lot of pain but I only got to see her hours later” (B.69).

There were a number of problems raised by research participants over receiving medical attention. While such problems were recognised by custody staff, it was pointed out that there were soon to be improvements because a new contract was shortly to be entered into with a different provider of healthcare services in both custody suites.

HMICFRS (2017 and 2018) inspection reports have identified problems with the healthcare provision available in a number of custody suites. In particular, it is noted that there can be difficulties for those contracted to provide health services in police custody to recruit and retain suitably qualified medical staff.

### **3.6 Experiences of BAME suspects and those who do not speak English**

There is the potential for racial bias in the criminal justice system, with disproportionate treatment and outcomes found for Black, Asian and Minority Ethnic (BAME) people when compared to White people (Lammy, 2017). It is extremely difficult to explore such issues without combining qualitative studies, which highlight people’s experiences in the criminal justice system, alongside analysis of large datasets, which include case outcomes and other factors where there is the potential for bias. This is an important issue that will be further explored when developing and user-testing the App. In particular, in addition to asking people about their experiences in police custody, and examining the potential for discriminatory treatment and/or decision-making, analysis of electronic police custody records will be undertaken.<sup>24</sup>

In addition, people who do not speak English, or for whom English is a second language, are also vulnerable in police custody, particularly as they are less likely than those who speak English to understand what is happening (Kemp and Balmer, 2008; Kemp, 2010). Without additional funding, it was not possible in this study to interview people who required an interpreter. There were a couple of occasions when suspects were asked by the police if they were prepared to take part in this study, they agreed to do so. However, when going through the research consent form, it soon became evident that they did not understand English sufficiently to give their informed consent to participate. While it was not possible to conduct a research interview, both suspects were anxious to talk to someone to find out what was happening in their case. Accordingly, it is important that research is able to take into account the experiences of all detainees, using interpreters for participants who do not speak English. This would help to ensure that the experiences and needs of those who have difficulty in understanding English are better understood and that their experiences can help to improve procedural safeguards.

### **3.7 Children and young people in police custody**

It had been our intention to test the App with young people held in police custody, but this was not possible because a research interview requires the consent of both the young suspect and their Appropriate Adult.<sup>25</sup> However, as the PI has found in other studies, Appropriate Adults tend not to arrive at the police station until the police are ready to interview the suspect and it is this task which then takes priority. While having an Appropriate Adult is an important safeguard, it is disappointing that we were not able to listen to the experiences of children and young people while held in police custody. We anticipate that many young suspects would be only too willing to talk to researchers, not least because it could help to relieve the boredom while waiting for many hours in a cell. Research interviews have been conducted with young people who have experience of being locked in a cell, but recollecting their experiences does not capture how they were feeling at the time. Nevertheless, we did learn that boredom for young people was the most difficult thing to cope with when held in custody. Interestingly, we also found that, for

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<sup>24</sup> The PI has experience of managing such large datasets having previously undertaken a study which involved extracting over 30,000 anonymous custody records drawn from 44 police stations in four police force areas (Kemp et al., 2011).

<sup>25</sup> It is mandatory for an Appropriate Adult to be involved in cases involving young suspects under 18 years of age.

some young people, being held in a cell was perceived as part of their punishment, even though, at that stage, they were being dealt with as a suspect (Kemp and Hodgson, 2016, pp. 21, 40).

When exploring the potential for racial bias in the criminal justice system, it is important to note that the Lammy Review (2017, p. 4) found the youth justice system to be the 'biggest concern'. This is because, despite there being a significant fall over recent years in the overall number of young people offending and reoffending, the BAME proportion on each of those measures has been rising significantly. Accordingly, research studies need to take into account the experiences of all children and young people in the pre-charge criminal process, including those from different BAME backgrounds. They could be asked questions about their experiences and treatment when being dealt with by the police, what they understood to be their legal rights, and how they exercised those rights. Such an approach is important not only in developing a child-friendly App, but also to assist policy makers in adopting a child-centred approach which could also help to eliminate racial bias in the youth justice system.

#### **4. Complaints**

There are procedures for detainees to make a complaint about their treatment in custody, but, as this requires them to contact their local police force, it is not known to what extent such complaints are made when people are released.<sup>26</sup> Some research participants raised concerns over the lack of objectivity in the complaints process with the police effectively investigating the police. On the other hand, people in custody are being detained against their will and so it is not surprising if complaints are made against the police. The following cases are illustrative of some of the issues observed and also raised by a small number of research participants when wanting to make a complaint:

- A detainee was being released from custody having been arrested on suspicion of driving a vehicle with excess alcohol. When dealing with the release, the custody sergeant asked if he had any complaints while he had been held in custody and the detainee said he had been assaulted by the police when a sample of blood was taken. The custody officer was not prepared to accept this complaint as he said the suspect was trying to create a defence that would be written down on his custody record. Having asked again if the suspect wanted to make a complaint, the same reply was received. In exasperation, the custody sergeant said that, instead of releasing the suspect, he would send him back to his cell and he would have to wait until the Inspector was free to talk to him about the complaint. Not surprisingly, the suspect withdrew his complaint and he was then released.
- A female research participant complained about her treatment by the police when being booked into custody. She said, "I had to strip and change clothes, but I don't know why because I didn't have any cords or anything. I was taking my clothes off and didn't have any trousers on when a woman went round me with the wand thing. I asked if it was a strip search and she said no, but it felt like it. It was so humiliating" (B.62).
- Having had to wait for a long time before seeing a nurse, and then being sent to hospital, a research participant was critical of a custody sergeant for not arranging for him to be sent to hospital earlier on. As he put it, "He didn't give a toss. I'm going to put a complaint in against him. His attitude was terrible" (A.97).

We discussed with research participants the potential for a digital feedback form to be incorporated into the App so that this could be used to make a complaint independently of the police. This was generally felt to be helpful, with one participant saying that complaining is important because, "You have some good people [in custody], but you need

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<sup>26</sup> Complaints can be made to the Independent Police Complaints Commission (IPCC), but the procedure to follow requires contact to first be made with the police force involved and the majority of complaints are then dealt with locally. The IPCC will also deal with a complaint if it was felt that this was not appropriately handled or the complainant was unhappy about the outcome.



to find out the few bad ones. The feedback form is a very good idea” (B.61). Some participants said they would only use the feedback form if they were confident that the police could not access the information. Whether, for reasons of confidentiality, detainees would be prepared to use a digital feedback form or not, an important part of user testing the App is to listen to people’s experiences in the pre-charge process and to use this information to help bring about change.

While the IPCC publishes statistical information about complaints made to the police, this does not provide details to enable an independent scrutiny of the data to be undertaken.<sup>27</sup> By not allowing formal complaints to be made at the time of detention, it is also not known to what extent people who have a grievance go on to make a formal complaint. By capturing people’s voices on the App when they are due to be released, this would enable their experience of custody to help inform policy and practice. The potential for the App to capture complaints, both in relation to the police and the defence, could also usefully be explored.

## **5. Technology and the Police Station App**

Not all participants commented on the efficacy of the App in providing information, but, of those who did, the majority said that it was a good idea, particularly for those brought into custody for the first time, and/or with children and young suspects. The App was also said to be helpful for people whose first language was not English if the information was set out in different languages. It was also commented on that the use of videos and graphics would help to make the App more user-friendly. There were a small number of participants who were too stressed to comment on the App and a couple who had no interest in technology.

There are safeguarding issues to be addressed if an App is to be made available to detainees while in their cell, as it could be used to self-harm. It was when looking to the future, with changes in the processing of cases and with a more sophisticated and user-friendly App, that research participants felt that there was the potential to help improve procedural safeguards, particularly when considering advances in information and digital technology. Some suggestions arose as follows:

- An App can provide information about suspects’ legal rights in different languages. A research participant, whose first language is not English, for example, said that it would be helpful for the App to have a map of the world and, by touching the country they come from, this would lead to the information being available in the language(s) spoken in that country (B.79).
- Instead of viewing the App on a tablet, participants were attracted by the idea that it could be incorporated into a TV monitor that is safely embedded into the cell wall.<sup>28</sup> In addition to providing information about detainees’ legal rights, it could also help to relieve boredom by providing off-line entertainment.
- Technology is available which would enable detainees to be connected virtually to their solicitor via a TV monitor. Research participants thought this was a good idea and some, who had refused legal advice, said they would have a solicitor if it were so easy to contact them.<sup>29</sup>
- Recognising the advantages of such a link one participant said, “I can talk to my solicitor over the phone now, but I can’t really say anything because I have an officer

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<sup>27</sup> In 2016/17 there were 34,103 complaints made against the police in England and Wales with the main categories relating to: other neglect or failure in duty, incivility, impoliteness and intolerance, other assault, oppressive conduct or harassment, lack of fairness and impartiality (IPCC, 2017).

<sup>28</sup> There are three police force areas where TV monitors have been brought into police cells on a trial basis.

<sup>29</sup> The TV monitor could have a secure link to custody officers who would arrange for the call via the Defence Solicitor Call Centre.

leaning over me. The App is the way to go; it will be a lot better when you can talk to your solicitor in private" (B.66).<sup>30</sup>

- Incorporated into the App could be a short comprehension test to evaluate a suspect's general understanding of language and law. Additional clarification would be available to address confusion about terminology, the process, or legal rights. Also incorporated could be a mental health assessment if certain problems are highlighted. Chatbot, a computer programme that mimics conversation using artificial intelligence, could be used to assist people when going through questions as part of the mental health assessment.

Advances in information technology could also assist in police custody if suspects arrested in one area have to be taken to court in a different area, particularly if this was many miles away. In one case, for example, a research participant was arrested on a Scottish warrant and the police had to arrange for an escort to convey him to the Glasgow Sheriff's Court. From what the participant had to say about the circumstances of the warrant, and the underlying offence (which could not be verified by the researcher), it seems that a virtual conversation between the police and the courts, both in Glasgow and locally, could have avoided the time and cost for the police in arranging the 600-mile round trip (A.3).<sup>31</sup>

Finally, it is important to reflect that advances in technology could assist with the routine recording of tasks undertaken in police custody. Instead of custody staff inputting data into custody records, many hours could be saved through the automation of such tasks. At the press of a button, for example, the time that detainees make a request for food or legal advice would automatically be recorded. A similar response from custody staff would also automatically record when the request had been met.

## **6. Summary**

PACE, and the accompanying Codes of Practice, provide legal protections for people held in police custody. When testing the prototype Police Station App with detainees, however, it soon became apparent that such legal rights are not always upheld. There are long delays, for example, with the average time of detention being over 17 hours in the two custody suites studied. It is also evident that the practice of many solicitors is not to talk to their clients over the telephone, but, instead, contact is first made with clients when attending for the police interview, which can be many hours after a request for legal advice has been made. Even if legal advisers do speak to their clients over the telephone, there are no arrangements in place at many police stations to facilitate a confidential conversation, which undermines access to legal advice. In developing an App to be used in police custody, it is important that such issues are addressed, so that legal rights, as required by PACE and the Codes of Practice, and which are then set out in the App, reflect practice on the ground.

When considering legal safeguards, however, it is also important to reflect that PACE was implemented over 30 years ago, and many changes have since taken place which have implications for the legal rights of detainees.<sup>32</sup> The complexity of cases, for example, has increased significantly, particularly with advances in technology leading to CCTV evidence frequently being used in cases, which increases delays. There has also been a significant increase in the number of voluntary interviews, used as an alternative to detaining and interviewing suspects. This has led to more complex and time-consuming cases being brought into police custody, which will increase average duration.

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<sup>30</sup> But, as the solicitor pointed out, the technology would need to ensure that the conversation between a solicitor and his client is confidential.

<sup>31</sup> This is not to say that the case could have been dealt with by way of a virtual hearing, but a different approach adopted could have avoided the need for the police to transport the suspect over such a long distance.

<sup>32</sup> While the PACE Codes of Practice have been revised extensively, there are increased safeguards which are ignored in some police stations.

There are other changes which have influenced the processing of criminal cases. When PACE was implemented, for example, there was no requirement for the police to take into account the needs of victims when authorising detention and deciding how long suspects should be detained. This has changed, with the police now being required to take into account the vulnerability of victims when making decisions, particularly in domestic violence cases. The recent change to pre-charge bail has also had an impact on increasing delays in police custody, with the police wanting to complete as much of the investigation as possible at the time of the first interview. With a tendency towards centralising custody facilities in some areas, there are also custody suites being built with 50 or more cells. Such large facilities were never envisaged by PACE, and it is important to review procedural safeguards in the light of such change. The structure of legal aid remuneration, with solicitors now being paid a fixed fee for police station work, also seems to have had a negative impact over the quality and availability of legal advice.

While safeguarding those detained is a priority for the police, being held in a cell for many hours with nothing to do can have a negative impact on people's perceptions of fairness within the criminal justice system. By listening to the experiences of those detained, this provides important information to assist policy makers when considering the efficacy of procedural safeguards from the users' perspective.

In seeking to address some of the problems raised in this study, the PI arranged a meeting with the police at the two custody suites observed and a local duty solicitor was also involved. It was acknowledged that improved communication between the police and legal advisers could help to increase efficiencies, and also help to improve access to legal advice. A suggestion put forward by the PI is for the police to make available a room for duty solicitors in the two large custody suites. This arrangement could help to reduce delays, as it would assist the police and the defence by organising in advance when a number of interviews are to be held simultaneously. This would also enable lawyers to respond quickly to requests for legal advice by detainees who do not have their own solicitor.<sup>33</sup>

While this study was based on two custody suites, the issues raised in relation to procedural safeguards suggest the need for a review of the PACE safeguards to ensure these are relevant to the processing of detainees in the 21<sup>st</sup> Century.

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<sup>33</sup> The PI worked with the police and defence solicitors in setting up a duty solicitor room in a large police station. This arrangement has not been as effective as it could have been, as the room was based outside of the custody suite and legal advisers did not have easy access to custody sergeants. Nevertheless, it did help to improve communication and it is still in use today (see Kemp, 2012 and 2013b).

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