

Thought piece

This special edition on UK homicide investigations cannot be more timely, given the current landscape within the Criminal Justice System in England and Wales. One could be forgiven for thinking that British criminal Justice raises the same problems on an almost cyclical basis, with recurring problems manifesting in the form of miscarriages of justice (MOJ), poor investigations of rape and domestic abuse reports, poor investigation of apparent or actual homicides, and ongoing issues with one of the areas of practice considered to be fundamental to justice and designed to reduce MOJs: the disclosure regime underpinned by the CPIA, codes of practice and various explanatory and guidance documents. There is a history of high profile failings that serve to place poor police practice in the spotlight and amplify in a negative way how the public see police abilities to solve major crime. As Brookman & Innes (2013) suggest, often how police investigate major crimes is used as a 'barometer' of police success. In contrast, the way police have honed investigative practice in relation to major crime investigation is often held as the gold standard for all investigations. Despite recurring problems, MOJs can variously be caused by corrupt practices, poor decision making, compliance drift (see Innes, 2003), or investigative incompetence variously fueled by neglect, laziness, lack of training, lack of resources, tiredness, lack of supervision or lack of experience to perform the duty required (as has always been the possibility). What is interesting however is that causes resulting in same outcomes can change over time. To that list of possible causes above, we can now add other variables such as government austerity measures, staff with higher workloads expected to do more with less, an ever increasing tidal wave of technological advancement that can overload stretched resources, a higher public expectation that the police are now professionalized and thus more capable than ever, and an increased level of scrutiny unwelcome in policing circles due to such problems (Roycroft, 2019).

Brookman, Maguire & Maguire (2019) suggest that the number of homicide cases solved in the US has declined significantly from above 90% in the 1960's to under 60% in 2016. In the UK, they demonstrate that the decline is less; from 94% in the 1960s to an average of 90% since the turn of the century. That said, a recent Guardian article, based upon freedom of information requests replied to by only 20 out of 43 police services, suggests that detected homicides fell from 83% in the year 2010-2011, to 74% in 2015-2016, and 67% in 2017-18 (Dodd, 2019). Whilst the statistics cannot be relied upon, because of the response rate and potential for inaccuracy, possible explanations for any decline in homicide detections are the increasing complexity of cases, the reduction of resources available to investigate, the capacity of investigations to be able to cope with high volume information generated in homicide investigations (see Allsop in this special edition), and capacity to deal with the rise in technology. Maguire, King, Johnson & Katz (2010), observe that the traditional academic view of homicide investigation, has been that two important factors contribute to whether a crime is detected or not. Those factors are environmental, and organizational. Environmental factors are usually understood as issues such as demographics of a case such as location, community characteristics, type of victim (including gender, race and lifestyle), and case complexity. Organizational factors usually comprise the nature and quality of the investigative response, competence, workloads, policies, practices and procedures, experience, and so on. Others have described these as being extrinsic factors (environmental), as opposed to intrinsic (organizational), and have suggested in the past that investigations are usually hampered by environmental/extrinsic factors and there is little that investigative effort (organizational/intrinsic) can do to improve matters and increase detections (echoing the Greenwood, Chaiken & Petersilia study (1977) which suggested that detective effort did little to solve crimes). Recent discourse has begun to challenge this perception, and argue that what

investigators do can, in fact, make a very important difference to whether cases are solved (Brookman, Maguire & Maguire (2019; Wellford, Lum, Scott, Vovak & Scherer, 2019). Cook, Braga, Turchan, & Barao (2019), also considered why gun homicides were cleared more than non-fatal gunshot cases in the US. They concluded that investigative effort longer than the first two days of an investigation yielded better results; once again pointing to factors that are organisational that can positively affect outcomes.

The dichotomy between environmental and organizational factors does however suggest that the distinction is simple, and if we know anything, it is that not everything *is* as simple as that. Brookman et al. (2019) suggest in their recent paper that some lines are blurred, and the simple dichotomy does not take account of the complex and sometimes close relationship between both environmental and organizational factors. It is useful to read the empirical studies within this special edition with these factors in mind. Many of the themes emerging from this collection of research papers on UK homicide investigation relate to organizational factors and the issues and problems raised by the voices of practitioners. That said, Mozova discusses problems associated with so called gang related investigations and articulates a number of both environmental and organizational factors that appear to hinder effective investigation of cases, and these are arguably linked to an extent that cannot be understood as a clear distinction between environmental and organizational. For instance, some communities where homicides occur may appear distant from the police and a likelihood of cooperation in investigations considered low (Brookman et al., 2019). But what about any effort by investigators to engage with the community, to encourage participation? A good starting point would be the use of community impact assessments, and Mozovas work suggest that these are sometimes not undertaken. Could the approach and mindset of investigators (organizational) make a difference to the environmental factor (community)? Again, this is not to suggest that police never engage, but assuming lack of cooperation could sometimes be a self-fulfilling prophecy.

Dominant themes that emerge from many of the research papers in this journal are: the effects of government austerity measures on resources and workload, the rise of technology and its detrimental effects upon police investigations, the current issues associated with disclosure, oversight of investigations, organizational arrangements for investigations, and the importance of experience, training and knowledge in investigators. These identified themes are important because they can all lead to miscarriages of justice either on their own or combined. Miscarriages of justice in this context relates to the wider sense of not just convicting the innocent, or not convicting the guilty but also never bringing a person to justice due to investigative failings (Poyser, Nurse & Milne, 2018). Space precludes a discussion of all themes emerging, but some will be extrapolated further below.

What is most concerning about the voices of practitioners in this special edition is that there seems little time or resources to be able to do the bare minimum required in homicide investigations. Evidently the rhetoric of professional practice struggles against the reality of deep cuts to the investigative function, and homicide investigations have not been immune to this. Indeed, Dodd (2019) also notes that there has been a decline in the number of detectives in homicide teams, down by 610 (28%) between 2010-11 and 2017-18. In Hill/O'Neill, Mozova, Fox, and Allsop, one discerns a body of investigators trying to do their best against a backdrop of less resources, higher workloads and increased expectations. The current system is providing perfect conditions for miscarriages of justice to flourish (O'Neill, 2018). Even the safeguard provided by the CPS appears to have suffered under austerity measures, to the detriment of case management. Hill/O'Neill demonstrate that investigators are unable to work on review recommendations and complain that often there appear to be more review team members than homicide detectives, and that they have fewer resources to be able to act upon recommendations. Moreover, they suggest they are likely to have moved to

another homicide case by the time any review is completed. The nature, timing, and purpose of reviews appears in need of reconsideration in the modern era, although the study reported one large police service and does not necessarily reflect what occurs in other police jurisdictions. In Mozova, and Hill/O'Neill, officers complained that they were unable to progress multiple perpetrator homicides due to scarce resources, and that they had to make pragmatic decisions to concentrate upon more obvious suspects rather than all potential suspects (what one respondent called 'low hanging fruit'). In Fox, the impression emerges of inconsistent practice in cases of child death investigation, with less resources applied to this category of homicide than almost any other. Whether this is a product of austerity and scarce resources is open to question, as the way in which these investigations are structured and managed appears to be a deliberate policy due to the nature of the response believed to be required, including responses with other agencies (see further discussion below).

Lack of resources represents an imperative for investigators to do more with less, although there are consequent concerns relating to welfare of officers in these situations (Turnbull & Wass, 2015). Various articles in this special edition identify lack of resources as problematic in modern homicide investigations, and in Hill/O'Neill, Mozova, Fox, Allsop, and Brown/Crego, there is evidence of high workloads against a backdrop of cuts, and concerns amongst some SIOs that systems and practices may not be able to identify actual or potential MOJs, either at all, or before it is too late. Concerns around cutbacks and their effects on police resources in homicide investigations have been reported elsewhere too (see for instance, Turnbull & Wass, 2015; Roach et al., 2018; Brookman, Maguire & Maguire, 2019).

Recent issues with failed disclosure in rape and serious sexual assault cases (such as Liam Allan, Isaac Itery and others), demonstrated further opportunities for actual or potential MOJ's. Luckily, cases like Allan were caught before conviction, but this and other cases mentioned still represent a catalogue of 'near misses' (Smith, 2018). The CPIA was intended to provide a statutory regime to ensure that problems with disclosure did not arise in the future. The CPIA, with associated codes of practice and a disclosure manual, mandated police and prosecutor conduct in the investigation of cases, as well as in the recording, retention, revelation and ultimate disclosure of unused material. Even before the recent problematic cases, there was ample evidence that police officers did not use the law (See Taylor, 2001; 2005), and a recent HMSPSI and HMICFRS report that criticized both the police completion of unused material schedules (22% inadequate) and CPS supervision and management of the process (HMCPSI & HMICFRS, 2017). Smith (2018), suggests that there is a tension between the due process rights of suspects and the adversarial system, with investigators in a cultural milieu diametrically opposed to open disclosure, despite legislation and guidance. Some commentators are also suggesting that the law needs to be changed to allow for post-conviction disclosure following what they suggest is an unsatisfactory ruling in a recent case (Greenwood & Eady, 2019). Disclosure is one of the issues that emerges again in both Mozova and Hill/O'Neill articles, representing a major concern for investigators worried about the implications of disclosure burdens with limited resources. One of the interesting aspects of the Allan case relates to the rise in technology and the challenges this brings for investigators. Whilst mobile phones, computers and other technological advances are to be welcomed in general, they pose problems for investigators. In the Allan case the suggestion was that a mobile phone contained 57,000 lines of data (MPS & CPS, 2018). Multiply this in cases of groups suspected of homicide and the problems for an investigation amplify. Bearing in mind the CPIA duty to pursue reasonable lines of inquiry, investigators will be faced at times with a battle to interrogate technology such as CCTV, computers, phones and other devices for evidence and or intelligence relevant to a case. All this against a backdrop of limited investigative resources, capacity and capability pointed out by the HMICFRS (2017) in its PEEL report.

In addition, Allsop notes how the rise in the use of forensic evidence, whilst a major breakthrough in strategies that could help to bring offenders to justice, can create issues with the need for further and costly forensic examination despite the closing of the Forensic Science Service, and the potential that an over reliance on forensic evidence can have a detrimental effect upon the amount of other investigative effort expended on a case. The problematic issue of investigator mindset to forensic evidence (or lack of) has been alluded to by others previously (see Innes, 2003, and Roach et al., 2018). The belief that forensic evidence is the 'golden nugget' of a case is also flawed from an evidential perspective. Even though it can be crucial to cases (Roycroft, 2007), it is only strong circumstantial evidence and on its own, without other evidence, rarely solves a case (Stelfox, 2006).

According to the Fox research, those undertaking child death investigations appear to be less experienced, and as a result of little or no training, are under qualified to perform their role. Bearing in mind the importance of child death investigations, this is a concern, although not surprising based upon the preceding discussions relating to resources and workload. The training issue is worthy of further research in terms of the effects of austerity on the availability and opportunity for training, the increased use and effectiveness of e learning as a tool for professional development, and the opportunity and availability for continuing professional development of specialists. In Hill/O'Neill, Mozova, Allsop and Fox there are signs that specialisms need both experience and quality training and development to enhance expertise in specific areas of homicide investigation. In Fox, for example, there is a call for more training in relation to the investigation of child death particularly in light of ACPO policy that suggests all investigators in the field must be nationally qualified to perform the role (ACPO, 2014). Hill/O'Neill highlights a need for training and development of SIOs and reviewers in proactive investigations, and in Mozova, the research highlighted a need for specialist, experienced officers to undertake gang related investigations. Brown/Crego and Mozova also highlight the importance of experienced and well trained Family Liaison Officers to assist with the ongoing investigation, as well as to support co victims through the criminal justice process. In relation to disclosure, the need for further training and development of police and CPS staff has already been identified (HMCPSI & HMICFRS, 2017; MPS & CPS, 2018), and a National Disclosure Improvement Plan is in place (NPCC, CoP, & CPS, 2018).

Fox highlights issues relating to the investigation of sudden child deaths, but his concerns and observations have implications for other sudden death investigations as well. Firstly, there is an issue relating to the ownership of investigations from the early stages of police response to sudden deaths. In relation to child deaths, Fox highlights the inertia of decision making regarding who investigates a case and at what stage. Homicide teams in the study appear to only take cases where medical evidence confirms homicide. This is problematic, as medical evidence can take some time to emerge. Often this can take months, by which time some essential investigative activities may no longer be possible. Fox highlights this lacuna well and makes suggestions for improvement. What he also alludes to is the inertia created at the investigation level in terms of the guidance afforded to responders in cases of child death (ACPO, 2014). We know that human nature can make a significant difference to how cases are investigated and their eventual outcomes. Guidance to investigators relies upon an understanding that many child death cases are as a result of natural causes, although it is suggested that as the situation develops with greater medical knowledge in this field, it is likely that the number will fall and the number of suspicious case will rise (Marshall, 2012; ACPO, 2014). Because many are due to natural causes rather than crime, police officers are in the unenviable position of being advised to approach cases in a different, more sensitive way to almost all other potential homicides. They are urged to act in a 'sensitive and controlled' manner, or what Marshall (2012) has described as 'compassionate cynic'. This is a tricky thing to require of investigators used to cordoning scenes, seizing exhibits, taking statements, arresting suspects and so on. Such a mindset encourages

investigators to perform some form of 'mental gymnastics' and to subsume their usual police mentality. The point here is not that police officers cannot do this. Indeed, many do this with ease. The problem comes in relation to consistency, and whether these instructions cause confusion and hinder effective responses, where officers could inadvertently miss important evidence. Good practice relies upon the level of experience, expertise, knowledge, and training that investigators have in these cases. Evidently, from Fox's article, training appears to be lacking, and inexperienced officers are investigating what are very important potential homicides. The College of Policing offer a National Child Death Investigation Programme, consisting of a week long course, although availability is unknown. Again, such lack of clarity potentially fuel a 'perfect storm' that could lead to future MOJ's. Arguably, cases such as Poppi Worthington demonstrate these kinds of issues, where the police response was criticized by both coroner and the IOPC, amid suggestions that officers at the potential crime scene failed to preserve what could have been crucial evidence, and where the initial response was deemed to be inadequate (IOPC, 2015). Fox goes further, and argues that the system of response to child deaths as it currently stands, may inadvertently lead to some homicides being missed.

The investigation of deaths is a fertile ground for future research, relying as it often does on a uniformed response, in the first instance, to consider whether any suspicious circumstances exist. In some cases local detectives are also called upon to provide their opinion on whether a case is suspicious, and only then will cases be referred to homicide teams to investigate. The Stephen Port case (Openshaw, 2016) is another that exemplifies problems in referrals to homicide teams. Whilst there is evidence of consultation between local investigators and the homicide team, the case was referred only after the family of Jack Taylor (Port's final victim of four) undertook their own investigations and pressed the police into further action. Lack of oversight from those considered experts (i.e. SIOs or experienced homicide detectives) can mean that homicides are missed. On a final note regarding death investigations, research would be useful to ascertain the force standard operating procedures and/or guidance relating to all forms of death investigation. Whilst the College of Policing have produced practice advice for dealing with sudden unexpected deaths in adults, each individual police force has their own policies and practices. Some mirror the practice advice, whilst others do not. Some use confusing language by identifying certain deaths as suspicious at the outset, such as deaths in prisons, child deaths, drug related deaths, suicides and so on. In this way they appear to be trying to ensure that certain types of cases have at least a detective of the rank of Inspector oversee local investigations, so that no potential homicides are missed. The confusing aspect of this is that the investigation then has to be undertaken to consider whether any death is *actually* suspicious in the sense that there may be third party involvement sufficient to invoke a fuller criminal investigation. As with guidance on investigating child death, clarity is important so that practitioners are clear on their responsibilities, and defining certain cases of death as suspicious in the first instance merely to signify that the response needs to be overseen by a detective Inspector seems likely to overcomplicate matters when the investigation should determine suspicion, not necessarily the category.

Waddington (2015) suggested a number of years ago that police often react to failings with the rhetoric that lessons have been learnt and that the problem will not recur. This, he argues, belies the reality of the situation, and indeed there is evidence that problems do recur despite claims made (see O'Neill, 2018). That said, it is difficult to be critical of a police service that appears to be suffering the consequences of severe cuts to resources and are having to make do with the limited resources they have against the backdrop of increased demand and an inevitable rise in technology that they have limited capacity to cope with. However the police cannot be absolved from all responsibility. Let us not forget that MOJs due to poor investigative practice, poor decision making and poor disclosure have occurred for many years, even before austerity and the resource shortages and rise in complexity

of cases and technological advances. What may be happening is that the more modern problems have added another layer to the variables that can create the conditions for MOJs to occur. Before austerity, attempts were made to professionalise investigations (at every level of seriousness), under the auspices of the professionalizing the investigation programme (PIP) (Stelfox, 2009; Tong et al, 2009; O'Neill, 2018). However, evidence of success is not currently available (James & Mills, 2012; O'Neill, 2018; Donnelly & West 2019). Additionally, the Murder Investigation Manual (MIM) (ACPO, 2006) was produced to act as useful guidance for SIO's, but has not been updated sufficiently to take account of new and emerging developments in the field of homicide investigations (Donnelly and West, 2019). Moreover, decision making guidance and tools (i.e. the National Decision Making Model) appears unsuitable for hypothesis generation and testing, a process thought most likely to prevent tunnel vision/confirmatory bias (and therefore minimize MOJ's) better than other decision making processes (Dando & Ormerod, 2017). This could have prevented flawed thinking of the kind that has crept into sexual assault investigations, where an assumption of the truth of a complainants account effectively reverses the burden of proof against suspects, thereby undermining essential principles of the legal system (Henriques, 2016). I do hope you enjoy the collection of articles within this special edition. It begins with an empirical study by Valeria et al that provides some interesting evidence regarding homicide offender typologies and crime scene behavior patterns. Within the context of offender profiling, this research may add an extra evidence based dimension to investigations where relevant.

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