

Examining the Impact of PACE on the Detention and Questioning of Child Suspects

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Foreword

By Lord Carlile of Berriew CBE KC

After leading the Parliamentarians' Inquiry into the operation and effectiveness of the youth justice system, I was delighted in 2016 to accept an invitation from Dr Vicky Kemp to Chair her Steering Group which, at that time, was overseeing her work on "Digital Legal Rights for Child Suspects". With representatives from policy and practice involved with child suspects, the Steering Group was well placed to oversee the work of the research team on this Nuffield-funded study of the impact of PACE on the detention and questioning of child suspects.

In addition to representatives from government departments and agencies, including the Home Office, the Ministry of Justice and the Youth Justice Board, it was essential to have the involvement and support of the police. The researchers were supported by the College of Policing, the leads for children and young people and police custody from the National Police Chiefs' Council, Chief Constable Catherine Roper and Deputy Chief Constable Nev Kemp, especially in obtaining access to police custody and in gathering electronic custody-record data from the individual forces. It was also important for the Steering Group to draw on the knowledge and expertise of practitioner groups providing legal safeguards for child suspects: these included Richard Atkinson, co-chair of the Law Society's Criminal Law Committee, and Chris Bath, Chief Executive of the National Appropriate Adult Network. To help with our review of PACE safeguards from the perspective of child suspects, it was invaluable to have Professor Michael Zander KC as a member of this Steering Group.

For the first time, the findings presented in this report illuminate in depth what happens during the early stages of the criminal process in police custody from a child's perspective. For too long, what happens to children drawn into police custody has been hidden. It is important that their experiences are analysed methodically and used to influence change. Involvement with the police is the gateway into contact with the criminal justice system for children and young people, and for this and other reasons, this research is essential. Police custody is a complex and sensitive environment that is centred on dealing with adults rather than children. When viewing the harsh realities of police custody through the lens of a child, particularly when this involves having to spend many hours alone in a cell waiting to be interviewed, it becomes all too clear that children should not be brought into this environment unless they are being dealt with for very serious offences.

Steering Group members and those involved in the project's Research Advisory Group were brought together to comment on draft proposals for change and, arising from those discussions, the report sets out a comprehensive set of measures for introducing a Child First approach in police custody. There are several key recommendations, with the first requiring that police custody is only used as a last resort when dealing with child suspects. This aim will only be achieved if the police are able to call upon help and support from children's services. In turn, these services require additional funding if they are to be available to provide full-time support, including overnight and at weekends, to ensure that children are not brought into police custody as a place of safety. It is not acceptable that

the police are often unable to make contact with agencies that have a statutory responsibility to safeguard and promote the welfare of children, as the findings from the research demonstrate, and this means that the police can often be left alone to deal with vulnerable children while they are held in police custody.

It is also important that the police are able to access information from other agencies in a timely way. This is not only to assist decision-making and to provide an early robust assessment of a child's vulnerability and competence, but also to help to identify those who can be diverted out of police custody at the earliest opportunity and to enhance legal protections for those who remain. The report proposes a relatively simple change in requiring a shorter PACE clock for children, using a 12- rather than 24-hour clock. Another important change proposed is to have a presumption of the provision of legal advice and restrictions on its waiver. There are also recommendations for developing a different model when interviewing child suspects and requiring specialist training of all practitioners involved in the detention and questioning of child suspects.

The comprehensive set of measures provides a framework within which changes to PACE can be piloted by the researchers in partnership with the police and other agencies. To this end, it is excellent that the Nuffield Foundation have agreed to fund this activity, using the evidence base from this study to help inform changes that will later need to be made to PACE and the Codes of Practice in requiring a Child First approach to be adopted when dealing with children in police custody.



The Nuffield Foundation is an independent charitable trust with a mission to advance social well-being. It funds research that informs social policy, primarily in education, welfare and justice. It also funds student programmes that provide opportunities for young people to develop skills in quantitative and scientific methods. The Nuffield Foundation is the founder and co-funder of the Nuffield Council on Bioethics and the Ada Lovelace Institute. The Foundation has funded this project, but the views expressed are those of the authors and not necessarily of the Foundation. Visit: www.nuffieldfoundation.org.

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Acknowledgements

This study examined the impact of the Police and Criminal Evidence Act 1984 (PACE) on the detention and questioning of child suspects. A “case study” approach was adopted, which included conducting research interviews with all those involved in the questioning of child suspects, as well as examining the recordings of these interviews. For the first time in England and Wales, this included researchers engaging with children about their legal rights while they were held in police custody. While it is difficult for researchers to undertake fieldwork in such a secure and sensitive environment, particularly when having to deal with some of the most vulnerable people in society, this study would not have been possible without the tremendous help and support we received from our three participating police forces.

We want to say particular thanks to custody staff in the eight custody suites where fieldwork was undertaken, who not only made it possible for researchers to observe children when they were brought into custody and to engage with those willing to participate in this study, but also gave their time to talk to researchers about their experiences of dealing with child suspects. We also want to extend our grateful thanks to those involved in the questioning of children who agreed to be interviewed as part of this study, which includes police interviewers, lawyers and appropriate adults.

Most importantly, our heartfelt thanks go to the children and young people who agreed to participate in this study, particularly as this was at such a difficult and anxious time for them, while they were waiting in a cell to be dealt with by the police. By listening to their experiences of being detained and questioned by the police, we have for the first time been able to view what happens at this early stage of the criminal process in “real time” through the lens of a child. From the child’s perspective, we have seen how the criminal process operates in a punitive and adult-centred system of justice, with very little difference required whether dealing with a child or adult suspect. When listening to the voices of detained children, we have seen first hand the isolation and distress that many children experience when being left alone in a cell for many hours with little or no distractions. Having viewed the criminal process from the child’s perspective has helped to inform our recommendations for change, which are set out in a comprehensive set of measures aimed at requiring a child-friendly and child-centred approach to be adopted in police custody.

In situating the case studies within a broader national picture, which has given both breadth and depth to this study, we were pleased to work with policing partners in 12 forces to obtain data extracted from anonymised electronic custody records. We want to thank and acknowledge these participating forces for taking the time and effort not only to collect and deliver this electronic data but also to bring together the data-sharing agreements required before sharing this information with academics. This administrative data offers a wealth of information from which to provide strategic oversight of PACE safeguards.

In overseeing this project, we want to express our grateful thanks to members of our Research Advisory Group. Their academic and practical expertise was invaluable in providing guidance throughout this project, particularly when dealing with the complex ethical issues arising when seeking to engage with children held in police custody. We want to express our particular thanks to Dr Miranda Bevan for her help in developing the comprehensive set of measures designed to bring about a Child First approach in police custody.

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We also want to thank policymakers and practitioners involved in the project's Steering Group. Chaired by Lord Carlile of Berriew CBE KC, and including academic and legal support from Professor Michael Zander KC, Professor Pascoe Pleasence, Dr Tim Bateman, Dr Laura Janes and Kate Aubrey-Johnson, representatives from the following bodies have provided guidance, expertise and advice throughout this project.

Home Office	Ministry of Justice
National Police Chiefs' Council	College of Policing
Law Society	Youth Justice Board
Crown Prosecution Society	National Appropriate Adult Network
Just for Kids Law	Solicitors' Regulation Authority
Michael Sieff Foundation	Legal Aid Agency

While we were supported by members of our Research Advisory Group and Steering Group throughout this project, all views expressed are our own.

Finally, we want to thank the Nuffield Foundation for funding this research and for supporting us through difficulties experienced when attempting to conduct fieldwork in police custody during a global pandemic.

Research Team: Dr Vicky Kemp, Principal Investigator; Dr Nicola Carr, Co-Principal Investigator; Hope Kent and Professor Stephen Farrall, Data Analysts (University of Nottingham).

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List of abbreviations

AA: appropriate adult
APP: Authorised Professional Practice
ABH: assault occasioning actual bodily harm
CAMHS: Child and Adolescent Mental Health Services
CID: Criminal Investigation Department
CJS: criminal justice system
CPS: Crown Prosecution Service
CR: custody record
CS: case study
DDO: Designated Detention Officer
DP: detained person
The ECHR: the European Convention on Human Rights
The EDT: the Emergency Duty Team
GBH: assault occasioning grievous bodily harm
HMICFRS: HM Inspectorate of Constabulary and Fire & Rescue
IO: interviewing officer
JIIP: Joint-Interim Interview Protocol
L&D: liaison and diversion [worker/team]
LA: legal adviser
MASH: Multi-Agency Safeguarding Hub
MPS: Metropolitan Police Service
NAAN: [the] National Appropriate Adult Network
NFA: no further action
NPCC: National Police Chiefs' Council
OOC: out-of-court disposal
PACE: the Police and Criminal Evidence Act 1984
RI: audio-recorded interview
RUI: released under investigation
s.18 GBH: GBH under section 18 of the Offences Against the Person Act (with intent)
TWOC: taking a vehicle without the owner's consent
The UNCRC: the United Nations Convention on the Rights of the Child
VRI: video-recorded interview
YOT: Youth Offending Team

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Executive Summary

The criminal law is supposed to treat children, being those aged under 18 years, less harshly than it treats adults because of their developmental differences. Children also have particular legal rights due to their age, needs and circumstances. While the number of children arrested by the police has fallen by two-thirds over the past ten years, there were just under 53,000 people under 18 years old brought into police custody in England and Wales during the year ending March 2022. For children who come into conflict with the law, particularly those detained and questioned by the police, special protections are required to ensure that their legal rights are protected. In addition to legal safeguards under the Police and Criminal Evidence Act 1984 (PACE), children arrested and detained by the police have legal protections under the United Nations Convention on the Rights of the Child. Within the secure environment of police custody, however, children's experiences are rarely heard, making them almost invisible during these early stages in the criminal process.

This study, funded by the Nuffield Foundation, explores the impact of PACE on the detention and questioning of child suspects. For the first time in England and Wales, this included researchers engaging with child suspects about their legal rights while detained. Talking to children about their experiences in police custody provided researchers with greater insight into the processing of child suspects by the police.

Methodology

This study sought to provide a critical examination of the impact of PACE safeguards on the detention and questioning of child suspects and on case outcomes for children, and both quantitative and qualitative methods were adopted. These included a statistical analysis of electronic custody-record data and observational case studies. In total, 51,504 electronic custody records were examined, 3,722 (7%) relating to children. These were drawn from eight police forces in England and Wales for two separate months (March and September) in each of 2019, 2020 and 2021. These records included information about the time children spent in custody, whether legal advice was requested and the outcomes of cases. They also contained demographic information about each child's age, gender and ethnicity.

A total of 32 observational case studies were carried out in eight custody suites in three police force areas with a view to further understanding child suspects' experiences both while detained and during the police interview, and how they understood their legal rights. This data included at least one research interview with each child, with these interviews taking place prior to and/or after the police interview. Where possible, those involved in the questioning of the child – including police interviewers, the lawyer and the child's "appropriate adult" – were also interviewed. The case studies also included examining recordings of police interviews where possible, and talking to custody staff.

Summary of key findings

Police custody officers have the power not to authorise the detention of someone arrested and brought into custody if they deem it unnecessary, but we found that this occurred in less than 1% of cases. We also found that children were held in custody on average for 11 hours and 36 minutes (with 54% being detained overnight), and 80% requested legal advice. In relation to the final case outcome, while 21% of children were charged and 14% received an out-of-court disposal (such as a

caution), no formal action was taken in most cases, with “no further action” being recorded against 56% of the child suspects and a further 5% of cases remaining outstanding.

When listening to children’s experiences while detained, it was found that police custody is experienced as harsh and punitive, fostering resentment and undermining trust in the police and the wider youth justice system. Of most significance is the isolation children were found to experience when waiting in a cell for many hours to be interviewed by the police. It is mandatory for a child to have an appropriate adult to support them while they are detained but, generally, due to restrictions in them gaining access to police custody, their contact with the adult was limited until just prior to the police interview. Similarly, in most cases where legal advice was requested, a child’s first contact with their lawyer tended to be just before the police interview. These delays are not acceptable, not least because a child needs access to these adults as soon as practicable following detention so that they can help them to understand and exercise their legal rights.

With no action being taken in the majority of cases, the early involvement of the lawyer and appropriate adult could have led to cases being resolved more quickly or being taken out of the criminal process altogether. It is of concern that not only did the majority of children in our case studies view police custody as part of their punishment, but this was also the view of some police officers, with a presumption of guilt rather than innocence. Formal action being taken by the police in only a minority of cases raises questions about the necessity and appropriateness of children being brought into police custody. Instead, with cases that need to be investigated, the police could bail child suspects or arrange for them to attend a voluntary interview. In cases where an investigation is not required, problem-solving and/or restorative approaches could be adopted.

We note that currently, vulnerable children are being drawn into police custody, with 18 out of our 32 child participants reporting having mental health issues during the risk assessment. This is an underestimate of vulnerability, as some child participants will not report such issues to the police when not knowing what they will do with this information. We also saw children being detained for minor “domestic” incidents, where police custody is effectively used as a “place of safety”, particularly at night. The police priority is to interview a child once they are detained, and this has led to children who have later been identified as the victim remaining in police custody as a suspect so that they can be questioned.

From the police perspective, a main concern raised by custody officers in the three participating forces regarded the lack of contact they had with children’s services that have a statutory responsibility to safeguard and promote the welfare of children. With the police being unable to access the network of support available to children within the wider youth justice system, child suspects can be drawn into a punitive and adult-centred system of justice.

When viewing police custody through the lens of a child, it is evident that changes to PACE and enhanced legal protections for child suspects are required. We recommend adopting a “Child First” approach, which means viewing child suspects as children rather than adults and/or “offenders”, encouraging collaboration with them while they are detained, and seeking to maximise opportunities to divert them away from the stigma of coming into contact with the criminal justice system.

A Child First approach would have the aim of reducing the number of children brought into police custody and would instead require the adoption of diversion, minimum intervention and problem-solving and restorative approaches. For those children who must be detained, a child-focused and rights-based approach needs to be adopted in custody that differentiates children from adult

suspects. Changes are also required to tackle disproportionality at this early stage, particularly with Black, Asian and minority ethnic children and looked after children, groups that are overrepresented in the youth justice system.

Summary of recommendations

Our key recommendations for adopting a Child First approach in police custody are as follows:

Detention should only be used as a last resort.

There should be a shorter PACE clock for children.

There should be a presumption of the provision of legal advice and restrictions on its waiver.

The appropriate adult safeguard should be reviewed, and there should be support for child suspects from adults who are independent from the police.

There should be a different model for interviewing child suspects.

Specialist training should be given to all practitioners involved in the detention and questioning of child suspects.

There should be national collating and reporting of electronic custody-record data.

We shall now summarise the specific changes we believe are required to achieve this aim.

Restricting the number of children being brought into police custody

1. Detention should only be used as a last resort. We recommend that PACE is amended to include a presumption that children will not be detained in police custody save in exceptional circumstances.
2. A digital screening tool should be provided to assist front-line police officers in triaging children where arrest and detention is being considered. Liaison with a custody officer should be required before bringing a child into police custody.
3. Police officers should have 24/7 access to health, social welfare and youth justice agencies to help ensure that detention is only used as a last resort.
4. Police interviews of child suspects outside of police custody should be prioritised. The police should arrange for a child to be bailed or interviewed on a voluntary basis to avoid bringing them into custody.

Adopting a Child First approach in police custody

5. There should be a shorter PACE clock for children. A 12-hour rather than 24-hour clock is recommended.
6. Children should be provided with age-appropriate and child-friendly information.
7. Child suspects should be separated from adult suspects in police custody.
8. The digital screening tool should be used to assist custody officers.
9. There should be a presumption of the provision of legal advice and a rule that a child can only waive this right if they first speak to a lawyer in person, who can advise them on what legal advice could do for them.
10. The local authority should be notified of children brought into police custody, and they should be required to report back to the police, detailing any safeguarding or welfare concerns that could impact on the child's detention and their safe stay in police custody.
11. Additional information should be gathered to assess a child's fitness to be interviewed.

12. Appropriate adults should be requested as soon as possible following the detention of a child, and they should physically meet with child suspects within one hour of the request unless there are exceptional circumstances.
13. Information should be provided to appropriate adults about their role.
14. The appropriate adult safeguard should be reviewed, particularly in relation to family and friends, to ensure the effectiveness of this important role.
15. The conditions of detention should be changed, with a presumption that a child will be allowed to sit with their appropriate adult and/or lawyer in a suitable waiting area.
16. There should be specific training for custody staff for dealing with child suspects.

Supporting child suspects prior to, during and after the police interview

17. A child's fitness to be interviewed should be re-visited prior to the police interview.
18. There should be a different model for interviewing child suspects.
19. Specialist training should be given to those involved in the questioning of child suspects.
20. Legal advice for children should be given in person for police interviews.

Collating and reporting nationally on electronic custody-record data

21. Requirements for obtaining electronic custody records from forces should be standardised.
22. The collection of electronic custody-record data should be standardised.
23. There should be regular reporting of anonymised electronic custody-record data by the Home Office, the Ministry of Justice and the Welsh Assembly.

Next steps

With funding from the Nuffield Foundation, and based on the recommendations set out in this report, we will work with the police and other agencies in piloting a comprehensive set of measures aimed at achieving a Child First approach for child suspects in England and Wales. This will also include working with government departments, particularly the Home Office, Ministry of Justice and Youth Justice Board, to identify what changes are required to PACE to promote a Child First approach in police custody.

As there are differences in the use of out-of-court disposals by police forces in England and in Wales, we will work with the Welsh Government and other Welsh agencies to ensure that the approach adopted is based on the country's own distinctive policies towards children in conflict with the law.

In relation to the recording of data in custody, we are engaging with analysts in the Ministry of Justice so that fully anonymised electronic custody-record data can be shared in the future (subject to data-sharing agreements with individual forces). Capturing and reporting this data publicly is needed to increase transparency and fairness regarding PACE safeguards.

PART 1 – Background to the Research

1. Introduction

This report details the findings of a research project undertaken by the University of Nottingham with funding from the Nuffield Foundation. The project has involved a detailed analysis of how the Police and Criminal Evidence Act 1984 (PACE) impacts the appropriate detention and questioning of child suspects, and to what extent this can influence case outcomes. It is now over 50 years since three teenagers were wrongfully convicted of the murder of Maxwell Confait and, following the subsequent Fisher Inquiry (1977) and the Royal Commission on Criminal Procedure (1981), PACE was implemented in January 1986 to help improve safeguards for those arrested and detained by the police. Despite PACE having arisen from a miscarriage of justice involving child suspects, research has rarely explored the efficacy of these legal safeguards from a child's perspective.

PACE provides important safeguards for all people suspected of having committed an offence; however, apart from the mandatory requirement for an appropriate adult (AA) to be involved when the suspect is a child,¹ in practice, there are no other adaptations for age. Despite PACE having been implemented almost 40 years ago, this is the first study in England and Wales involving researchers talking to children while detained about their experiences in police custody and about understanding and exercising their legal rights. This project has the following objectives:

- To provide a critical examination of the impact of PACE safeguards on the detention and questioning of child suspects and on case outcomes.
- To explore the degree to which the principles of the United Nations Convention on the Rights of the Child (UNCRC) – in particular, the extent to which the child's welfare is a paramount consideration and the importance of children being able to participate in decisions made about them – are adhered to in the police interviewing processes.
- To engage with child suspects to ensure that PACE safeguards are critically reviewed from a child's perspective.
- To make recommendations for changes in policy and practice that would lead to the adoption of a child-centred approach when dealing with children in the youth justice system (in line with the principles of the UNCRC and the European Convention on Human Rights (ECHR)).

In-depth case studies enable us to explore what happens in these early stages of the criminal process through the lens of a child. Furthermore, by immersing ourselves in police custody, we have been able to observe the demeanour of the parties involved and how they interact with one another, providing a more detailed understanding of decisions made within custody and during the police interview. Analysis of electronic data drawn from police custody records, obtained from several police forces, has also enabled us to situate the case studies within a broader national picture, giving both breadth and depth to this study. The multi-level approach adopted has enabled us to acquire a 360-degree account of what happens to child suspects when they are detained and questioned by the police, providing a more nuanced understanding of the process and the interactions it involves from the perspectives of children and other actors.

When examining the experiences of children in police custody, it is important to note that the number of children arrested by the police has fallen significantly over recent years, reducing by two-thirds from the year ending March 2012 to the year ending March 2022 (from 160,213 to 52,953),

¹ PACE recognises children to be all those under 18 years of age.

although there has been a 7% increase over the past year, rising from 49,424 in the year ending March 2021 to 52,953 in the year ending March 2022 (Home Office, 2022). There has also been a significant reduction in the number of children brought into the youth justice system: a fall of 78% from the year ending March 2012 to the year ending March 2022 (Youth Justice Board, 2023). While these changes are to be welcomed, children detained are now known to have greater and more complex needs (Bevan, 2019), and they are acknowledged to be particularly vulnerable according to a range of measures (Kirby, 2021). While children who are recognised as neurodivergent have been identified as being disproportionality represented in the youth justice system, many others will not have had the opportunity to be assessed and diagnosed, or they may not meet the criteria for a clinical diagnosis (Day, 2022).

A review of the research literature has identified concerns raised in the past regarding the dominance of the police within interviews and the limited contributions of AAs and lawyers (Evans, 1993; Bucke and Brown, 1997; Medford et al., 2003; Pierpoint, 2006). A child's maturity also affects their ability to instruct lawyers, and they are more likely than adults to confess, and to confess falsely (Feld, 2012; Kassin et al., 2010). It is also known that 10- to 13-year-olds are the least likely of all age groups to have a lawyer (Kemp et al., 2011), and that many adults – let alone children – do not understand the modified right of silence (Fenner et al., 2002; Kemp and Hodgson, 2016). Without understanding their legal rights, and within the pressured environment of police custody, many children have been criminalised unnecessarily (Kemp, 2014). The research literature also highlights how early studies of PACE tended to focus on adult suspects, with the child's experience in police custody almost never being considered, leading to Brookman and Pierpoint (2003:453) commenting that children were "all but invisible in the criminal justice literature".

While the prominence of children in police custody has not increased significantly since 2003, this is now changing, particularly following Bevan's (2019) excellent in-depth examination of police custody from the perspective of the child. Recognising the important ethical issues arising when seeking to engage with children held in police custody, Bevan (2019) spoke to child suspects following their release from police custody using a similar approach to that adopted by Kemp and Watkins (2021). When asking children to reflect on their earlier experiences in police custody, with this tending to be some weeks or even months after the event, it is recognised that children's memories fade. Furthermore, as most children experience being in police custody as a traumatic event, many will be reluctant to recall these painful experiences (Bevan, 2022). To better understand children's experiences while detained, in this study, we engaged with child suspects while they were held in police custody.

When engaging with children, it is important to recognise that disproportionality in the youth justice system is compounded by decision-making once children enter the justice system (May et al., 2010), and this becomes most evident in the numbers going through to youth custody. Over five years ago, David Lammy MP (2017) identified racial bias in the youth justice system; however, instead of his review helping to tackle racial disproportionality, the number of children from Black, Asian and minority ethnic backgrounds held in youth custody has risen from 45% in 2016/17 to 56% in 2021/22 (HM Inspectorate of Prisons (HMIP), 2023). It is in relation to Black children that we see the highest increase: from 17% of the youth custody population in 2011/12 to 28% in 2021/22 (Youth Justice Board, 2022). Disproportionality has also led to looked after children being overrepresented in the youth justice system; indeed, while they represent only 1% of the under-18 population (Department for Education, 2020), 59% of children in youth custody report having been in local authority care (HMIP, 2023).

We begin this report by setting out the legal framework concerning the detention and questioning of child suspects in England and Wales and providing an overview of children’s legal rights as suspects. The quantitative and qualitative methods adopted in this study are then described, and comments are made on some of the difficulties encountered when undertaking research into child suspects. This is followed by the presentation of findings arising from our analysis of electronic custody-record data based on eight police forces from which comprehensive datasets were received. After this, we present an overview of our 32 case studies. We first focus on children’s experiences in police custody and the extent to which they understand their legal rights; this is followed by an examination of police decision-making and the role of custody staff when looking after children who are detained. The role of AAs and lawyers is next considered, prior to reviewing what happens both in and after the police interview and in relation to case outcomes. With social welfare issues arising in some of our case studies, we also explore the role of social services when dealing with children in police detention. Finally, we present recommendations for change and outline the next steps to be taken according to the findings of this study.

2. Summary of the legal framework

The legal framework concerning the arrest and detention of children and young people in England and Wales is governed mainly by PACE and the associated Codes of Practice, with Code C governing the detention, treatment and questioning of suspects. PACE and Code C have been revised many times following their implementation in January 1986, and this has included revisions to take into account changes to the right of silence brought about by the Criminal Justice and Public Order Act 1994. Custody officers also have to take into account Authorised Professional Practice (APP) – official police guidance – on detention and custody issued online by the College of Policing (2013).

The legal framework first deals with responsibilities of custody officers, who are responsible for making decisions and looking after the welfare of people while they are held in police custody. Their first decision is whether to authorise detention, which has to be a “last resort” and for the shortest time possible. Thereafter, a custody officer has the following obligations to child suspects in relation their legal rights:

- To inform them of the mandatory requirement to have an AA involved, to explain their role and to let them know that they can contact their AA “at any time”, including over a private telephone call.
- To let them know about their right to free and independent legal advice, and to tell them that they can speak to their lawyer in confidence at any time over the telephone.
- To contact the person who is responsible for their care, telling them of their arrest and where they are detained.
- To let them know that they can consult the Codes of Practice.
- To provide interpretation and translation services, if required.

As set out in Code C, the mandatory requirement for an AA to be involved when dealing with people under 18 years old is to safeguard the child’s interests, rights, entitlements and welfare by ensuring that they are treated in a fair and just manner and are able to participate effectively in custody procedures and in decisions made about them.² The custody officer has to arrange for an AA to be present when dealing with certain procedures, such as when a child is informed of their legal rights,

² See also the National Appropriate Adult Network’s website, which sets out the role and duties of AAs: <https://www.appropriateadult.org.uk/information/what-is-an-appropriate-adult>.

when conducting strip/intimate searches and when taking samples and fingerprints, as well as during the police interview and on a child's release from police custody (National Appropriate Adult Network (NAAN), 2020). Code C requires police to prioritise parents, guardians, representatives of care organisations (for looked after children), or social workers when securing an AA for a child. Sometimes no such person is available, willing, or appropriate, for example due to childcare commitments or being the victim or a witness. Under the Crime and Disorder Act 1998 s.38, local authorities have a statutory duty to ensure the provision of AAs when requested by police as one of the specified youth justice services for their area. Each area has a local Youth Offending Team (YOT) which ensures AAs through direct provision or commissioning a provider. Either approach may use volunteers, employees or sessional staff, or a combination of these. Approaches to 'out of hours' provision vary and include the use of 24/7 volunteer rotas, sessional staff, Emergency Duty Teams, and commissioned providers.

AAs have an important role in processes and procedures that significantly affect child suspects, including requesting legal advice, interviews, when police seek consent, and during strip searches. While the AA role is an important safeguard for child suspects, from the time PACE was first implemented in 1986, concerns have been raised over who is taking on this role, delays in getting AAs into custody suites and the AA role in police interviews.

In addition to taking care of the welfare of detainees, the custody officer has the following obligations after booking suspects into police custody:

- To conduct a risk assessment to help inform the safeguarding of detainees.
- To process suspects, which includes the taking of fingerprints, photographs and DNA samples.
- To conduct searches.
- To provide medical help and support, if required.

Custody officers are assisted by Designated Detention Officers (DDOs) in the day-to-day business of running the custody suite and taking care of detainees. DDOs will regularly check on detainees, at least every 30 minutes when a child is involved.

In relation to the police interview, the custody officer is responsible for deciding whether to deliver the child into the officer's custody, which includes reviewing their physical and mental state. Custody officers will also be involved in deciding the case outcome, although this is often in consultation with investigating officers and, for more serious offences, this decision will be made by the Crown Prosecution Service (CPS). The custody officer has to conduct a pre-release risk assessment before releasing a child from police custody. They also have to try to find alternative accommodation in cases where a child is charged and remanded to the next available court date.

A child's AA has to be present during the police interview and, prior to the commencement of the interview, the child has to be reminded of their right to legal advice. They are also advised of their right to silence, with the modified caution being read out. Interviewing officers are not allowed to obtain responses to their questions by using oppression, and police interviews are recorded. A detailed account of this legal framework is set out in Appendix 1.

As found in Quinn and Jackson's (2003) study, there are three important factors to highlight at this stage. First, there is considerable emphasis on recording mechanisms in police custody, particularly with data collected on individual custody records (some of which is now available to download electronically) and with the digital/tape recording of police interviews in custody being required,

providing greater transparency in what happens in police custody. Second, there are important safeguards for child suspects, including the mandatory requirement for an AA to be involved and for the provision of legal advice, with this study assessing how these safeguards operate in practice. A third feature of the PACE regime is the considerable discretion given to custody officers to make decisions on the detention and disposal of child suspects. Accordingly, it is important to examine the manner in which decisions affecting child suspects are made and how the attendance of AAs and lawyers affects this process.

3. Children's legal rights as suspects

In addition to PACE safeguards, when undertaking their study of child suspects, Quinn and Jackson (2003) commented on legal rights provided to child suspects in the United Kingdom by the Human Rights Act 1988, which made it important to ensure that procedures governing the detention, questioning and charging of child suspects conform to human rights standards. In addition, the particular vulnerability of children in a police interview raises additional human rights issues. In *T and V v the UK*,³ the European Court of Human Rights held that to conform with an individual's right to a fair trial under Article 6 of the ECHR, it was essential that a person charged with an offence is dealt with in a manner that takes full account of his or her age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote the person's ability to understand and participate in the proceedings.

While the principles of children's rights are universal to all children, a number of specific principles and standards have additional and specific relevance for children who come into conflict with the law. Article 37 of the UNCRC recognises a child's right to legal and other assistance, and among a range of provisions, Article 40 outlines that children have the right to have matters determined without delay. Guidance from the Committee on the Rights of the Child (2019) supplements the rights set out in the UNCRC by including several recommendations specific to youth justice and providing interpretative guidance. These recommendations include that the principles of the UNCRC should be infused into all justice mechanisms dealing with children, which requires the setting up of a comprehensive child justice system. The guidance states that this "requires the establishment of specialized units within the police, the judiciary, the court system and the prosecutor's office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child" (2019: para. 106). The Committee also recommends a minimum age of criminal responsibility of 14 years, commending countries that apply a higher minimum age of 15 or 16 years (para. 22); in England and Wales, the minimum age has remained at 10 years since 1963.

The Council of Europe (2011) has also published guidelines on "child-friendly justice". In addition to requiring systems and practices that are "accessible, age appropriate, speedy and diligent", these guidelines also require these practices to be "focused on the needs and rights of the child, respecting the rights of the child to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity (Council of Europe, 2011:17).

The ability of a child to participate meaningfully in proceedings that affect them is a key tenet of children's rights principles, as is the "paramountcy principle", which requires the best interests of children to be at the forefront of considerations in proceedings. The ability of children to participate meaningfully in proceedings such as police interviews can be impacted by a number of factors, including their capacity to understand the purpose and significance of the interview and the offence

³ [1999] 30 EHRR 121.

for which they are being investigated. Children’s rights provisions make it clear that children have evolving capacities that are based on factors such as their age and levels of maturity and learning. Accordingly, there is a mandatory requirement for an AA to be involved when dealing with all those aged under 18 years, and all suspects must have access to free legal advice. There is also a government priority for a “Child First” ethos to be dominant in the youth justice system, requiring child-friendly and child-centred strategies to be adopted (Case and Browning, 2021).

4. Methodology

4.1 Introduction

In this section, the main methods adopted by the researchers in examining the impact of PACE on the detention and questioning of child suspects are described. Both quantitative and qualitative methods were used, including statistical analysis of electronic custody-record data and observational case studies.

4.2 Electronic custody-record sample

The Codes of Practice under PACE state that a custody record must be opened for each person detained in police custody. This custody record must record key details relating to the individual detained, and as some data is recorded electronically, it can be downloaded. From this electronic data, we can explore whether legal advice was requested, how long someone spent in police custody, whether force was used or if there was a strip search, the type of offence and case outcomes. Some demographic data is also available electronically, including a person’s age, gender and ethnicity, as well as any specific vulnerabilities they may have. Because these electronic records provide descriptions of those detained and chart some of the main events concerning children’s time in police custody, they are an effective way of collecting data relating to their experiences of police custody.

We sent out a request for anonymised electronic custody-record data to all UK forces in July 2021, and in January 2022, we repeated this request to forces that did not respond. We requested data relating to all those first detained in police custody (including both adults and children) during the months of March and September⁴ in 2019, 2020 and 2021. Subsequently, we liaised individually with 29 forces regarding entering into data-sharing agreements prior to obtaining the electronic data. We have now received 12 datasets, with two other forces having agreed to provide this data in due course. However, the data in four of the 12 datasets is incomplete; for example, information about requests for legal advice was not available from three forces. Table 1 describes the missing data by force.

Due to missing data on key outcomes or demographic variables for four of the forces, we analysed eight comprehensive datasets; these include a total of 51,504 custody records, with 3,722 (7%) relating to children (people under 18 years of age). A breakdown of this data is set out in Table 2. Table 2 also shows the overall volume of custody records reported by the eight police forces and the proportion of each that relates to child suspects. While we have undertaken not to name the participating forces, we can confirm that six forces are in England and two are in Wales. The four excluded datasets are from police forces in England. No participating forces are in London.

⁴ These two months were chosen so that the findings could be compared to an earlier analysis of custody-record data undertaken by the researchers.

Table 1: Data availability and missing data.

Force	Outcome variables				Demographics				Offence description	Contextual information	
	Legal advice requested	PACE clock	Strip searched	First and final disposals	Ethnicity	Age	Detainee type (adult, vulnerable adult, juvenile)	Person vulnerability warnings†	Offence description (gravity score, offence type)	Whether the detention was initial or return for that offence	Custody suite
A	✓	✓	✓	✓	✓	✓	✓	1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.	✓	Missing	✓
B	✓	✓	✓	✓	✓	✓	✓	1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.	✓	Missing	✓
C	✓	✓	✓	✓	✓	✓	✓	1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.	✓	Missing	✓
D	✓	✓	✓	✓	✓	✓	✓	1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.	✓	Missing	✓
E	✓	✓	✓	✓	✓	✓	✓	1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.	✓	Missing	✓
F	✓	✓	✓	Final only	✓	✓	Missing – children calculated from age	9. 10. 13.	✓	Missing	✓
G	✓	✓	✓	✓	✓	✓	✓	9. 10. 13. 14. 15.	✓	✓	✓
H	✓	✓	Missing	Final only	✓	✓	✓	9. 10. 13. 14. 15.	✓	✓	✓
I*	Missing	✓	✓	Final only	Format not comparable	✓	Missing	5. 9. & 10. combined. 15.	✓	Missing	✓
J*	Missing	✓	✓		✓	✓	✓	9. 10. 13.	✓	✓	✓
K*	Missing	Missing	✓	Format not comparable	✓	✓	Missing	Missing	✓	Missing	✓
L*	✓	✓	✓	Format not comparable	Missing	Only provided in bands	✓	Missing	Missing	✓	✓

*These forces were excluded from the main analysis due to missing data.

†Please see the note on the next page for an explanation of these designations.

Note to accompany Table 1: Key for person warnings as provided by police forces.

1.	Ailment
2.	Alleges
3.	Conceals Items
4.	Contagious
5.	Drugs
6.	Escaper
7.	Firearms
8.	Mental Disorder
9.	Self-Harm
10.	Suicidal
11.	Violent
12.	Weapons
13.	Mental Health
14.	Child at Risk
15.	Disability

From this point forwards, all tables and figures relate to the eight included forces (A–H) unless specifically stated otherwise.

This is the largest study of electronic custody records to date, with Pleasence et al. (2011) previously having received electronic datasets from four police forces for March and September 2009; these contained 30,921 custody records, of which 5,153 related to children. Quinn and Jackson (2003) manually extracted information from 441 children’s custody records drawn from custody suites in Northern Ireland over a two-month period (January and February) in 2002.

Table 2: Summary of raw data by police force.

Force	Number of custody records	Number of individuals	Number of detentions not authorised	Number removed due to anomalous data, likely to be indicative of administrative errors (>100 hours)	Number removed due to being held on non-PACE matters	Number removed due to being a return detention (see notes)	Number in final dataset		
							Adults	Children	Total
A	15,070	8,923	130	10	1,400	215*	6,706	462	7,168
B	8,396	5,182	136	6	703	4*	4,037	296	4,333
C	11,226	6,873	96	7	883	50*	5,409	428	5,837
D	8,971	5,329	47	10	705	10*	4,209	348	4,557
E	11,370	6,736	18	10	999	12*	5,226	461	5,687
F	23,166	11,312	38	22	1,377	0*	9,070	805	9,875
G	16,375	4,601	35	171	588	101	3,464	242	3,706
H	N/A	12,506	13	16	1,759	655	9,262	680	9,942
Total		61,462	513	252	8,414	756	47,383	3,722	51,105

Notes: Forces A to F are in England (no London forces participated) and Forces G and H are in Wales. Forces I, J, K and L were excluded from the final dataset due to their missing data. Information on whether a detention was initial or return was only provided by two forces. This is important, as return detentions are likely to be shorter than initial detentions, and our research questions only relate to initial detentions. Where information about return detentions was not available, individuals held in custody for less than 30 minutes were removed for being likely to be a return detention (as indicated by *). This threshold was agreed with some participating forces; however, it is likely to still be an underestimate of the number of return detentions, so it should be regarded as a source of error. See Table 1 for further detail on missing data. Due to the need to strip custody-record numbers from force H as per their data-sharing agreement, the raw number of records is unavailable.

4.3 Profile of child suspects

The majority of child suspects were boys; 18% were girls. Figure 1 gives a complete breakdown by gender and age.

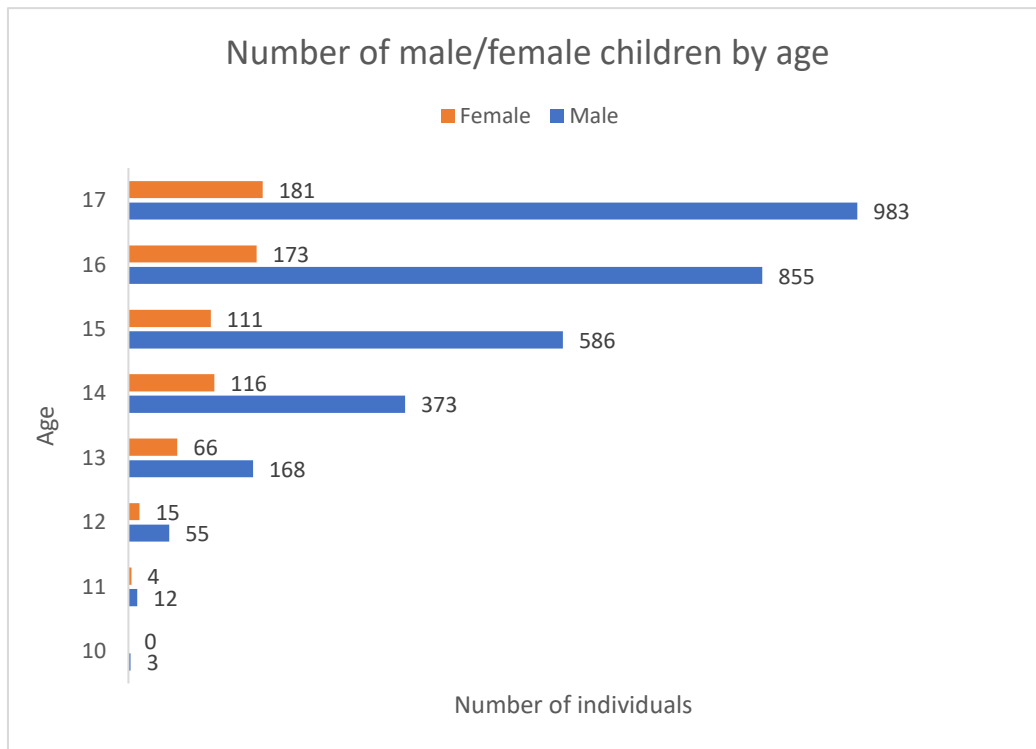


Figure 1: Breakdown of age among male/female children.

Table 3: Ethnicities of child suspects (officer defined).

Force	White	Black	Asian	Other or Unknown
A	73.8%	21.2%	3.7%	1.5%
B	92.6%	5.7%	1.7%	0.0%
C	82.9%	10.5%	6.1%	0.5%
D	74.7%	23.0%	1.7%	0.6%
E	70.5%	17.6%	10.6%	1.5%
F	81.6%	13.8%	2.6%	2.0%
G	83.9%	7.4%	4.5%	4.1%
H	87.2%	7.4%	3.2%	2.2%
% in total sample of children	80.8%	13.4%	4.2%	1.6%

We used officer-defined ethnicity in this analysis; this is because if bias were introduced on the basis of ethnicity, the officer-defined ethnicity was most likely to capture this. A core reporting issue is that officer-defined and self-defined ethnicities are difficult to compare, as different categories are available. For example, the self-defined ethnicity includes several options for being of a “mixed”

background, while officer-defined ethnicity is limited to single backgrounds. This means that a test of concurrence between officer-defined and self-defined ethnicity would not be valid. Consistency in reporting – both between forces (there was variation in how some forces collected the data and which categories were available) and between officer-defined and self-defined ethnicity – is therefore a recommendation arising from this analysis. Due to variation between forces in how ethnicity data is collected, we can only use very coarse categories – “White”, “Black” and “Asian” – for the purposes of this analysis, which is a limitation. A breakdown according to these categories is given in Table 3.

We have not provided comparative average ethnicity data by region, as this would identify the forces who participated. However, to add context, according to the 2021 census of the whole population of England and Wales (including adults), 81.7% of people identified as being from any White ethnic group, 9.3% of people were from Asian ethnic groups, 4.0% were Black, 2.9% were from mixed ethnic backgrounds, and 2.1% belonged to other or unknown ethnic groups.⁵ However, it should be noted that these national statistics include London, and our electronic data did not include any London forces. Those identifying as White British accounted for 43.4% of London’s population, compared with 78.4% for England and Wales overall.⁶ Therefore, the proportion of those identifying as White in the participating regions may be slightly higher than the national averages. From this national data, it appears that Black children were overrepresented in custody in our participating forces compared to the proportion of Black people in the general population.

⁵ <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/national-and-regional-populations/population-of-england-and-wales/latest>

⁶ <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/articles/populationestimatesbyethnicgroupandreligionenglandandwales/2019>

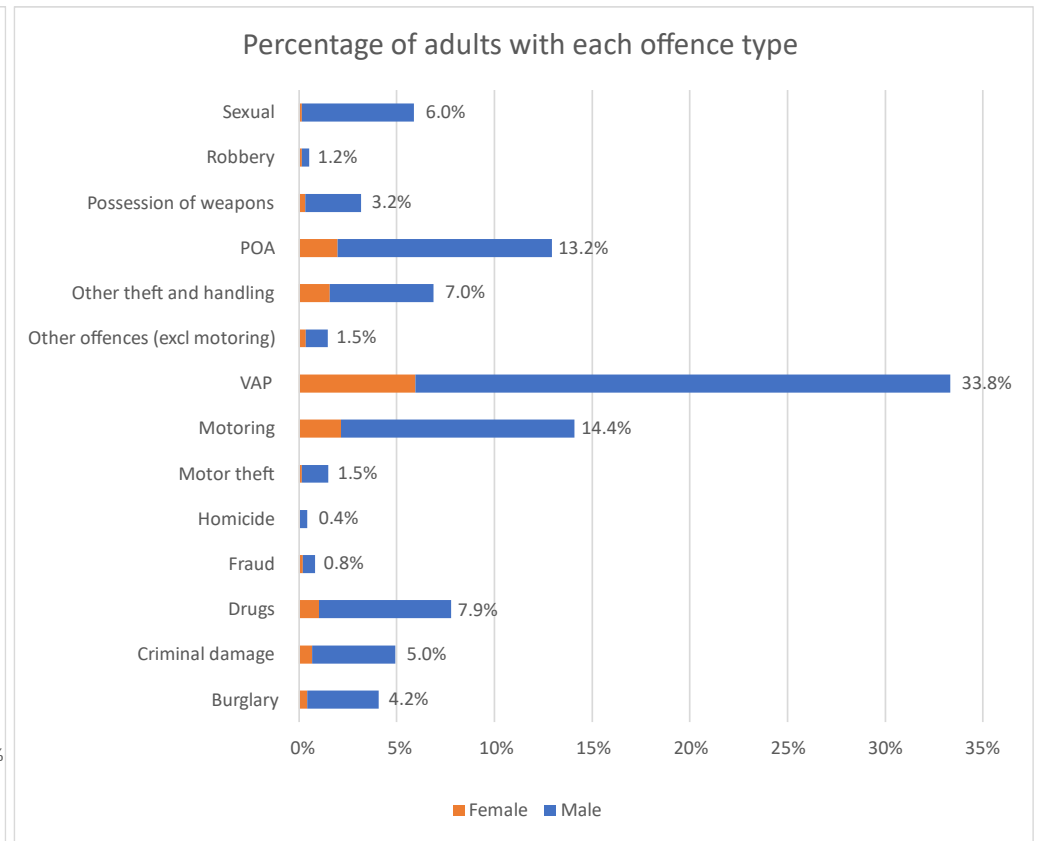
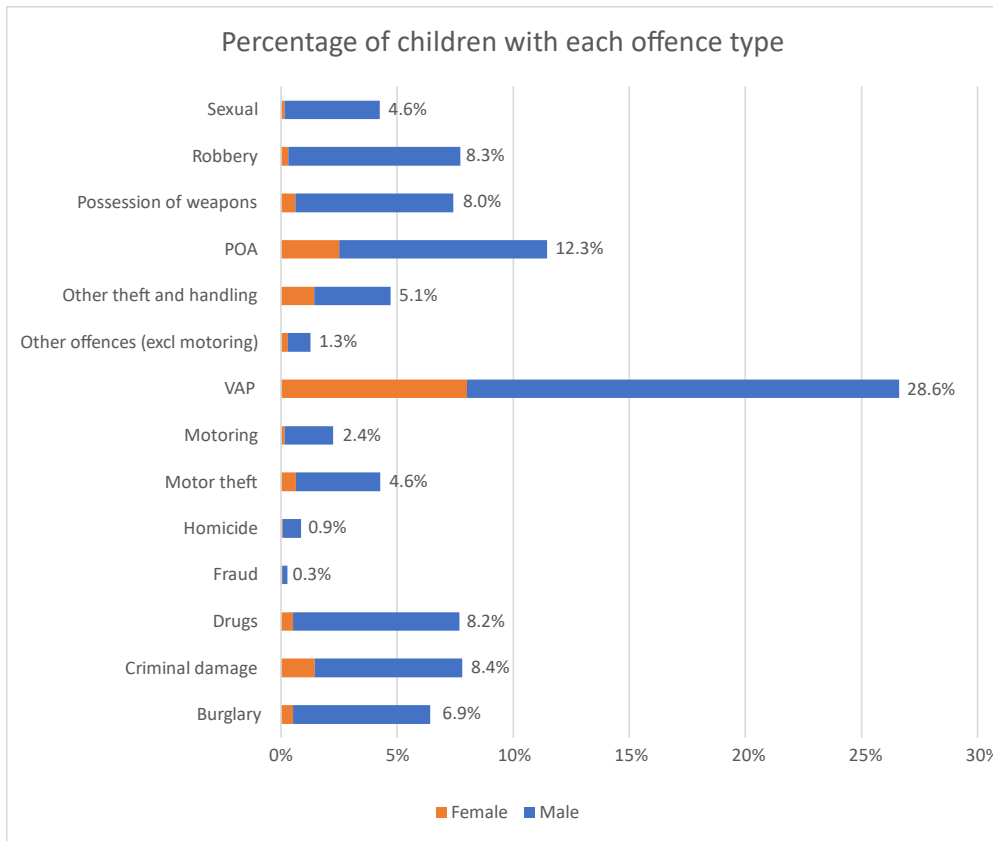


Figure 2: Breakdowns by type of offence for children and adults. Note: “POA” are Public Order Act offences and “VAP” are violence against the person. Within the VAP category, there are three main types of offences: minor assault, assault occasioning actual bodily harm (ABH) and assault occasioning grievous bodily harm (GBH). For boys, while 50% were arrested for a minor assault, this was 60% of girls; 31% of boys were dealt with for ABH compared to 33% of girls; 19% of boys and 7% of girls were dealt with for GBH offences.

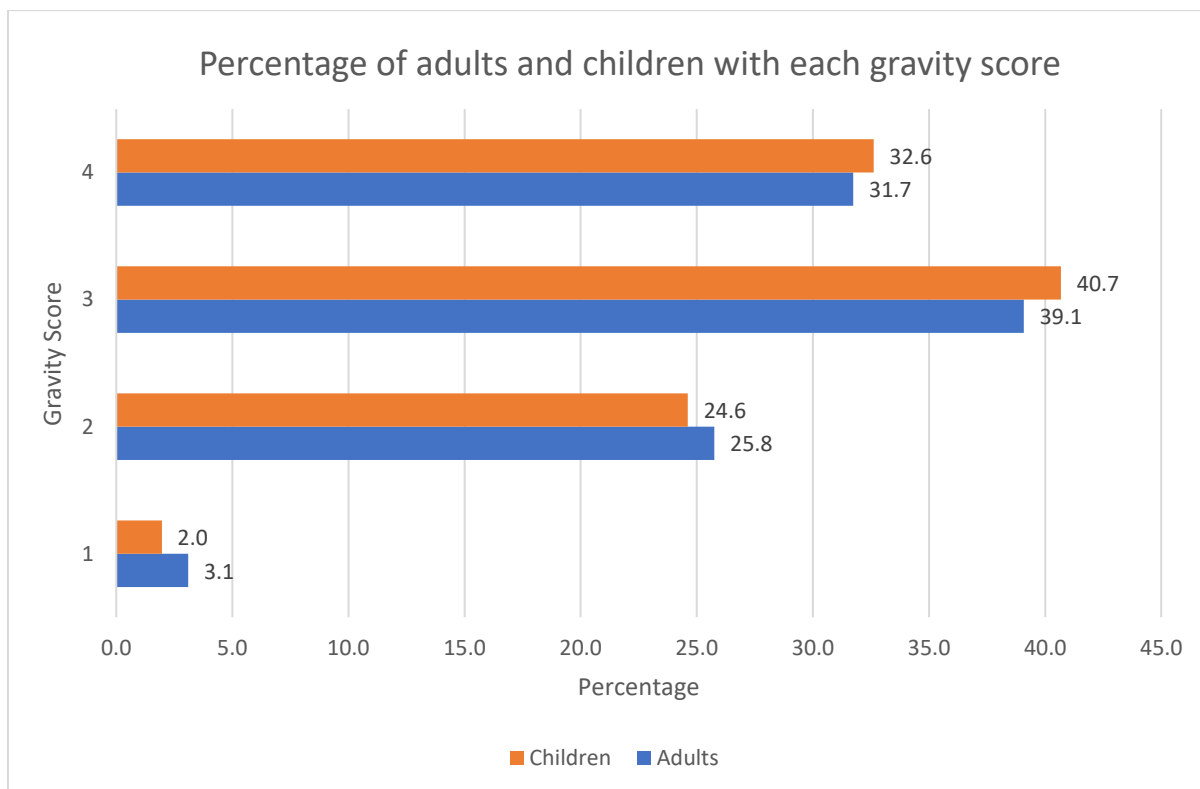


Figure 3: Seriousness of offence. Note: Lower gravity scores are indicative of less serious offences. Gravity scores were calculated manually using offence descriptions and the youth⁷/adult⁸ gravity score matrix as appropriate. Due to recording of offence descriptions – and the time constraints of this being a manual procedure – contextual information that may mitigate or inflate the gravity score was not always available, and as a result, gravity scores could be +1 in reality. This should be considered a limitation of the data, but it provides an approximate indication of the severity of the offence. Where a child suspect had been arrested for more than one offence, we included the most serious offence in our dataset after applying the gravity scores.

Figure 2 presents breakdowns of the data by offence type for adults and children, and Figure 3 gives a breakdown of the data by offence seriousness. It is important to consider that outcomes could be impacted by the complexity as well as the seriousness of offences. Information about whether an individual was being held for multiple offences was available from five forces. Totals of 37.8% of adults and 41.0% of children were being held for multiple offences.

When going through individual custody records, Quinn and Jackson (2003) were able to extract information on the “condition of the young people”, which included, for example, evidence of alcohol, drugs or medication being used, or evidence of them having physical or mental health/learning difficulties, having self-harmed or having dyslexia. While this type of information is noted on individual custody records, there is no central requirement for police forces to capture some of this data electronically. With this information being recorded inconsistently between forces, a recommendation of this report is to standardise the collection of key vulnerability variables.⁹

We collated vulnerability in four areas: suicide, self-harm, drugs and mental health (see Table 4). These areas were selected because they were most consistently collected between forces and were

⁷ <https://yjlc.uk/sites/default/files/ACPO%20Youth%20Gravity%20Matrix.pdf>

⁸ <https://www.whatdotheyknow.com/cy/request/349779/response/878197/attach/3/FOI%20428.2016%2017%202%20Gravity%20Matrix%20Current.pdf>

⁹ A summary of which variables were collected by which forces is available in Table 1.

areas of interest for the participating forces. However, we made the assumption here that “mental disorder” meant the same/was assessed in the same way as “mental health”. Without having the addresses of detainees, we were unable to obtain socio-economic information about child suspects.

Table 4: Proportions of adults and children with specific vulnerability flags.

	Adults	Children
Suicide	20.3%	12.5%
Self-harm	23.9%	24.8%
Drugs	14.3%	15.2%
Mental health	32.2%	24.0%

Note: The drugs vulnerability flag was not provided by three forces, so the percentage was calculated proportionally.

4.4 Limitations when obtaining custody-record data from individual police forces

Our requests for data were sent out to individual police forces by the National Police Chiefs’ Council (NPCC), both in July 2021 and January 2022. Although we had support from the NPCC, it was not possible to organise collection of data centrally; instead, we liaised individually with each force that expressed an interest to participate in this study. While we initially liaised with 29 police forces, due to the time and effort required – not only for extracting the data but for arranging data-sharing agreements – we eventually obtained datasets from 12 police forces.

In some cases, over a year elapsed between our initial request for data and obtaining the datasets. Although it takes a long time, the effort required by forces when entering into a data-sharing agreement and arranging for the relevant data to be extracted from their data systems is not to be underestimated. We are extremely grateful to all the participating forces that made this effort on our behalf. The reason this process was so time-consuming, both for the researchers and for the forces involved, was that each force wanted their own bespoke agreement to be entered into before sharing data. Instead of liaising separately with each force, it would have been far more efficient if we had been able to make the request for custody-record data centrally; alternatively, one force that was recognised as having the relevant expertise in this area could have taken responsibility for creating a template data-sharing agreement that other forces could then adopt.

With sensitive personal information being held on custody records, it is not surprising that police forces were cautious when sharing information with external academics. Instead of asking for personal data, such as the name, address and date of birth of detainees, we asked for the unique custody-record number and age in years of the individuals so that researchers could not identify them. Subject to data-sharing agreements, most forces were prepared to share the electronic custody-record number with the researchers, with the proviso that this would be replaced by a coded reference at the end of this study. While we received eight comprehensive datasets, there were three others that had missing information due to the limitations of the computer systems in these areas. In a fourth force, although comprehensive data could be extracted from the police

computer, there was a reluctance to share some of this with external researchers. This included not sharing the custody-record number but instead replacing this with a coded reference; this was not a problem for the research analysts, but it also included giving us age ranges instead of the actual ages of the detainees. More importantly, this force was not prepared to provide arrest data, so we were unable to split off detainees from suspects or understand the type or severity of each offence, and no information was provided on ethnicity. With only partial information received, it was not possible to include this force's dataset in our in-depth analysis of electronic custody-record data. The problems encountered by academics in trying to access electronic custody-record data highlight the need for this key data to be collected centrally by the Home Office.

4.5 Case studies

In addition to the electronic custody-record data, which provided a wealth of information about children's experiences in police custody, qualitative data was gathered by the researchers when undertaking case studies. This approach was based on that adopted by Quinn and Jackson (2003) when examining 12 case studies. As noted above, this included engaging with child suspects while detained and, from these discussions, we were able to listen to children's experiences in custody, explore the extent to which they understood what was happening and examine how they exercised their legal rights. Engaging with children while detained provided the researchers with greater insight into the processing of child suspects by the police. The findings from our case studies help to expand and illuminate those from our statistical analysis of electronic custody records. Where possible, the following elements were to be undertaken as part of individual case studies:

1. Observation of child suspects (and interactions between custody staff and child suspects) as they are brought into police custody, given their rights and processed and detained by the police.
2. "Pre-police-interview" research interviews with child suspects while they are waiting to be interviewed by the police. Taking place in a child's cell, these interviews were brief and considered the child's welfare, their current experience of detention, their understanding of their situation and their legal rights. They were also asked who was acting as their AA, whether they had requested legal advice and whether they had spoken to them, either over the phone or in person.
3. "Post-police-interview" research interviews with child suspects and those involved in the police interview, including AAs, legal advisers and police officers. We were able to consider participants' understandings and experiences of the process from multiple perspectives in these research interviews.
4. Analysis of the audio/video recordings of the police interviews.

In total, 32 case studies were undertaken, all of which included engaging with child participants while they were detained. These case studies were undertaken in eight custody suites in three police-force areas over a period of 13 months (from 10 May 2021 to 25 May 2022). With children tending to be held on average for almost 12 hours, it was not feasible for the researchers to be present from the time they were booked into custody until the time of their release, particularly if just one researcher was conducting the fieldwork. Accordingly, in 13 cases, children were observed when first brought into custody, with eight later becoming a case study.

It was agreed with participating forces that instead of being present in the police interview, we would later listen to the recorded police interviews (with the child participant's written consent). We decided on this course of action because we were aware that there would already be four or five people in the interview room, there was the potential for observer effects to be caused by a

researcher being present and for safety reasons during the pandemic. While 18 recorded interviews have been examined in Areas A and C, unfortunately, it has not been possible to listen to recorded interviews in Area B.

4.6 Ethics and engaging with children in police custody

With child suspects being almost invisible within the research literature when examining PACE safeguards, it was important for us to engage with children while they were held in police custody. Because this was such a frightening and anxious time for them, important ethical issues had to be addressed; however, this was not straightforward. It is recognised, for example, that a child suspect's AA should be spoken to by researchers before approaching them directly, but the researchers knew from experience that it is often difficult to contact the AA prior to the police interview. Accordingly, when preparing a detailed ethics application, this had to include protocols on informed consent, on safeguarding and on COVID-19 public health measures that allowed the researchers to engage with a child without their AA's consent if they were not available. Our ethics application was approved by the Research Ethics Committee at the University of Nottingham on 27 November 2020.

Our ethics application also included a detailed flow chart to assist decisions made prior to approaching a child, which included steps to be taken if their AA was not available. The flow chart also dealt with the levels of potential harm required to initiate a safeguarding action by the research team and the process required for choosing whether to overrule the wishes of a child in cases of serious and/or significant harm. The flow chart also depicted the courses of action to be taken by researchers in the event of disclosures of criminal activity and the steps to be taken to initiate safeguarding action by the researchers, particularly the process for choosing whether to overrule the wishes of a child in cases of serious and/or significant harm.

Before approaching a child to see if they were willing to participate in this research study, the flow chart first required researchers to approach the custody officers responsible for the child's welfare to undertake a risk assessment. If the custody officer decided that an approach could be made, the next step required the researchers to obtain contact information for their AA and try to speak to them prior to approaching the child. In the cases where contact was made, the AAs agreed that the researchers could approach their child; however, in most cases, the AA could not be contacted. In these cases, if the custody officer agreed that the researchers could continue, the child was first spoken to by a custody or detention officer to see if they were willing to participate in a research study. In all but six cases, the child agreed to participate, and the researchers were able to approach them. At the request of the police, in all but one case, the discussion took place in the child's cell. After describing the research project and going through the participation sheet, all but one agreed to participate, although the child initially refusing to engage later changed his mind. While it was important to provide information to help children make an informed decision when being asked to participate in this study, most tended to glance over the written participation sheet. Instead, we created an animation that set out in a child-centred way the key issues children needed to consider before giving their consent to participate.¹⁰

From the outset, we recognised the need for sensitivity when seeking to engage with children when they were detained, particularly because during this time, most are frightened and extremely anxious about what is happening in police custody, as well as at home. The researchers were also aware that children can have complex health and/or welfare issues, and police custody is not the time or place

¹⁰ The animation can be viewed at <https://youtu.be/Tsoy32Hi32E>.

to discuss such issues in detail. Accordingly, and guided by safeguarding and informed consent protocols, the priority at all times was on the welfare and well-being of the children involved.

4.7 Overview of case studies undertaken

During a period of ten days in May 2021, two researchers conducted 196 hours of fieldwork (covering day and night shifts) in four custody suites in Areas A and B. Thereafter, a single researcher carried out 240 hours of fieldwork over a period of 20 days (mainly covering day shifts): six days in Area A in September 2021, eight days in Area C in February and March 2022 and six days in Area B in May 2022.¹¹ This led to eight case studies being undertaken in Area A, 13 in Area B and 11 in Area C.

Within each case study, the child was interviewed at least once, and an overview of these 32 case studies is set out in Table 5. This includes the personal characteristics of the child participants, their detention times, the type of offence, whether they had previously been arrested and detained in police custody, the type of AA involved, whether a lawyer was engaged and the case outcome. Also set out is a summary of the research data obtained, including those interviewed by the researchers, whether details from the custody records were obtained and if the recorded interview was observed. For reasons of confidentiality, the names of our child participants are replaced with a coded reference that includes the letters CS to represent “case study”, followed by a number given chronologically to the individual involved. When referring to practitioner interviews, the initials of the type of practitioner involved are added to the child’s reference: an interviewing officer is referred to as IO, the legal adviser as LA and the appropriate adult as AA. When reference is made to the AAs provided by different services, AAs provided directly by YOTs are referred to as ‘YOT AAs’ and those provided by their commissioned provider are referred to as ‘agency AAs’. Where reference is made to information recorded in the fieldwork diary, the letters FD are used followed by the date on which the note was made; when referring to information drawn from the recorded interviews, the letters RI follow the case study number.

The time constraints involved when dealing with some case studies sometimes made it difficult to undertake research interviews with all practitioners involved, particularly when a researcher was conducting the fieldwork on her own; however, the case studies generally provide a good cross-section of the practitioners involved. It is disappointing that no research interviews were undertaken with police interviewers in Area B, although the researchers were able to talk informally to some investigating officers about issues arising when dealing with child suspects. It is also frustrating that in four of the last six case studies, only the child was interviewed as part of the case study; however, it was the research interviews with children while detained that were the most illuminating when considering the efficacy of PACE safeguards.

¹¹ Research interviews were also undertaken with practitioners outside of this fieldwork period.

Table 5: Details of the 32 case studies

CS*	Custody suite	Arrival time	Wait for interview	Time held	Offence ^A	Age	Sex	Ethnicity	Type of AA ^B	Lawyer	Times in custody	Research ^C	Case outcome ^D
1	A	21:41	15:47	19:50	ABH – domestic	15	M	Black	YOT	Yes	0	Child, IO and AA: CR and VRI	RUI – O OCD
2	A	21:00	18:25	20:36	s.18 GBH – secondary offence of poss. Class B drug – charged	16	M	Black	Dad	Yes	Many	Child, IO and AA: CR and VRI	NFA
3	B:1	01:55	10:35	13:10	Criminal damage and common assault – domestic	17	F	White	YOT	Yes	0	Child, AA and LA: CR	NFA
4	B:1	00:41	13:19	14:24	Criminal damage – domestic	17	M	Asian	YOT	Yes	0	Child, AA and LA: CR	NFA
5 ¹	B:2	18:30	19:32	22:41	s.18 GBH	15	M	Asian	Friend	Yes – tele	A few	Child, Mum and AA: CR	RUI – NFA
6 ¹	B:2	18:35	17:55	22:29	GBH/ABH	17	M	Asian	Brother	Yes	Many	Child: CR	RUI – NFA
7 ²	B:3	15:37	4:08	06:40	Criminal damage	14	M	White	Mum	No	A few	Child and AA: CR	RUI – NFA
8 ²	B:3	15:25	8:05	09:23	Criminal damage	15	M	White	Aunt	Yes	Once	Child: CR	RUI – NFA
9 ²	B:3	15:30	8:15	09:22	Criminal damage	15	M	White	Mum	Yes	Once	Child and AA: CR	RUI – NFA
10	A	13:35	4:44	5:50	Criminal damage – domestic	17	M	White	YOT	No	A few	Child, AA and mum: CR and VRI	RUI – O OCD
11	A	21:30	15:41	17:29	Affray – domestic	16	M	White	Social worker	Yes	0	Child, AA, IO: CR and VRI	NFA
12	A	01:06	14:45	15:22	TWOC and excess alcohol	17	F	White	Mum	Yes	1	Child and AA: CR and VRI	RUI – NFA
13	A	12:30	4:45	9:18	Agg. TWOC and assault – domestic	16	M	White	Dad	Yes	Many	Child, AA, IO and LA × 2: CR and VRI	Conditional bail – NFA
14	A	22:34	12:38	13:20	Criminal damage	16	M	White	Mum	Yes	0	Child, AA and IO: CR and VRI	RUI – O OCD

CS*	Custody suite	Arrival time	Wait for interview	Time held	Offence ^A	Age	Sex	Ethnicity	Type of AA ^B	Lawyer	Times in custody	Research ^C	Case outcome ^D
15	A	03:43	8:35	13:32	Witness intimidation and assault – domestic	17	M	White	Stepdad	Yes	A few	Child, AA and LA: CR and VRI	Conditional bail – NFA (CPS)
16	C	02:30	9:01	11:43	Burglary (non-dwell.) and theft	16	M	White	Dad	No	0	Child, AA and IO: CR and RI	RUI – NFA
17	C	9:05	7:58	9:22	Attempted s.18 GBH, possession of offensive weapon	14	M	White	Agency	Yes	0	Child and AA: CR and RI	Conditional bail – NFA
18	C	14:20	6:07	7:29	Possession with intent to supply Class B drugs	17	M	Mixed ethnicity	Agency	Yes	0	Child and AA and LA: CR and RI	RUI – charged
19 ³	C	00:00	13:37	15:33	Robbery – with a knife	13	M	White	Mum	Yes	1	Child and AA: CR and RI	NFA
20 ³	C	23:45	13:10	16:02	Robbery – with a knife	15	M	White	Dad	Yes	A few	Child: CR	NFA
21 ⁴	C	23:27	15:07	22:18	Robbery × 2 and attempt robbery – with a knife	17	M	Black	Agency	Yes	2	Child and AA: CR and RI	Conditional bail – charged
22 ⁴	C	23:05	16:48	23:08	Robbery × 2 and attempted robbery – with a knife	16	M	White	Agency	Yes	Many	Child and AA: CR and RI	Conditional bail – charged and remanded
23	C	08:34	2:16	3:47	Burglary (dwelling), possession with intent to supply Class B drugs	15	M	Black	Agency	Yes	Many	Child, AA and LA: CR and RI	Conditional bail – RUI
24	C	05:18	8:43	14:18	s.18 GBH and affray	16	M	Black	Sister	Yes	0	Child and AA: CR and RI	Conditional bail – NFA
25	C	09:30	8:52	15:22	Robbery and driving with excess alcohol	17	M	Black	Grandma	Yes	A few	Child: CR and RI	Conditional bail – NFA
26	C	01:35	13:23	14:48	Arson	14	F	White	Agency	Yes	1	Child, AA, IO × 2 and LA: CR and RI	Charged (CPS) and Referral Order imposed at court

CS*	Custody suite	Arrival time	Wait for interview	Time held	Offence ^A	Age	Sex	Ethnicity	Type of AA ^B	Lawyer	Times in custody	Research ^C	Case outcome ^D
27 ⁵	B:4	17:05	18:31	23:34	Possession of offensive weapon (knife) and breach of court order	16	M	Black	Agency	Yes	Many – custodial sentence	Child: CR	Conditional bail for offensive weapon
28 ⁵	B:4	17:02	19:51	24:53	Possession of offensive weapon and possession with intent to supply Class A drugs	16	M	Black	Mum	Yes – tele	Many times	Child: CR	RUI – for offensive weapon and NFA for drugs
29	B:5	14:54	5:42	7:54	Robbery	16	M	Black	Mum	Yes	1	Child and AA: CR	Conditional bail – NFA
30	B:5	16:12	10:40	13:17	Possession with intent to supply Class A drugs, theft of a vehicle, and handling	15	M	Black	Dad	Yes – tele	0	Child and LA: CR	RUI
31	B:4	00:51	11:49	17:47	Affray and ABH – domestic	14	M	Black	Sister	Yes	1	Child: CR	NFA
32	B:6	10:10	7:44	10:09	Possession with intent to supply Class A drugs	15	M	White	Mum	Yes – tele	A few	Child: CR	RUI

*CS: case study. Cases marked with superscripts 1 to 5 indicate that co-accused are involved in those cases.

^AABH: assault occasioning actual bodily harm; GBH: assault occasioning grievous bodily harm; s.18 GBH: GBH under section 18 of the Offences Against the Person Act (with intent); TWOC: taking a vehicle without the owner's consent.

^BYOT: Youth Offending Team.

^CIO: interviewing officer; AA: appropriate adult; LA: legal adviser. CR indicates that the individual's custody record was examined; VRI: video-recorded interview; RI: audio-recorded interview.

^DThe case disposal imposed when the child participants were released from police custody is shown first, and if dealt with later on, the updated outcome is also given.

O OCD: out-of-court disposal (a criminal sanction that can include restorative justice and other interventions); RUI: released under investigation; NFA: no further action.

As set out in Table 5, the ages of the child participants included in the case studies ranged from 13 to 17 years, with the majority of offences being violence against the person – mainly assaults and robberies – and they were otherwise generally criminal damage and drug offences. In 19 out of the 32 case studies, the AA role was taken on by a family member or a friend, with an agency AA involved in the other 11 cases. There was a high take-up of legal advice, with 29 out of the 32 child participants having a lawyer.

We can also see from Table 5 that most child participants had to wait a long time in a cell to be interviewed by the police. Based on the 32 case studies, child participants waited on average 11½ hours before being interviewed by the police, and they were held overall for 14½ hours. However, as noted from our analysis of electronic custody-record data below, the average time that children were held in police custody in eight police force areas was 11 hours and 36 minutes.

4.8 Analysis of qualitative data

All the research interviews were digitally recorded and transcribed shortly afterwards. A thematic analysis approach was undertaken, with primary analysis used to develop draft conceptual frameworks that included the key themes and secondary analysis being used when subdividing these broad themes and examining relationships between them. Separate thematic frameworks were used for interviews with children and practitioners. A systematic approach to the qualitative data was applied, coding the transcripts into the frameworks using the NVivo software package.

4.9 Potential barriers to conducting qualitative research in police custody

It is extremely difficult to undertake observational research in the secure and sensitive environment of police custody, particularly as custody staff are often having to look after some of the most vulnerable people in society. With the researchers deciding on the imperative of engaging with children while detained in custody, they relied on custody staff from the participating forces to help facilitate the research. This required detailed negotiations with interested forces and, having agreed to the methods to be adopted – including access to “special category data”, which is personal data that requires a high level of protection due to its sensitivity – the arrangements were brought into data-sharing agreements. From the outset, there were three police forces interested in supporting the study because they were experiencing difficulties in coping with children in police custody.

In two police forces, senior custody officers were keen for the researchers to examine the detention and questioning of child suspects and, with ethics approval having been granted in late November 2020 and data-sharing agreements being in place, we visited Area A in December 2020. Subsequently, with lockdowns and other measures being imposed due to COVID-19, later that month, our fieldwork had to be postponed until May 2021. It was due to the pandemic that we were given a conditional grant by the Nuffield Foundation, with the full award only becoming available if we completed a small number of pilot case studies by the end of June 2021. Once the researchers were allowed into police custody, they first conducted five days of fieldwork in Area A and, the following week, another five days in Area B, during which time nine pilot case studies were undertaken (two in Area A and seven in Area B). Having reported on these pilot case studies, the full award was released in July 2021.

We had agreement from a third force to participate in this study from June 2020, but this was followed by a long-drawn-out process of dealing with the documentation required due to the sensitivities involved. This first required responding to lengthy questions concerning the methods to be adopted; next, detailed discussions took place concerning the setting up of a data-sharing

agreement to cover both qualitative and quantitative methods. It was not until February 2022 that the data-sharing agreement was signed, and there then followed further delays while negotiating access to the force's police custody suites. With no access having been agreed by April 2022, and with the project due to end in June 2022, it was no longer feasible to include this force in our qualitative study. With the research tending to rely on the support of one or two senior officers in each force, we had provided research support for new initiatives in police custody in two other forces with a view to these providing a back-up plan if required. We began negotiations with Area C in November 2021 and, after entering into a data-sharing agreement, fieldwork commenced in February 2022.

While it is difficult to undertake research in police custody, we received tremendous help and support from our three participating forces. As a measure of the trust the police had in the researchers – who had been vetted to a high level (NPPV2/CTC) – they were allocated custody swipe cards by the three forces to help facilitate access to custody suites at any time.

After receiving support from senior officers on a force-wide basis, the researchers then had to negotiate access with those responsible for individual custody suites. While access was agreed with senior custody officers, this support did not always translate into custody staff being prepared to assist researchers on the ground. This is not surprising, as the researchers were “outside outsiders” within police custody.¹² Having no formal affiliation within police organisations, being “outside” of the police, academics are most likely to experience considerable barriers to both formal and informal access (Reiner, 2000). At the same time, it is also important to recognise the stressful conditions in which custody staff work – not only when dealing with a high volume of cases, but also when coping with extremely vulnerable individuals. In all three forces, custody officers had to manage staff shortages, putting custody staff under increased pressure and sometimes limiting the time they had to speak to the researchers.

With the focus of the study being on police custody, and with researchers negotiating access with senior officers within custody itself, police investigators were seldom aware of the research project. This was not too problematic in Areas A and C, as some police interviewers were based in the same station as the custody suite, and the researchers could talk to them about the purpose of the study and encourage interviewing officers to participate. In Area B, however, police interviewers were not based in the custody suites, which meant that the first time officers were approached by the researchers was when they were asked if they were prepared to be involved in a case study. The police interview was their priority at this time, and they did not have prior notice of the research; it is nonetheless disappointing that no interviewing officers in Area B participated in a case study. In future studies, we will ensure that details of the research are circulated both within police custody and to police investigators.

While we were able to examine police recorded interviews with our case studies in Areas A and C, it is disappointing that this was not possible in Area B. This was due to difficulties encountered in seeking access to these recorded interviews, which was controlled by the investigating officers and, without having engaged with them, we were unable to listen to the recorded interviews in our 13 case studies in Area B.

¹² In Brown's (1996) categorisation of those conducting research in police custody, the first three categories relate to police officers and civilian analysts employed by the police who do research either inside or outside of their organisation. The fourth category, which relates to academic researchers, is “outside outsiders”.

PART 2 – Findings

5. Analysis of electronic custody-record data

5.1 Introduction

Statistical analysis of the electronic custody-record data was undertaken using the SPSS and R statistical software packages. The significance threshold was set to $p < .05$ throughout. From our analysis of 51,105 custody records (47,383 adults and 3,722 children) drawn from eight police force areas, we comment on the following key findings.

5.2 Key findings relating to PACE safeguards

5.2.1 Authorising detention

Police custody officers have the power not to authorise the detention of someone arrested and brought into custody if they deem it unnecessary, but we found that this occurred in less than 1% (0.8%) of cases. A breakdown by police force can be seen in Table 2. Demographic information about the individuals for whom detention was not authorised was not consistently available.

5.2.2 Requests for legal advice

The eight forces were only able to provide information about whether or not legal advice was *requested*, not whether it was actually received, whether there was a change of mind or the form in which it was received. This is a caveat to hold in mind, as our models and statistics can only assess factors associated with requesting legal advice, not whether it was received. In total, 80.2% of children and 61.0% of adults requested legal advice (see Table 6 for a complete breakdown). This is considerably higher than the average request rate identified in 2009, when 45% of both children and adult suspects requested legal advice (Pleasence et al., 2011). It is anticipated that with fewer children now being brought into custody, those detained are more likely to be dealt with for more serious and complex offences, in which cases children are more likely to request legal advice. In addition, and as commented on below, there is a pilot project running in London and other police force areas in which there is a presumption that children who are detained will have legal advice.

Table 6. Proportions of adults and children who requested legal advice.

Force	Adults	Children
A	60.7%	82.9%
B	53.7%	75.0%
C	63.0%	91.8%
D	65.3%	87.6%
E	64.6%	86.1%
F	56.4%	69.2%
G	57.3%	74.4%
H	65.1%	80.4%
% in total sample	61.0%	80.2%

Figure 4 shows the percentages of children who requested legal advice according to offence type. Children who were arrested for homicide requested legal advice in 100% of cases, while the least frequent requests for legal advice occurred for other theft and handling (67.2% request rate).

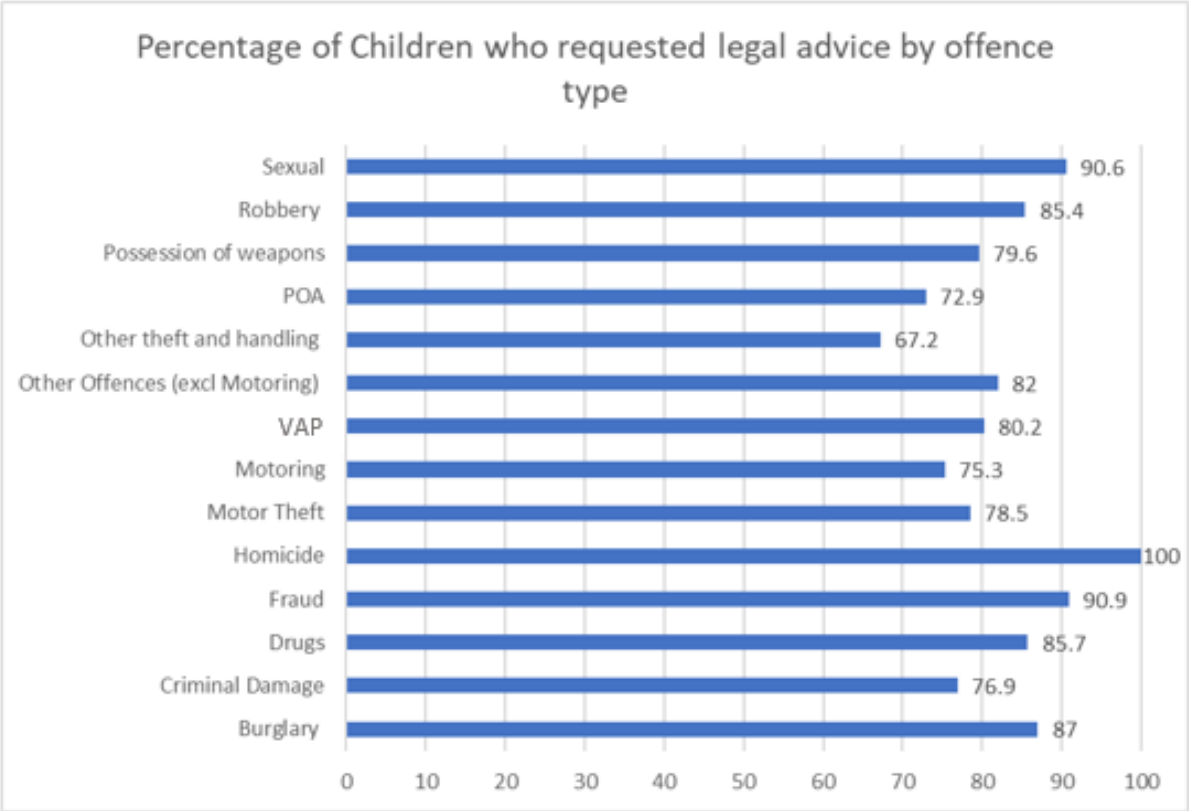


Figure 4: Percentage of children who requested legal advice by offence type.

A total of 73.0% of female children requested legal advice, while 81.7% of male children requested legal advice. This difference could be associated with the offence types and the severity of offences (see the breakdown by offence gravity scores in Figure 5). In terms of ethnicity, 78.4% of White children requested legal advice, compared to 87.2% of Black children and 88.5% of Asian children.

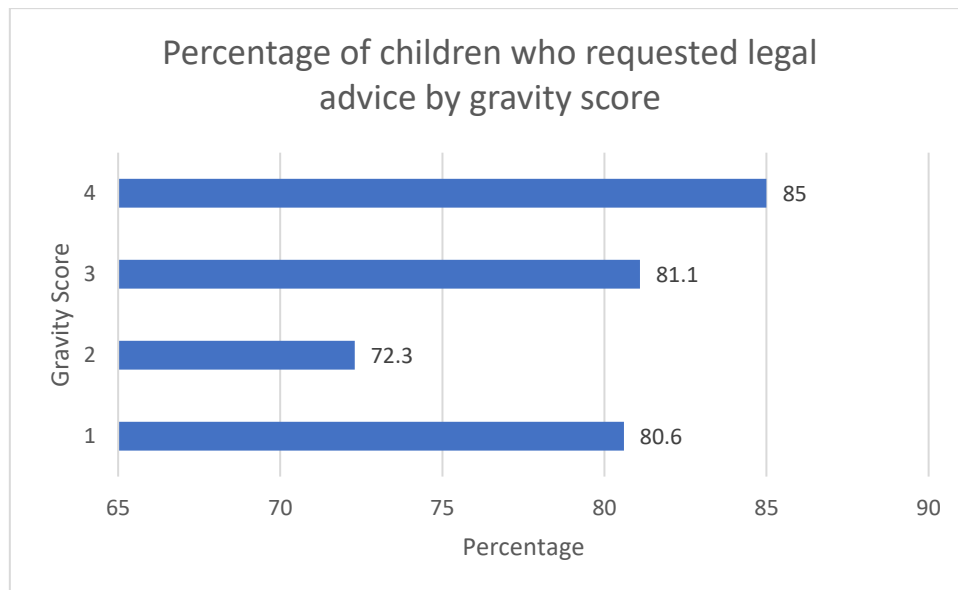


Figure 5: Percentage of children who requested legal advice by gravity score.

Table 7: Requests for legal advice according to age.

Age	Proportion who requested a lawyer
10–13	73.1%
14	76.6%
15	77.4%
16	81.9%
17	83.8%

By age, a higher proportion of older children requested a lawyer (see Table 7). Importantly, as found when analysing 2009 custody records (Kemp et al., 2011), 10- to 13-year-olds were least likely of all children to request legal advice.

We ran a logistic regression model to test which factors were statistically significantly associated with children requesting legal advice. This allowed us to input multiple variables and assess their influence in the presence of other variables. For the purposes of the model, we grouped offences into: acquisitive crime (burglary, fraud, theft of motor vehicles and other theft/handling); violent offences (including violence against the person, robbery and possessing a weapon); sexual offences; drug offences; criminal damage; motoring offences; and other offences (including Public Order Act offences). Homicide was not included in the model due to there being very small numbers of children in this category. The extent to which force was used prior to their detention was coded as follows: no force used; handcuffs to the front; handcuffs to the back; and more serious forms of force (such as tasing, incapacitant sprays or other restraining devices to the legs, for example). Requesting legal advice was treated as a binary. We found that Black children were significantly more likely to request legal advice than White children (there was no effect for Asian children). Having had handcuffs to the front or back meant that children were more likely to request legal advice than if no force was used. Furthermore, those who were detained for drug offences or sexual offences were more likely to request legal advice than those detained for other offences. The results of the model can be found in Appendix 2.

5.2.3 Appropriate adults

A total of 99.0% of children had an AA. No information was available about the identities of the AAs.

5.2.4 Duration of detention

Police forces provided a detention-duration variable, which was the PACE clock. Time spent in detention not on the PACE clock (e.g. when remanded or having a medical visit) was therefore not included. The average time spent in detention for child suspects was 11 hours and 36 minutes, and for adults this was 14 hours and 6 minutes. A full breakdown of the average time in custody by police force is provided in Table 8.

According to the Home Office definition of an overnight stay (spending a minimum of 4 hours in custody and at least part of this period being between 00:00 and 04:00 – regardless of when they came into custody) 53.6% of children had an overnight stay, and 61.7% of adults had an overnight stay. This is higher than the 45% of children found to be held overnight in police custody in the Home Office (2022) analysis of custody-record data from 26 police forces.

Significantly more Black ($\chi^2 = 1311.3, p < .001$) and Asian ($\chi^2 = 355.6, p < .001$) children had an overnight stay when compared to White children: 58% of Asian children, 59% of Black children and 52% of White children had an overnight stay.

Table 8: Average number of hours spent in custody by police force.

Force	Adults	Children
A	15.0	11.9
B	12.5	10.5
C	13.9	10.1
D	14.3	11.4
E	14.1	11.0
F	14.7	13.2
G	10.9	9.4
H	14.8	12.2
Average in total sample	14.1	11.6

Note: 0.1 hours is 6 minutes.

We examined the time spent in custody dependant on what time children were detained. Children detained between midnight and 04:00 spent the longest time on average in custody – 14 hours and 48 minutes. Children detained between 08:00 and noon spent the least time in custody on average – 9 hours and 18 minutes. Figure 6 illustrates this.

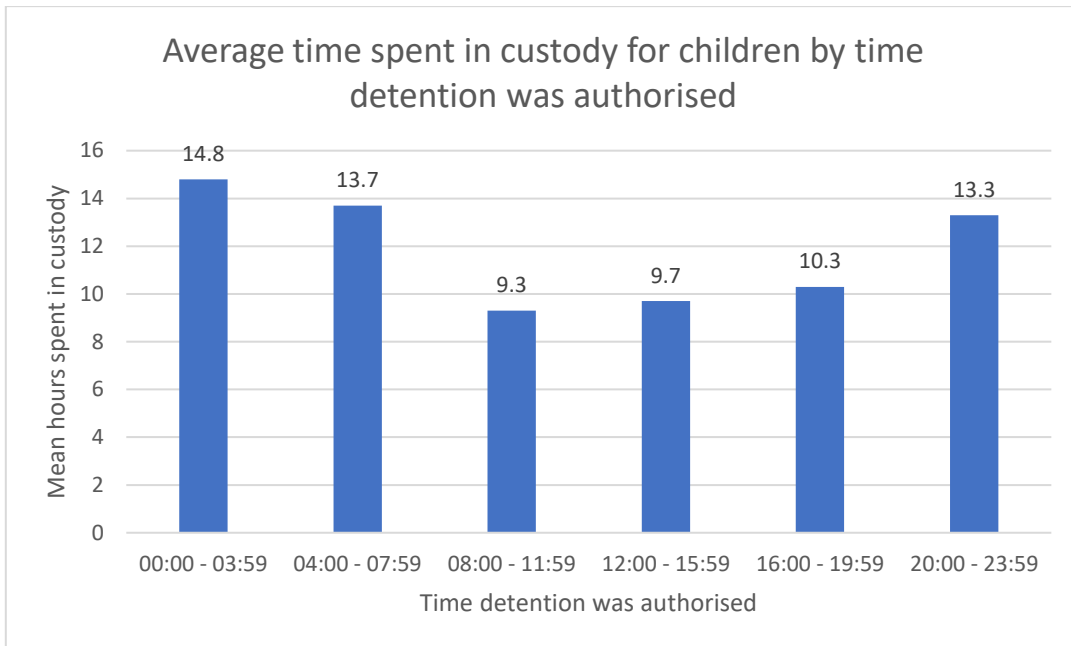


Figure 6: Length of time spent in custody according to time brought into custody. Note: 0.1 hours is 6 minutes.

Figure 7 shows the numbers of children released after x hours. Custody reviews occur at 6, 15, and 24 hours. Figure 8 shows the average time spent in custody by children according to offence type.

Research has identified inspectors’ reviews of detention to be perfunctory exercises that have little impact on the release times of suspects (Kemp, 2020a). While the greatest number of children were released after spending 6 hours in custody – the time of the first inspector’s review – there was no spike in the release of children at this time or at the 15-hour review, which we would expect if the reviews were effective in helping to expedite cases.

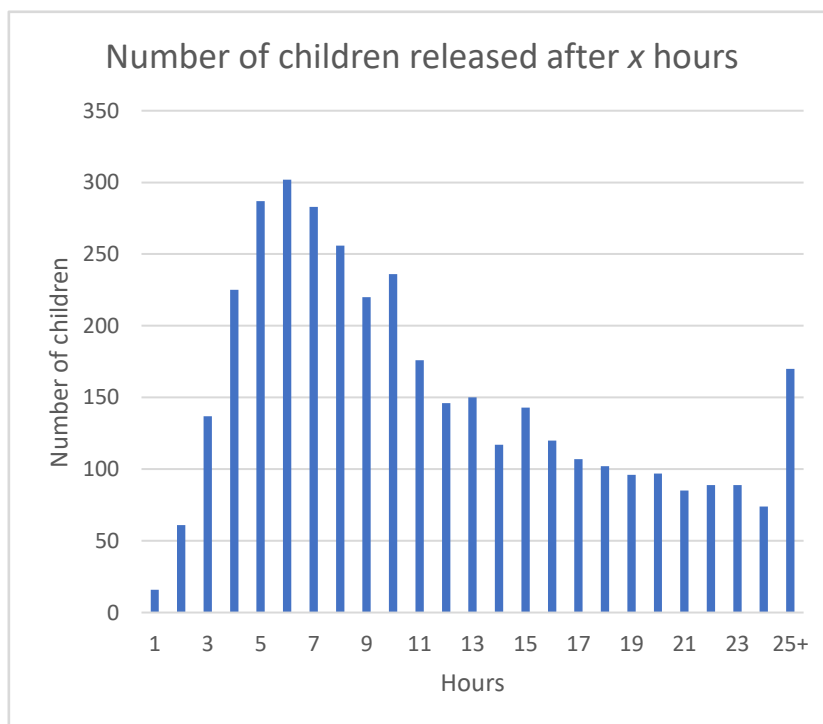


Figure 7: Number of children released after being detained for x hours.

It is only possible to consider the potential impact of the inspectors’ reviews on the detention when comparing this data with 2009 records (Kemp et al., 2011); however, this previous analysis included all detainees, whereas only children were involved in our analysis. In 2009, it was noted that 47% of all detainees were released within 6 hours compared to 25% in our study. In addition, the proportion of those released between 6 and 14 hours in 2009 was 34%, compared to our 46%; the proportion of those released between 15 and 24 hours was 14% in 2009, compared to our 23%. A total of 5% of children in our study were detained in excess of 24 hours.

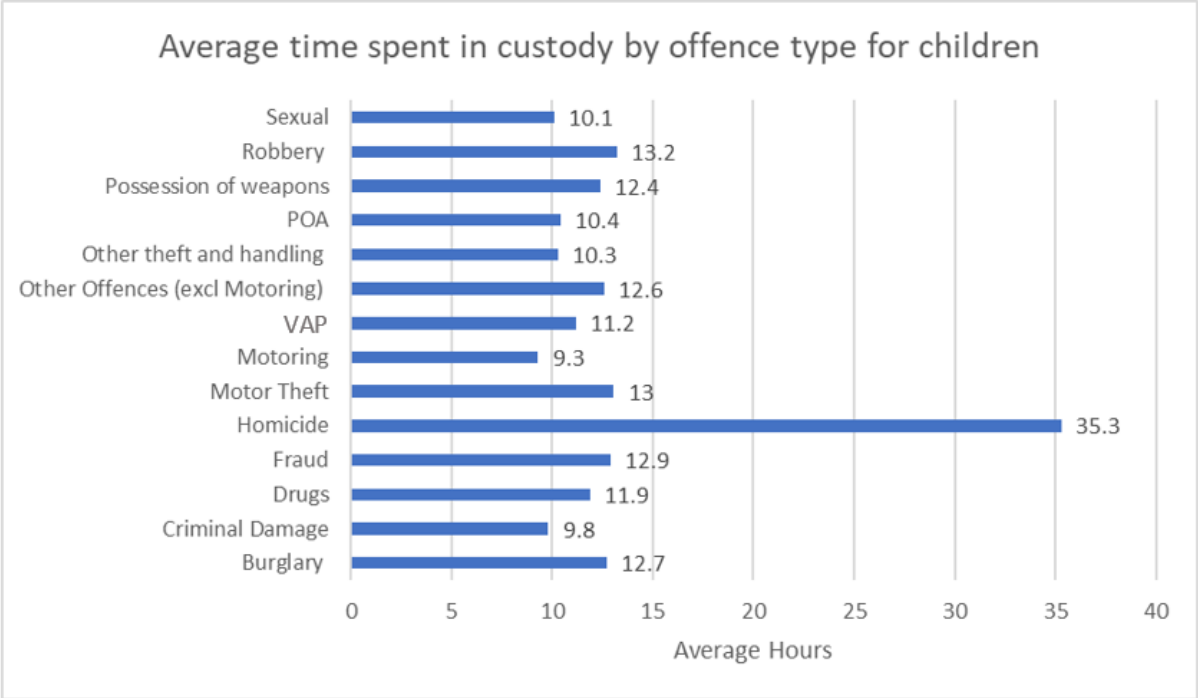


Figure 8: Average time spent in custody by offence type for children.

We conducted a multiple linear regression to establish which demographic, offence-related and contextual factors were statistically significantly associated with time spent in custody for children detained between 30 minutes and 96 hours. We found that older children were detained longer – a one year increase in age was associated with a 43-minute-longer stay on average. Ethnicity had no impact on detention duration. Being arrested for motoring offences or criminal damage were associated with shorter times in custody than being arrested for other offences. Children who requested legal advice spent significantly longer in custody (140 minutes longer on average), and the use of handcuffs to the front or rear before being brought into custody was also associated with longer stays. The full model can be found in Appendix 2.

5.2.5 Force used before detention

As noted above, we grouped the level of force used before detention into four categories: no force used; handcuffs to front; handcuffs to back; and more serious force, which includes incapacitant sprays, leg restraints, taser devices, and other. Figures 9 and 10 break down the levels of force used before detention by ethnicity and gender, respectively.

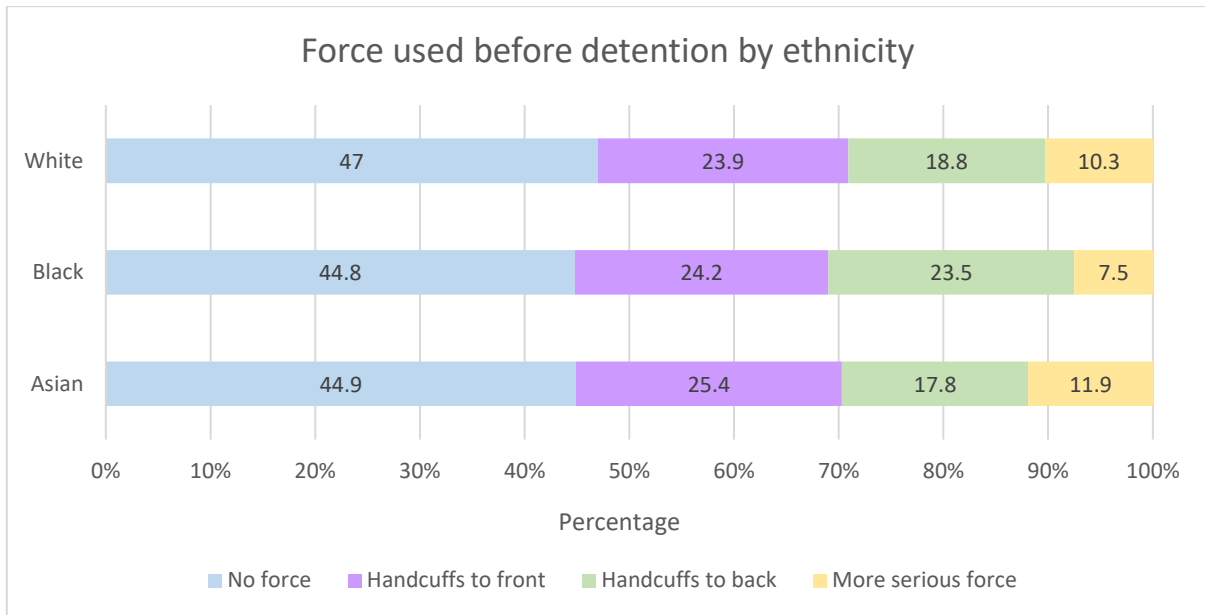


Figure 9: Levels of force used before detention by ethnicity for children.

While they were small, there were statistically significant differences between ethnic groups ($\chi^2 = 33.0, p < .001$). White children were less likely to have force used when brought into custody than Black and Asian children. Similar proportions of children of all ethnicities had handcuffs to the front, which is not as restrictive as being handcuffed to the rear. Black children were more likely than White and Asian children to have handcuffs to the rear, although they were less likely to have more serious force used than White or Asian children.

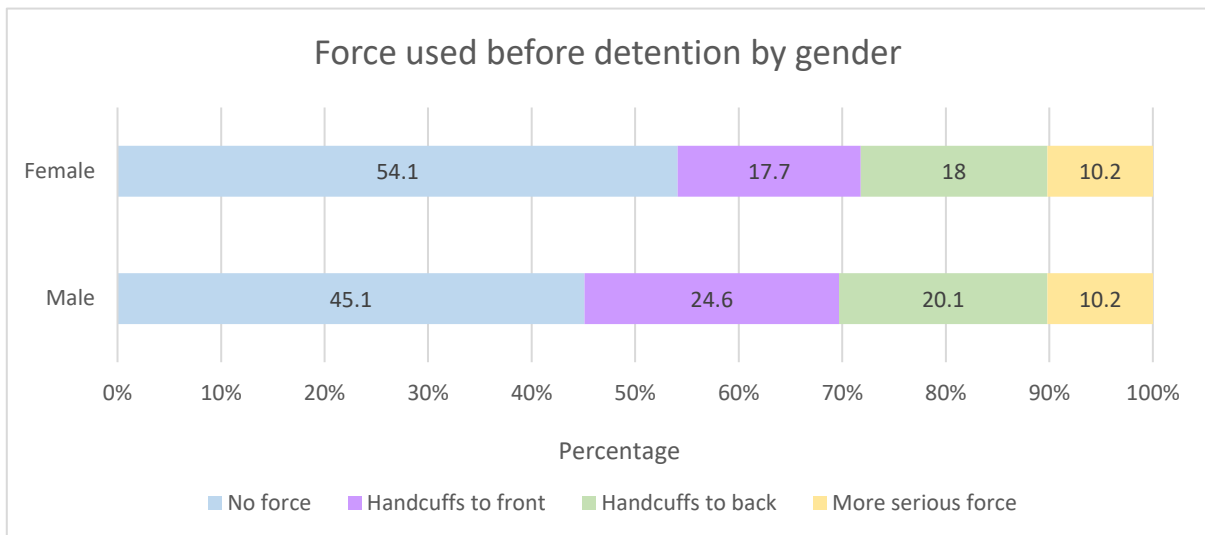


Figure 10: Force used before detention by gender for children.

There were also significant differences by gender ($\chi^2 = 25.2, p < .001$). While a higher proportion of girls than boys had no force used when first brought into custody or had only handcuffs to the front, a similar proportion had handcuffs to the rear and the same proportion had more serious force used.

5.2.6 Strip searches

A binary variable indicating whether or not an individual was strip searched was available for seven of the eight forces included in this analysis. Overall, 7.5% of children and 9.6% of adults were strip

searched. When broken down by gender, 8.1% of male children and 4.9% of female children were strip searched. By ethnicity, 6.7% of White children, 10.9% of Black children and 11.2% of Asian children were strip searched.

We conducted a logistic regression to test which factors were statistically significantly associated with being strip searched in the presence of all the other variables in the model. We found that the strongest predictor of being strip searched was having committed a drugs offence as opposed to other offences (odds ratio = 14.6). Having had handcuffs to the back used was associated more with being strip searched compared to having had no force used (odds ratio = 3.5) and being Black was associated more with being strip searched compared to being White (odds ratio = 2.6). There was no significant effect of being Asian compared to being White. The full model can be found in Appendix 2 (Table A2.3).

5.2.7 Case outcomes

Initial disposals when suspects were released from police custody were provided by six of the eight forces (Table 9), and a final disposal was given by all eight (Table 10). Note that while we use the terminology “final disposal”, these files can be left open indefinitely; this is just indicative of what the most up-to-date disposal was at the time when data was pulled from the police system (between February and December 2022). Those cases from 2019 will have therefore had more time to be resolved than cases from 2021, which must be noted as a limitation. Some cases in which suspects were “released under investigation” therefore exist in the “final” disposals, as these remained unresolved at the time data was collected. These outcomes are displayed for English and Welsh forces as well as overall, as there appear to be significant differences in policy across England and Wales in relation to the final use of out-of-court disposals in police custody.

Table 9: Proportions of adults and children with each first-disposal outcome, broken down by English and Welsh forces.

First disposal		Adults	Children
No further action	English forces	18.5%	16.6%
	Welsh forces	25.9%	18.5%
	Total	19.3%	16.8%
Released under investigation	English forces	17.3%	20.6%
	Welsh forces	23.5%	43.8%
	Total	18.1%	22.1%
Released on bail	English forces	17.3%	14.4%
	Welsh forces	18.2%	14.5%
	Total	17.4%	14.4%
Charge	English forces	38.3%	20.2%
	Welsh forces	25.1%	8.2%
	Total	36.8%	18.9%
Out-of-court disposal	English forces	7.0%	1.2%
	Welsh forces	6.8%	12.8%
	Total	7.0%	2.5%

Note: Percentages may not sum to 100, as some had other disposals such as being transferred to another force. Also note that for first disposals, only one Welsh force provided data, so this may not be representative.

Table 10: Proportions of adults and children with each final-disposal outcome, broken down by English and Welsh forces.

Final disposal		Adults	Children
No further action	English forces	50.1%	58.5%
	Welsh forces	46.2%	46.4%
	Total	49.1%	55.5%
Released under investigation	English forces	6.1%	5.8%
	Welsh forces	2.3%	2.2%
	Total	5.1%	4.9%
Charge	English forces	34.5%	21.1%
	Welsh forces	38.0%	22.2%
	Total	35.4%	21.4%
Out-of-court disposal	English forces	6.0%	11.2%
	Welsh forces	8.5%	22.2%
	Total	6.7%	14.0%

Note: Percentages may not sum to 100, as some had other disposals such as being transferred to another force. There were no cases remaining on bail at the time of the final disposal.

The average time a child spent in custody varied depending on the case outcome: those receiving an out-of-court disposal spent less time in custody, at 8 hours and 42 minutes, and those who were charged spent the longest, at 14 hours. In cases where no further action was taken, children spent on average 11 hours and 24 minutes; for those released under investigation, it was 13 hours and 6 minutes.

Important differences are found when comparing the present case outcomes with the findings based on children in our 2009 custody records (Kemp et al., 2011). In relation to the final disposal, for example, the proportion of cases where no further action was taken increased significantly from 31.8% in 2009 to 55.5% in this study. The proportion of children who were charged or received an out-of-court disposal has reduced over time. In 2009, for example, 42.1% of children were charged and 26.1% received an out-of-court disposal (Kemp et al., 2011), but these disposals were found to have reduced to 21.4% and 14.0%, respectively, in this study.

It is when examining the out-of-court disposals that we can see the Welsh forces using this disposal twice as often as English forces: 22.2% compared to 11.2%. With similar proportions of children being charged in England and Wales, it is important to consider further any differences in the way the police, lawyers and AAs deal with children in the police interview in Wales that could have an impact on the outcomes of cases.

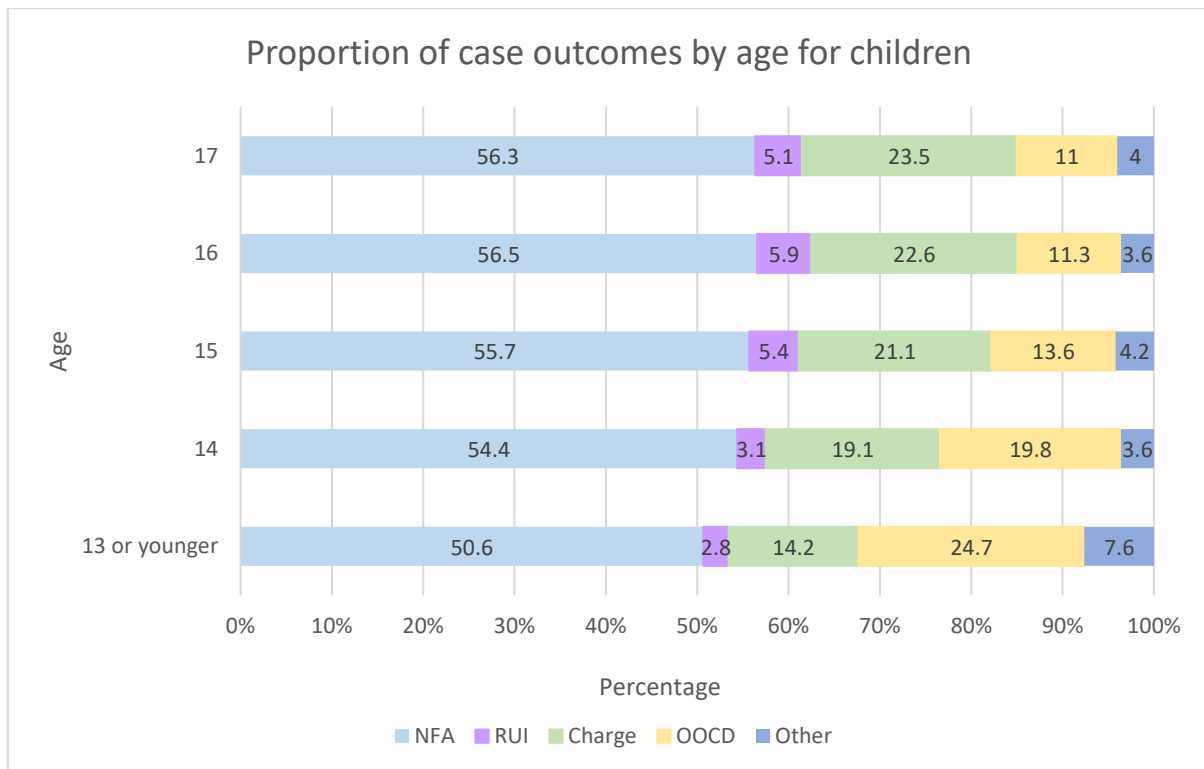


Figure 11: Case outcomes by age for children based on final disposals.

As illustrated in Figure 11, there were significant differences by age for case outcomes ($\chi^2 = 84.3$, $p < .001$). It is of concern to note that children between 10 and 13 years old were least likely to have no further action taken when compared to older children. This was the finding in 2009, when 10- to 13-year-old children were also found to be least likely of all age groups to have a lawyer (Kemp et al., 2011), which is also the finding in this study. While 10- to 13-year-old children were less likely to be charged and more likely to receive an out-of-court disposal, the same proportions of this age group and 14-year-olds both received these disposals, at 38.9%; the proportion of children charged increases with age, and the proportion overall who are charged or receive an out-of-court disposal reduces, to 34.7%, 33.9% and 34.5% for 15-, 16- and 17-year-olds, respectively.

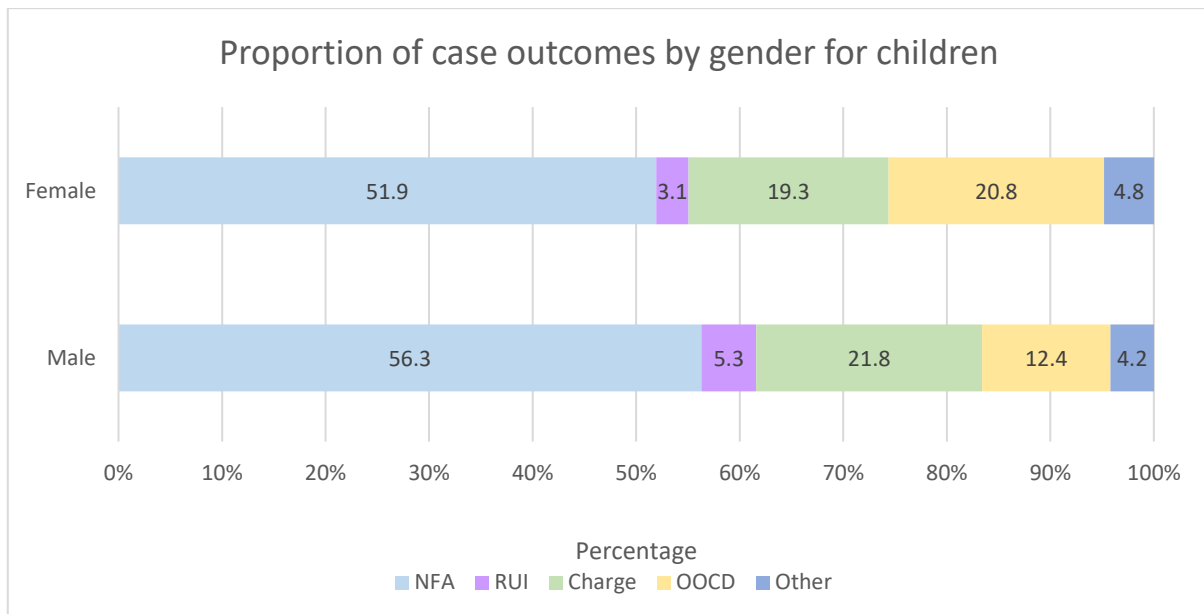


Figure 12: Case outcomes by gender for children based on final disposals.

With girls having been seen to be arrested for less serious offences than boys, it is perhaps not surprising that there are more cases involving girls in which no further action is taken; however, by the same token, it would also be expected that more boys than girls would be charged, which – with a difference of just 2.5% – is not really the case (see Figure 12). For girls, there is a higher proportion receiving an out-of-court disposal than boys – 20.8% compared to 12.4% – but it is also concerning to note that overall, 40.1% of girls received formal action from the police compared to just 34.2% of boys. As noted above, boys were more likely to have a lawyer, with 81.7% requesting legal advice compared to 73.0% of girls. The differences in case outcomes between genders were statistically significant ($\chi^2 = 37.2, p < .001$).

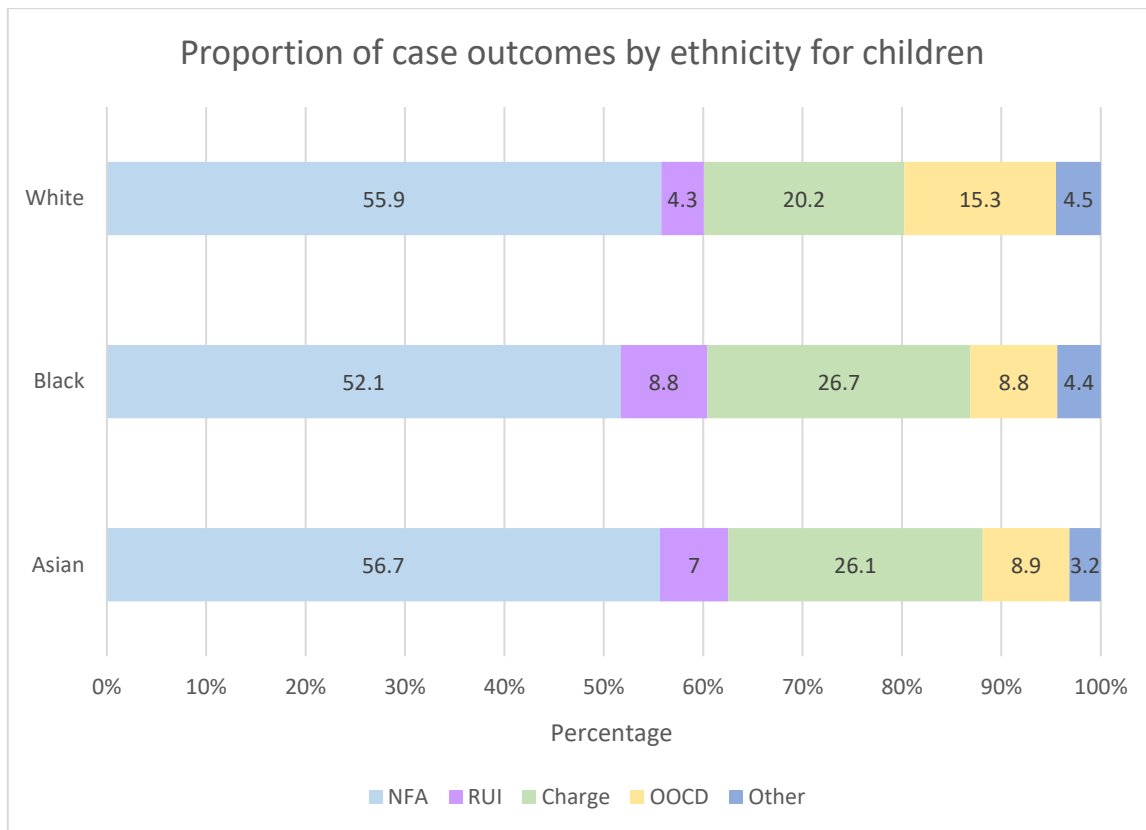


Figure 13: Case outcomes by ethnicity for children based on final disposals.

As illustrated in Figure 13, while White and Asian child suspects had similar proportions of cases in which no further action was taken – 55.9% and 56.7%, respectively – at 52.1%, the proportion was lower for Black suspects. Most significantly, we can see that White child suspects were less likely to be charged – at 20.2% – than Black or Asian children – at 26.7% and 26.1%, respectively. While White, Black and Asian child suspects all had similar proportions of cases in which formal action was taken – 35.5% for both White and Black children and 35.0% for Asian children – the proportion of White children receiving an out-of-court disposal was 15.3%, compared to just 8.8% and 8.9% of Black and Asian child suspects. Differences in case outcomes by ethnicity were statistically significant ($\chi^2 = 56.2, p < .001$). This suggests the potential for racial bias within police decision-making when considering case outcomes, and this requires further exploration.

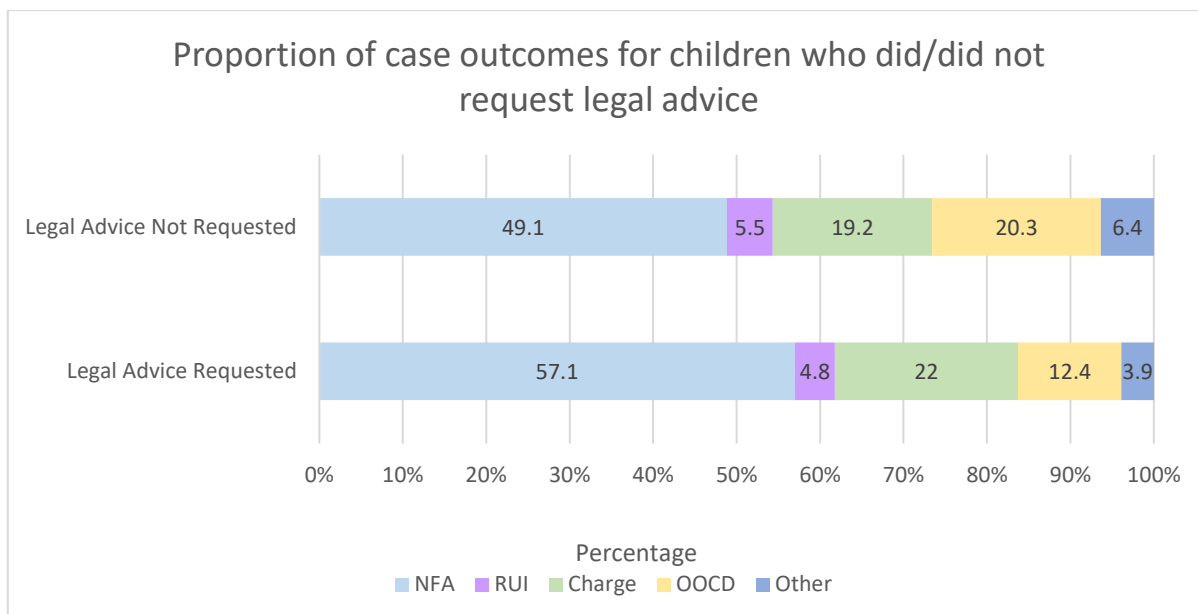


Figure 14: Case outcomes by whether children requested legal advice based on final disposals.

From Figure 14, we can see that children who requested legal advice were more likely than those who did not to have no further action taken: 57.1% compared to 49.1%. There was little difference in the proportions of cases charged with and without a lawyer having been requested (19.2% and 22.0%, respectively), but there was a significant difference in the proportions receiving an out-of-court disposal, being 20.3% of those without legal advice and 12.4% of those who requested a lawyer. Differences in case outcomes based on legal-advice requests were statistically significant ($\chi^2 = 43.1, p < .001$).

While it might be assumed that child suspects are less likely to be given an opportunity to be diverted from court when they have legal advice, it could be that lawyers are less likely to advise their client to accept an out-of-court disposal unless the offence is admitted and the police have shown that they have sufficient evidence to take the case to court. These are legal criteria that have to be met before an out-of-court disposal can be imposed, and; questions thus arise about the extent to which a child is able to take these criteria into account when accepting such a disposal. It would be helpful if there were a review of out-of-court disposals so that there could be confidence that these disposals were being imposed only when the legal criteria were met.

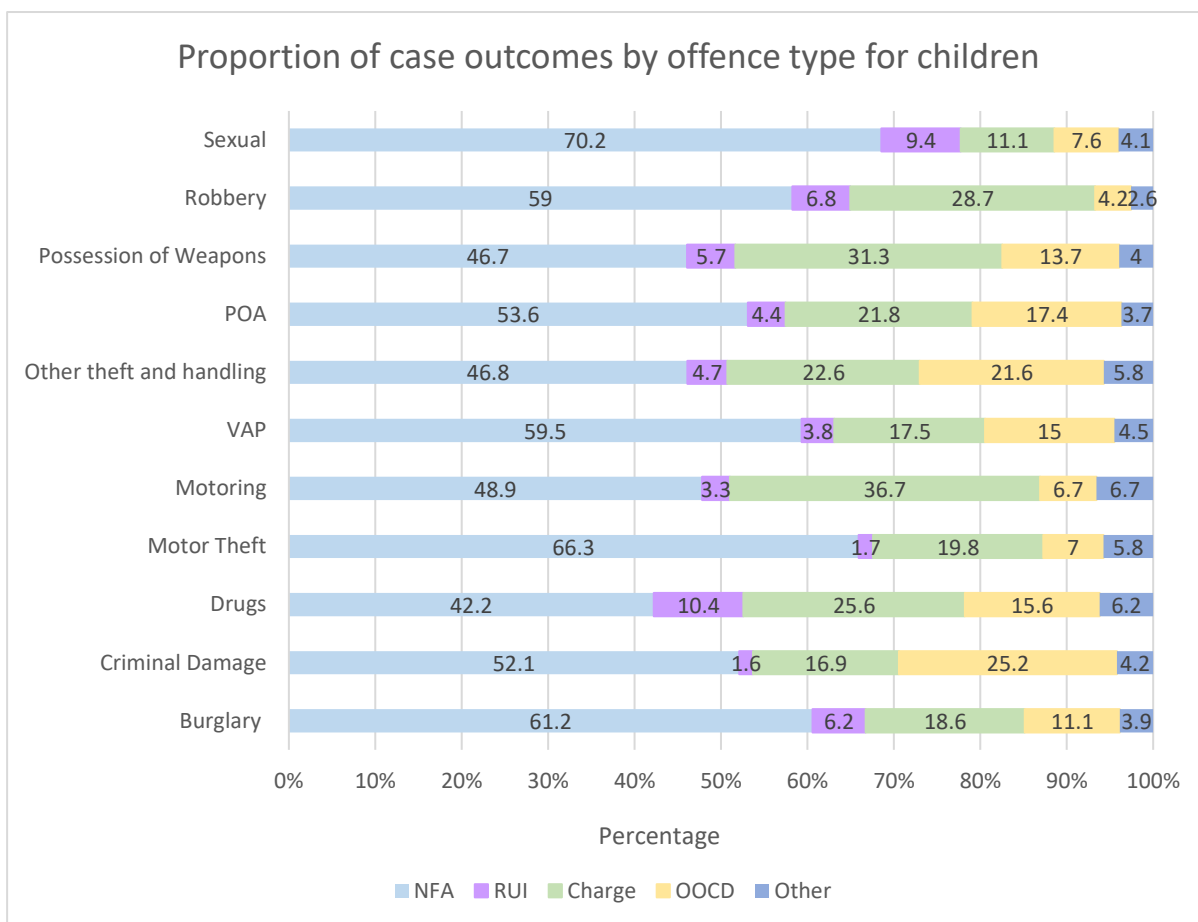


Figure 15: Case outcomes by type of offence for children based on final disposals. Note: Fraud, Homicide, and Other Offences were not included in this chart, as the numbers in each category were too low for meaningful comparison.

The case outcomes by offence type for children are particularly interesting (Figure 15): high proportions of cases involving sexual offences, robbery, motor theft and burglary – 70.2%, 59.0%, 66.3% and 61.2%, respectively – had no further action taken. For sexual offences, there was also a low proportion of cases charged or having an out-of-court disposal being imposed. With theft and handling offences (21.6%) and criminal damage (25.2%), there was a high proportion of child suspects receiving an out-of-court disposal; this raises questions over whether these cases needed to be brought into police custody. Overall, differences in case outcomes by offence type were statistically significant ($\chi^2 = 233.9, p < .001$).

Seven of the eight forces provided an indication of whether a child’s first or final disposal was “charge and remand”. Of the children in these seven forces, 3.3% were charged and remanded. However, due to inconsistencies in the reporting of disposals, this could be an underestimate.

5.2.8 Children in police custody during the pandemic

With our custody record spanning the time of the COVID-19 pandemic, it is important to consider what impact this might have had on this data and on the people in custody. We collected data only from two months per year – March and September 2019/2020/2021 – which is not granular enough to be able to track the changes in volume of people detained in custody during the pandemic, as any changes may have had a delayed impact on the data. It is possible that the nature of cases changed

(e.g. people detained for remaining in a public place during a “stay at home” order and a higher volume of domestic violence cases), but we do not have the data required to confirm this. Additionally, changing policy landscapes regarding the detention of children may have had an impact on the volume brought into custody over and above the effect of the pandemic. However, the latter must be considered as a confounding feature of the data, and collection of more data over the next few years will help to elucidate what a return to “normal” looks like. Summary plots of the variations in the numbers of adults and children brought into custody are given in Figure 16, and summary plots showing changes in the average time spent in custody are given in Figure 17.

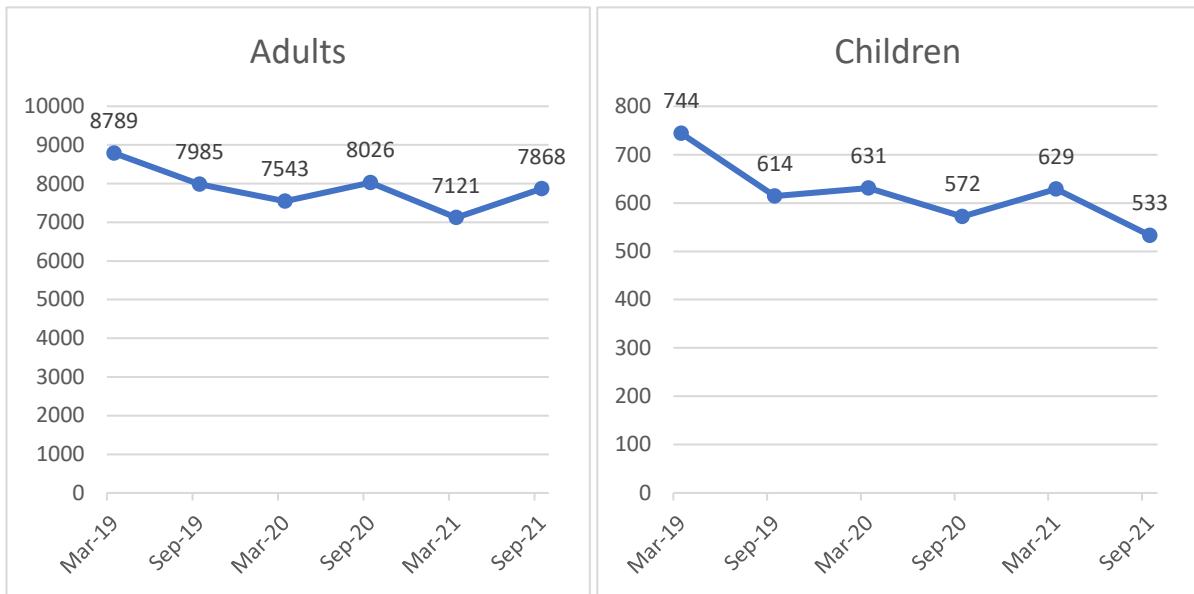


Figure 16: Numbers of adults and children brought into custody in March and September 2019 (pre-pandemic), 2020 (early pandemic) and 2021 (1+ year into the pandemic).

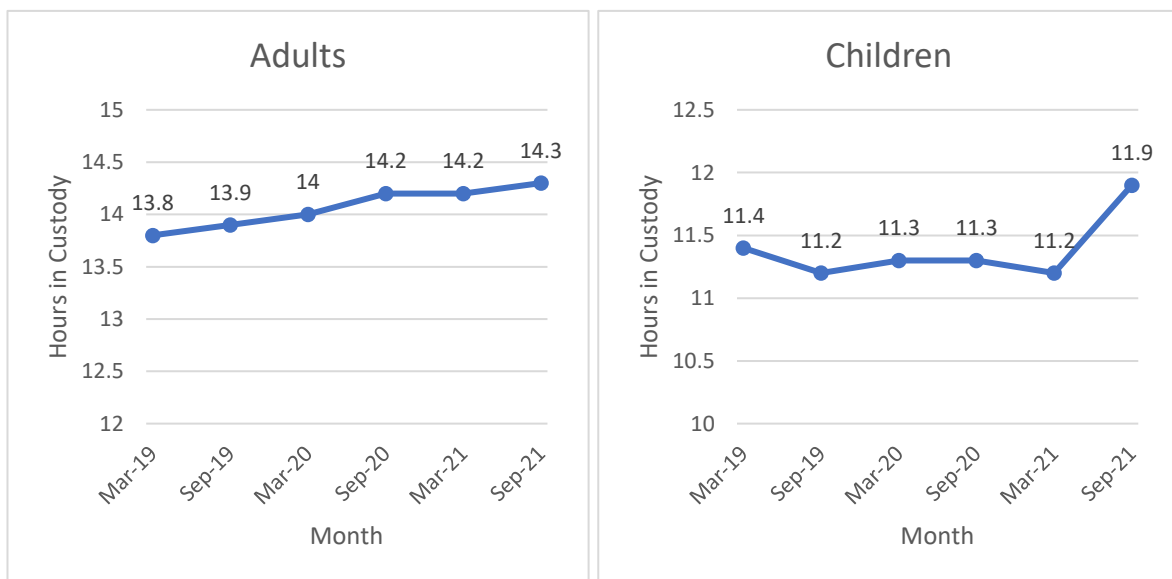


Figure 17: Average time spent in custody by adults and children in March and September 2019 (pre-pandemic), 2020 (early pandemic) and 2021 (1+ year into the pandemic). Note: Time spent in custody in homicide cases has been excluded, as this would be likely to skew the averages.

5.3 Summary of key findings

From analysis of police custody records, we can identify variations in the numbers of children brought into police custody and how these differed between police forces and – by carrying out a more detailed analysis – between individual custody suites. In relation to PACE safeguards, we know from our statistical analysis of the data that detention is very rarely refused, and that the request rate for legal advice by children has increased significantly – from 45% in 2009 to 80% in this study. What is of concern, however, is that children under 14 years of age are still less likely than older children to request a lawyer, and they are also less likely to have no further action taken in cases when compared to 15- to 17-year-olds. Fewer girls request legal advice than boys (73% compared to 82%), and at 87% and 89% respectively, Black and Asian children are more likely to request legal advice than White children, at 78%. With legal advice being so important to children within an adversarial system of justice, and with so many now having a lawyer, we recommend that there should be a presumption that all people under 18 years will have legal advice and restrictions on its waiver.

The electronic custody records tell us little about the involvement of an AA, apart from recording that 99% of children had one. It would be helpful if the type of AA involved could also be captured on electronic records, for example whether they were a family member, friend or agency AA.

While PACE requires the cases of people held in custody to be dealt with expeditiously, the average length of time suspects are detained has increased by around five hours over the past ten years, rising from 8 hours and 55 minutes in 2009 (Kemp et al., 2012) to 14 hours and 6 minutes in this study, with children being held on average for 11 hours and 36 minutes. With the police being under pressure not to hold children overnight, it is of concern to note that this occurred for 54% of children in our custody-record dataset. Without changes to reduce the detention times of children, we anticipate that there will be increasingly long delays in the time taken to deal with child suspects.

We had information on the use of force prior to detention and, in relation to ethnicity, White children were noted to be less likely to have force used when brought into custody than Black or Asian children. By gender, girls were likely to have less force used than boys, except when “more serious force” was used (10% for both genders).

Regarding strip searches, we found that 8% of boys and 5% of girls were strip searched. By ethnicity, 7% of White children were strip searched compared to 11% of Black and Asian children. Within our logistic regression model, we found that the strongest predictors of being searched were having committed a drugs offence as opposed to other offences and having handcuffs to the back as opposed to no force being used; the suspect being Black was associated more with them being strip searched when compared to them being White.

In relation to case outcomes, the most significant finding is to note the high proportion of cases where no further action was taken against children: 56% overall. However, we saw a difference between English forces, where no further action was taken in 59% of cases, and Welsh forces, where this figure was 46%. The proportion of cases charged were similar, at 21% overall for children, although this is lower than the 42% of children charged in our analysis of 2009 custody records. We can also see that out-of-court disposals were used less – 14% compared to 26% in 2009 (Kemp et al., 2012); again, we can see a difference here between English and Welsh forces, with 11% of children given this disposal in England and 22% in Wales.

While our statistical analysis of electronic custody records helps in setting the scene when considering issues arising from the treatment of children in custody and in relation to their legal rights, we next turn to our case studies and, in particular, our engagement with child suspects, which helps with seeing police custody from a child's perspective.

5.4 Future plans for capturing custody-record data

There are some forces where electronic custody-record data is routinely downloaded to assist senior management teams to monitor performance in custody suites; however, in other areas, this data is not downloaded. This is either because of a lack of expertise in the force to extract the electronic data or because the computer system does not allow the information to be downloaded. As the police are rarely asked to provide electronic custody-record data outside of individual forces, there is a danger that key data not relating to the police is no longer captured. This was seen to be the situation in three out of our 12 datasets, with the police no longer capturing electronically whether legal advice was requested. This is important data for the Ministry of Justice, and in addition to capturing whether legal advice was requested, there also needs to be an electronic field to capture whether the advice was actually received.

We will be making subsequent requests for data from police forces nationally in a second Nuffield-funded study that continues our research with children in police custody. We will ask the 12 forces that provided data for this study to also provide electronic custody-record data for 2022 and 2023. Furthermore, we will request electronic custody-record data from other forces, and we will ask those unable to provide this data to complete a survey so that we can establish to what extent this is because of resource issues or problems with extracting the data. We also set out some specific measures relating to the collection of custody-record data in our recommendations in Section 15.

6. Children's perspectives on police custody

With the researchers generally first engaging with child participants while they were waiting to be interviewed by the police, their questions revolved around asking how they were feeling, whether they understood what was happening and if they knew their legal rights as suspects. They were also asked if they had requested a lawyer and, at that time, whether they had spoken to either their AA or their lawyer. Prior to the police interview, it was not appropriate to ask questions about the alleged offence, and it had been agreed with the police that no such questions would be raised. Thereafter, a second interview was held with each child participant, during which they were asked about their experiences in the police interview, their views on police interviewers, AAs and, if involved, their lawyers, and also on what they thought would happen next.

6.1 Understanding legal rights

Of our 32 participants, 18 said that they did not understand their legal rights while held in police custody, although four had initially said that they did know their rights but, when asked, they were unable to say what these were. For example, CS21 said he knew his legal rights, but when asked what these were he replied, "I can't remember now. I did have a sheet with them written down." CS11 remarked, "I was given a form about my legal rights, and it gave me some insights."; however, he continued, "There's a Code thing I can look at, but I don't know what it is. Perhaps it's a poster on the wall?" (CS11). Having said that he understood his legal rights, CS10 seemed to be confused when asked what these were, and he replied, "I'm not sure. You can contact someone through the button on the wall [of the cell]. I was offered a book about the rules, but I said no to that." He also said no to having a lawyer. Of those who said that they did understand their legal rights, most commented on

knowing that they could have a lawyer, and some said that they needed to have an AA. The child's first contact with their AA and lawyer is considered further below.

So far as child participants' understandings of their right to silence is concerned, it was not felt appropriate to ask questions about this right before they had spoken to their lawyer and, asking about this after the interview could have put doubts in children's minds about how they responded to police questions. This important issue, however, was raised by some child participants and interviewing officers, and we could listen to officers explaining the right to silence when observing recordings of the police interviews in 18 case studies in Areas A and C (for further details see section 10.1 and Appendix 3). Prior to an officer asking a child any questions in the police interview, they must read out the following words of the modified caution:

You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence (Code C, para. 10.5).

As this is a complicated form of words, most interviewing officers in Areas A and C said they would try to explain this to child suspects to make sure that they understand their right to silence.

In Area A, the exchange observed between the interviewing officer and CS10 when listening to the recorded interview provides a good reflection of the type of issues raised in several interviews in this area after the modified caution was read out. The interviewing officer said, "We need to explain what the caution means. You don't have to answer our questions, but if you go to court and say something different it could harm your defence. Just to check, do you have to answer our questions?" CS10 responded by saying, "No." The officer continued, "What happens if you go to court and tell them something different to what you have told me?" CS10 replied, "They'll think I'm lying." In dealing with the third part of the caution, the interviewing officer said, "The interview is being recorded and so how will the court know what you have said?" CS10 responded by saying, "Because it's being recorded." (CS10:RI).

It is important that officers ask questions to check a child's understanding, because in CS12's case, when asked if she understood what the caution means, she replied, "yes", but when asked to explain what it means she said, "I'm not sure." (CS12:RI).

As there was seen to be a consistent approach adopted by most officers in Area A when explaining the caution and checking a child's understanding, when asked about this, an officer replied, "We have a memo card where the caution is broken down into three parts ... We then ask questions to test understanding and that's on the memo card too." (CS13:IO). The approach adopted by officers was seen to vary in Area C, and not one officer asked a child questions to check their understanding of the caution. This finding is helpful, as it shows how different approaches being adopted by officers can lead to confusion over the meaning of the modified caution.

In Area C, when talking to the interviewing officer in CS16's case, she said about the caution, "I explain what it means and I'll ask the suspect if they understand it. They just say yes so, I don't bother asking if they understand it, I just explain what it means." (CS16:IO). In the interview, after cautioning the suspect, the officer explained, "What this means is I'm going to ask you some questions. You don't have to answer them if you don't want to. If the matter goes to court and you say something in court that you could have said now, they are less likely to believe you. The

recording can be played at court.” (CS16:RI). Without CS16 having a lawyer, the officer did not check to see if he understood the caution.

After reading the caution out in CS17’s case, the officer asked if he understood what it meant and when given the reply “yes”, the officer continued saying, “You say you understand but you are 14 years of age and I’ll break this down.” When commenting on the second part of the caution, the officer did not seem focused on what he was saying when he told CS17, “It says, ‘it may harm your defence’ and what this means is if you are charged and go to juvenile court or Crown and say, ‘I haven’t done it for all sorts of reasons’, the judge or jury or magistrate could ask, ‘why didn’t he answer police questions?’ They might think you’ve gone off and made it up. Do you understand that?”, and CS17 replied, “Yes.” (CS17:RI).

CS19 was a 13-year-old who had been arrested for an offence of robbery, and after reading out the caution, the officer said, “It’s a bit of a mouthful.” He explained what the caution means, commenting, “From your silence the court can draw an inference. By that it means they may or may not believe your account if you are silent today.” At the end of the explanation, he asked CS17, “Does that make sense?”, and after receiving the reply “yes”, he said, “It’s a bit of a mouthful but you seem confident.” (CS17:RI). Commenting that CS19 appeared confident highlights the need for training of officers when dealing with children. Not only was this a 13-year-old boy, but the police were also aware that he was autistic (CS17:AA).

In some cases, interviewing officers read through the caution and the explanation quickly, which meant that it was difficult to follow, and this could also lead to officers not explaining the caution properly. This was the situation in CS23’s case when, after reading out the caution, the officer said to him, “You can say what you want. You can talk to me, or you don’t have to talk to me. It’s your choice.” Without the officer telling CS23 that she was about to give him an example of what could happen if he did not talk to her, she remarked, “If it goes to court and they ask for your side of the story and you give your side of the story, they might wonder why you changed your mind.” She then began the interview without asking him if he understood what the caution meant (CS23:RI).

What was missing from the officers’ explanations of the modified caution in both Areas A and C was the privilege suspects have against self-incrimination. This is particularly important in cases where the police have little or no evidence and, by exercising their right to silence, there will be no adverse consequences. When commenting on this issue, the lawyer in CS18’s case said, “The way they explain it can put a child under pressure to say something.” (CS18:LA). This was the situation for CS18, who did reply “no comment” in the police interview, but he was not comfortable in doing so. When asked what the caution means, he replied:

It means I don’t have to answer any questions but if I don’t say anything now, I won’t get another opportunity. It’s bullshit. They repeat it and try to explain it, but they are using the same words in a different order every time. I have a solicitor telling me to make ‘no comment’ but then the police are telling me they can use it against me. What does that mean? It doesn’t make sense. (CS18)

CS18 is right in that it is difficult to understand, which raises questions about suspects having a right in law that they do not understand in practice. Research has found problems with the wording of the modified caution, not only with children (Sim and Lamb, 2018), but also with adults (Fenner et al., 2002). Instead of trying to provide an accessible and child-friendly explanation of the modified caution, due to the complexities involved, either the right to silence should not be curtailed when

dealing with children, or there should be mandatory legal advice for people under 18 years old so that a lawyer can help a child to decide how best to respond to police questions.

6.2 Being held in a cell

It is important to reflect on children's experiences of having to wait in a cell to be interviewed by the police; they often wait for many hours, during which time they have little or no contact with the outside world.¹³ Police custody is a complex environment that is often compared to a prison, and the same cells are used whether dealing with an adult or a child (although in some suites, there are "juvenile" wings to keep the two separate). While suspects only spend a relatively short period of time in custody compared to those sentenced to imprisonment, CS27 commented on the latter being preferable, saying, "I've been in youth custody before, and I'd rather be there than here because at least I have my TV to watch. It's more comfortable. I have better food to eat. You don't have anything that's so hard as it is in here." In a similar vein, CS28 remarked on his experiences in a cell when saying, "It's everything. The door, the mattress – it's so hard. The food is horrible. They offer me food, but I just don't eat. I haven't had anything to eat since 5 pm yesterday [this was 19 hours later], except biscuits." (CS28). Most child participants said the food was "horrible", with 16 of our 32 child participants saying they had had nothing to eat, not even biscuits or cereal, with six having to wait 15 hours before being interviewed by the police.¹⁴ Having been held for over 20 hours, CS6 said, "I don't trust the food. I've tried it before and never again. I'm starving. I've been having cups of water, the bare minimum." By refusing to eat, hunger pangs can have a detrimental impact on children's decision-making and on what they say in the police interview.

Many child participants said they tried to sleep as a way of trying to help pass the time away, with others saying they would count the squares on the cell wall. Others still said that they were too anxious to sleep or, having to wait for many hours, they would fall in and out of sleep. Having been brought into custody during the night while intoxicated, for instance, CS14 said, "At first I coped because I was sleeping, but then I had to try and trick myself to go to sleep. The waiting was the worst thing. I had a couple of hours when I was awake, and I just needed to get it over with." It was the waiting that could be particularly difficult for vulnerable participants, especially those reporting neurodivergent issues, such as autism or attention deficit hyperactivity disorder (ADHD). In two cases (considered further below), the custody officer allowed their parents, acting as their AAs, to stay with them in the cell to help calm them down (CS13 and CS15).

A few child participants were given books or a newspaper to read to help pass the time. When asked how he managed to cope in a cell for over 22 hours, CS6 replied, "There's nothing to do. I asked for a book but they didn't have any and so I was given a newspaper to read. All you can do is sleep." CS3, who had not been in custody before, said, "I was given a book to read, and that distracted me from the surroundings because it was very hard for me." In a couple of areas, child suspects were occasionally given a foam football to help pass the time. CS8 played with the football for a long time, and he said that this helped to calm him down. His co-accused, CS9, he said, "My football quickly went down the toilet." While some children were offered a book to read or a football to play with, they were not routinely offered to all, which suggests that some child suspects may be considered to be more "deserving" of having a distraction than others.

¹³ See also Kemp and Carr (2023:80–82) when looking at children's experiences of waiting in a cell.

¹⁴ It was marked on their custody records that food had been declined.

The boredom children experienced when waiting in a cell for many hours was summarised by CS2 when he said, "I feel like a caged animal. I've been sat in the same room with no TV. Absolute boredom." (CS2). When CS3 was asked what the worst thing about being in a cell was, she replied, "Just being alone, having no one to talk to. You don't know what's going on. You're treated like you're an adult already." CS18 complained about the isolation he felt while detained, and when asked if it felt like being in solitary confinement, he replied, "1,000 percent yes. I've seen things like this on TV, but I've never experienced it."

When asked how they were treated by the police while in custody, most child participants said that they were looked after well, with most negative comments relating to the circumstances of their arrest rather than their detention. It was not knowing how long they were to be held that was so difficult to endure, particularly without having a clock or a watch to tell the time. CS11 was of the view that the police would hold him for 24 hours, saying, "I've been here for 14 hours, and I've worked out that I've only got 10 hours left. Is that right?" When told he could be held for a maximum period of 24 hours, he replied, "That's reassuring. It might just be another three hours then." (CS11).¹⁵ It was a relief for most child participants after they had been interviewed by the police, as they realised that it would not be too long before they were released from custody. After the interview, for example, when asked how he was feeling, CS5 said, "Relieved as I'm being let out. The first few hours are okay. You are patient, but later, perhaps after eight hours, it starts kicking in and you begin to feel annoyed. Towards the end it got really stressful being in the cell."

When child participants were asked what could help to make things better for them, most said not to be detained in the first place, and certainly not for such a long time. There were complaints made over the clinical and bare environment of a cell, and over how uncomfortable the mattress and pillows were, having to be made of fire-resistant and vandal-proof materials. It is within such an environment that many child participants said they felt that being in a cell for many hours was part of their punishment. As CS18 put it, "I can lean my head against this wall and it's more comfortable than this pillow. You put your head on it and it's so hard. There's nothing soft in here." When asked how she felt while being in a cell, CS26 said, "I'm missing home. I'm bored. It's clinical in here and there's nothing to do."

In 19 cases, child participants were asked if they felt that being in a cell was part of their punishment, and 17 replied in the affirmative, with one saying no and another saying they did not know. CS30, for example, remarked, "This is like a punishment, and I don't deserve it ... I was in the wrong place at the wrong time." CS18 tried to sleep to help pass the time away, and he said, "The whole thing is terrible. I know I've done something wrong and we're not here for an amazing time, but we're still human." When asked how he was coping he replied, "I'm not. I literally went insane. I thought at one point I was losing my brain." (CS18). The concept that the "process is the punishment" was first developed by Malcolm Feeley (1992) when examining cases dealt with in the lower criminal courts in the USA, and this is explored further below when considering the attitudes of some custody staff to child suspects.

It was due to the boredom that many child participants seemed pleased to have the opportunity to talk to a researcher. At the end of the research interview in CS19's and CS21's cases, for example, they both said, "Thanks for talking to me." Having seen CS10 before the police interview, when the researcher asked if she could come to see him again after the police interview, telling him that he

¹⁵ Detention can be extended up to 36 hours on the authorisation of a senior officer, but this was unlikely to happen in this case.

could change his mind, he said, “Yes, of course. I won’t change my mind, you’re my friend now.” It is not acceptable that children are left alone in a cell for such a long time, not knowing what is happening, and without having help and support from their AA and/or lawyer.

7. Police decision-making and caring for children in custody

Key decisions are made by custody officers when authorising and reviewing detention, and they are supported by DDOs when looking after detainees. From our observations and discussions with research participants, we now examine steps taken by custody officers when dealing with child suspects, including authorising detention, conducting a risk assessment, caring for child suspects, accessing agency AAs through social services and assessing a child’s fitness to be interviewed.

7.1 Authorising detention

The arrest and detention of children is the main gateway into the criminal justice system, with a priority in all cases for suspects to be interviewed by the police once detained. Despite the critical importance of this decision, and with detention only to be used as a “last resort” (College of Policing, 2013), it is of concern to see that detention is almost automatic, being refused in 0.8% of suspect cases in our electronic custody-record sample. It is the custody officer’s decision to authorise detention, and this is based on information provided by the arresting officer. However, as there is no requirement to take into account anything a child might say about being detained or to invite them to comment on this important decision, it is not surprising that it is rarely challenged (Code C, para. 3.4(a)). Furthermore, there is no requirement for custody officers to arrange for a child suspect to speak to either their AA or their lawyer at this stage, and this means that children are not given the opportunity to participate in this key gatekeeping decision.

As discussed above, it is important to note that the number of people under 18 years old arrested and detained by the police has decreased significantly over recent years, with this change having been encouraged by a revision to Code G in 2012 (covering police powers of arrest) requiring custody officers to be more challenging of the “necessity” of bringing suspects into custody (Kemp, 2013).¹⁶ While far fewer children are now being brought into custody, without additional safeguards, this welcome trend could easily be reversed, particularly if a police target to increase the number of detections were to be re-introduced.¹⁷

While fewer children are being arrested, we observed some child participants being detained for minor offences. In the case studies, for example, three co-accused boys, CS7, CS8 and CS9, aged 14 and 15 years, had been arrested on their way back from school after having been reported for causing damage to a padlock when trying to gain entry to a garage. A custody officer who was not dealing with this case later observed that it was inappropriate for the boys to have been detained, particularly as they were all attending school and there were no aggravating features in this case. After the three boys were released under investigation, no further action was taken against them. When talking to custody officers, some were critical of arresting officers for bringing children into custody for a minor matter, such as having a “spliff” in their possession when stopped by the police,

¹⁶ The police were required to set up interview rooms outside of custody so that suspects could be asked to arrive at a pre-arranged time for the interview. Known as a “voluntary attendance”, there is little or no data available on the volume of these “voluntary” interviews undertaken nationally. This means that we do not know how many are taking place each year, who is involved or what the outcomes are in these cases.

¹⁷ From 2003 to 2008, this target led to the criminalisation of a greater number of children (Bateman, 2008), and it significantly increased the number of children detained by the police (Kemp, 2014).

because the child “cheeked” or “disrespected” them, as it was felt that this would help to “teach them a lesson” (FD.20.5.21).

There were some interviewing officers who agreed with such an approach, as custody was seen to be an effective deterrent to offending. As one interviewing officer put it:

Holding a child for a while in a cell helps to put them off offending ... particularly when they have to listen to all the banging, screaming and shouting – that should be enough to put them off ... They need a good shock. I don’t think it should be as cosy as it is. (CS16:IO)

Additionally, when CS16 was released from custody, the custody officer told him that further enquires would be made; when CS16 asked if he could have his mobile phone back, the custody officer told him not until the investigation had closed, which he said could take six months. He said to CS16, “Actions have consequences, and if you’d listened to your dad you wouldn’t be in custody and you wouldn’t have your phone taken from you.” (FD:CS16).

As discussed below, some custody staff were also seen to hold such thoughts, even though the research evidence does not support such a view. On the contrary, programmes where “shock tactics” were used – such as “Scared Straight” programmes, in which child in trouble with the police were taken into maximum-security prisons to meet inmates and to be told about the horrors and difficulties of their life in prison – were not found to be an effective deterrent, and they were actually linked to increased offending (Petrosino et al., 2013). Instead, interventions that embody “therapeutic” philosophies, such as counselling and skills training, have been found to be far more effective in reducing offending than those based on strategies of control or coercion, including deterrence and punishment (Ross et al., 2011). McAra and McVie’s (2007) longitudinal study of young offenders found that bringing a child into police custody is more likely to increase offending, and the deeper a child penetrates the formal system, the less likely they are to desist from offending. Accordingly, they argue that to reduce offending, minimal intervention and maximum diversion policies are required, with effective mechanisms over police decision-making to help reduce the number of children brought into police custody.

Many inspectors and custody officers, while accepting that children should not be brought into custody unless absolutely necessary, acknowledged that this could happen, particularly when dealing with children for “domestic” incidents. If the police are unable to engage public agencies – particularly children’s services that have a statutory responsibility to safeguard and promote the welfare of children¹⁸ – especially at night, they sometimes have no choice but to detain a child for their safety. As this inspector put it, “If there’s a domestic incident, where is the child going to go at two o’clock in the morning? Social services need to take on their responsibilities, but when we can’t get hold of them, we end up having to put them in a cell for the night.” (FD.17.5.21).

There were three separate cases in which child participants aged 17 were brought into police custody for minor offences badged as “domestic” incidents arising from an argument at home. With a parent having called the police because they wanted help in coping with their child, the officer attending decided to temporarily remove the children from their home to help them calm down. Two of these child participants had had no previous encounters with the police, and they were brought into custody after midnight. CS3 was arrested and detained for an assault and criminal damage after slapping her sister and breaking her mobile phone, and CS4 was held for an offence of criminal

¹⁸ The statutory responsibility falls under section 11 of the Children Act 2004.

damage after breaking a plate. Their detention was authorised and, without being able to get through to social services at night, in the morning, the custody officer arranged for an agency AA to attend so that they could both be interviewed. With delays in conducting the interviews, CS3 was held in detention for just over 13 hours, and CS4 was held for over 14 hours. The lawyer acting for both of these child participants said, "It's totally wrong that children should be brought into custody, and there should be other ways of dealing with them. It makes me very cross, particularly when one of them is in custody for breaking a plate." (CS4:LA).

In the third case, CS10 was arrested for causing criminal damage after breaking a window during an argument with his mother (he had previously been detained for similar incidents on "a few" occasions). He was brought into custody at 13:35 and, without attempting to contact social services, his detention was authorised; having been interviewed by the police, he was released almost six hours later.

Custody officers commented on some of the difficulties they can experience when dealing with minor "domestic" incidents, particularly as these are priority cases for the police. One officer explained how such a case "is highlighted on the custody officer's computer as being a big risk, with a red exclamation mark next to it. It's difficult for them not to authorise detention because sending the child home will just escalate it again." (FD.26.7.22).

Concerns were also raised by an inspector over staff in care homes sometimes contacting the police when having difficulties coping with a child, wanting them to make an arrest and bring them into custody. He complained that they were using custody as a "bed and breakfast" and as a way of providing "respite" for staff, but it was inappropriate for these children to spend "time in the cells". By responding to a call from a care home, and with a lack of alternative provision, he said that a duty of care is created that effectively "forces" the police to take the child away, particularly as they cannot leave them without taking action once they have been identified as at risk (FD.10.5.21).

A custody officer in another area made a similar point when talking about children being brought into police custody for domestic incidents that should more appropriately be dealt with by social services or other welfare agencies. Without being able to engage with these agencies he said, "The buck stops with us. We have to take preventative action even if we're not the 'right' service to be involved." (FD.10.5.21). Lawyers were sympathetic to the difficulties the police can face when having to respond to domestic issues. One lawyer said, "A wider problem is that these children have parents who are refusing to come out and rescue them. The police become quasi-babysitters when there's nowhere to take them. They are under a duty to approach social services, but it doesn't help if they can't get hold of them." (FD.8.11.21). When dealing with CS13, another lawyer commented, "The police are being turned into glorified social workers in uniform." (CS13:LA2).

Custody officers complained of some children being brought into custody inappropriately, but they felt they had no choice but to authorise detention because of the lack of support that the police receive from other agencies, particularly social services. If social welfare agencies are not resourced to provide help and support when children are brought into police custody, these cases cannot easily be transferred over to them. Quinn and Jackson (2003) had a similar finding in their study of child suspects in Northern Ireland in the early 2000s; this research helped to bring about youth justice reforms that, instead of funding social services and other agencies to assist the police when dealing with children in police custody, changed the emphasis from a dominant "justice" approach to one that prioritised "welfare/diversion" instead.

Different issues were seen to arise in other cases when authorising detention. CS13, for example, was a 16-year-old who had been arrested and detained on numerous occasions, and on the last occasion, he had been bailed to return at a pre-arranged time to be interviewed by the police for offences of aggravated taking a vehicle without the owner's consent (TWOC) and a domestic assault. Although he arrived at the station in time for the interview, with his father acting as his AA and his lawyer being present, the officer dealing with the case was not available, and there was a long delay while finding another officer to conduct the interview. With the police having powers to bail suspects initially for 28 days, and with CS13 coming to the station on the 28th day, the custody officer said he had to authorise CS13's detention until the officer was ready to interview him. From CS13's custody record, the custody officer knew that he had ADHD and anxiety, and that he could be disruptive and violent when detained. Accordingly, he allowed his father, acting as his AA, to stay in the cell with him. After waiting for almost five hours, CS13 was interviewed, and he was released after spending over nine hours in custody. While recognising the custody officer's dilemma in relation to bail, CS13's lawyer said that he should not have been bailed in the first place but instead asked to attend a voluntary interview (CS13:LA1).

A different situation arose in the case of CS29, a 16-year-old Black boy. He was arrested at school after sitting a GCSE exam and the Criminal Investigation Department (CID) wanted to question him about an offence of robbery. CS29 was not known to the police until he was arrested the week before and interviewed about a related incident. It seems that there was no urgency to make this arrest, particularly as the offence had been reported over two months earlier, and with Code C stating that "juveniles should not be arrested at their place of education unless this is unavoidable" (Notes for Guidance 11D). Acting as his AA, CS29's mother said that she would have brought her son down to the station to be interviewed at a convenient time if she had been asked by the police to do so. While CID had presumably timed his arrest for the convenience of the interviewing officer, CS29 had to wait almost six hours before being interviewed, and he was released after having spent eight hours in custody. CS29's mother said that she felt the arrest and detention of her son was racially motivated, saying it was highly unlikely that the police would have arrested a White child when at school in similar circumstances. There was also seen to be evidence of "adultification" in CS30's case, when a custody officer commented on a 15-year-old Black boy looking older than his years. It is through adultification that Black children in particular can be perceived as more mature and culpable than their White peers. For Davis (2022:8), this "can lead to the rights of children not being upheld, potentially leaving them more at risk of harm, due to a dereliction of safeguarding duty".

There were also concerns raised by some custody officers over investigating officers requiring the nightshift to make an arrest and bring a child into custody in the early hours of the morning so that they were available to interview when the investigation team came on duty in the morning. This was the situation in CS15's case, with officers arriving at his home at 02:50 and arresting him for an offence of witness intimidation reported by the complainant 10 days earlier. Acting as his AA, CS15's stepfather said that he complained to the arresting officers about the timing of the arrest and, explaining that his stepson has high-functioning autism, he offered instead to take him down to the station to be interviewed in the morning. The officers continued with the arrest and, as noted below, when the custody officer realised from his records the difficulties that CS15 would have if left alone, he allowed his stepfather to wait in the cell with him.

When making arrest decisions, in the recent case of *ST v The Chief Constable of Nottinghamshire Police*,¹⁹ the High Court judgement confirmed that consideration of a child's best interests must be made, with the timing of any arrest being relevant to necessity. In this case, ST, a 14-year-old was arrested at 05:30 at his home address after he had been present when a phone had been snatched from a pupil at his school by another pupil. The investigating officer had left instructions for night shift officers to attend at the child's address and arrest him before school the next day (12 days after the incident) so that ST was available for him to interview in the morning. During the arrest, ST's father offered to take his son down to the station for a voluntary interview at a more reasonable hour but, on instructions from a supervisor, the officers continued with the arrest. ST brought a claim of false imprisonment against the police and the judge (on appeal) held that the arresting officers did not have reasonable grounds to believe that ST's arrest was necessary, and the arrest was therefore held to be unlawful. Crucially, the judge held that the child's age was a "central and obvious consideration" (para. 94) and that the police must differentiate between children and adults when considering the necessity of arrest and detention. He said that this was not only required by PACE but also due to wider obligations, including the UNCRC and the Children Act 2004.

7.2 Risk assessment

Having authorised detention, custody officers complete a risk assessment for a suspect, with questions focused on safeguarding issues and the responses helping to inform the level of care required.²⁰ Custody officers were critical of having to use the same risk assessment whether dealing with an adult or a child. Some also complained of having to ask personal and intrusive questions in the custody block, where the responses could be overheard. Despite this, there were no cases observed in which custody officers sought to hold these discussions in private, even though in one area there was an alternative room that could be used to book children into police custody. Concerns were also raised by custody officers over the accuracy of responses provided by children, particularly if they did not understand the significance of their own medical conditions.

In our 32 case studies, 22 of the children reported having mental or physical health issues during the risk assessment: 11 reported having ADHD (with two of these also reporting having autism), three reported having autism, two had mental health problems and another two had anxiety. While some child participants had received a diagnosis of ADHD or autism, others were either waiting for a diagnosis or waiting for an appointment to be screened by Child and Adolescent Mental Health Services (CAMHS).²¹ Among those reporting physical problems, two had asthma, one had rhinitis and another reported having Ménière's disease and a brain cyst. In recognising the vulnerability of children brought into police custody, it is also important for a risk assessment to note any trauma or adverse childhood experiences, including abuse, neglect and exploitation (NAAN, 2022).

Although ten of the child participants did not report having physical or mental health issues in the risk assessment, two later reported becoming anxious while held in a cell, and another two said they were finding it difficult to breathe. On CS29's custody record, it was noted during the risk assessment

¹⁹ [2022] EWHC 1280 (QB).

²⁰ There are four levels of observation for young suspects: level 1 = 30-minute checks that require as little intrusion as possible; level 2 = rousing them at least every 30 minutes; level 3 = carrying out physical checks every 30 minutes; and level 4 = constant observation.

²¹ A mental-health worker commented on CAMHS having a long waiting list prior to the pandemic but, subsequently, she said it had got a lot worse (FD.24.5.22).

that “DP [detained person] is a juvenile and states he gets anxious if placed in a cell and struggles to breathe for too long”. When later seen by the researcher, he said:

It’s the waiting that’s so difficult. I just want to go home. They put me in a bigger cell because I said I wouldn’t be able to cope but it only helps for a certain time. I’m getting more anxious the longer I’m in here and I started to get a panic attack. (CS29)

He said that the custody officer had arranged for him to get some fresh air in the exercise yard, and he was also allowed to speak to his mother over the cell intercom, and this had helped to calm him down.

While custody officers have to rely on answers given by children when asking questions in the risk assessment, they are not always aware of the severity of the health issues the child experiences. In CS13’s case, for example, he reported having anxiety when asked questions in the risk assessment. From previous records, the custody officer was aware of problems that CS13 had with self-harming and being violent while in custody. Accordingly, he noted on the custody record, “CS13 has previous issues in custody and father willing to sit with him in the cell. If father leaves, consideration required for constant observations.” While it was also noted on the custody record that he had ADHD, for which he was no longer medicated, there was no other information noted about the health issues experienced by CS13. Later on his father said he had mental health problems for which he was under CAMHS, and his lawyer described him as having “severe ADHD that is being treated through CAMHS, Tourette’s syndrome, and an ‘Oppositional Defiant Disorder’ (ODD)” (CS13:LA1).

Similarly, in CS15’s case, as noted above, this 17-year-old was arrested while asleep at home for intimidating a witness, and he was brought into custody. His former girlfriend had initially complained to the police that he had assaulted her when they were in a relationship and, subsequently, she told the police that he had threatened to release a sex video of them together if she did not withdraw her complaint. Describing CS15, his lawyer said, “He has high-functioning autism and because of this he can be difficult, and he creates holy hell every time he’s arrested.” (CS15:LA). When authorising detention at 03:43, the custody officer knew from previous detentions that CS15 was autistic and did not cope well in a cell on his own, and so his stepfather was allowed to stay in the cell with him for over 13 hours while he was detained.

The lawyer in CS13’s case commented positively on the practice of custody officers allowing parents to stay in a cell with their child. She said, “It’s a high point for this police force. If you have someone who is a bit vulnerable, or who needs a bit of support, they will allow a father or mother to join them.” (CS15:LA). HM Inspectorate of Constabulary and Fire & Rescue (HMICFRS) (2019) also commented positively on this practice in an inspection of custody suites in another area, when it was noted that “a mother stayed with her son as he was at risk of self-harm, as this was deemed to be better for him than to be watched by officers” (para. 4.35). Custody officers, however, know that allowing a parent to stay in a cell with their child is against PACE safeguards and, in one case, having allowed this, a custody officer said that a complaint had been made against him.

Within the risk assessment, it is not known to what extent children will be open and honest when asked questions about whether they have self-harmed or felt suicidal in the past, particularly when they do not know why these questions are being asked or what action might be taken in response. Accordingly, CS12 told the researcher that while she had had suicidal thoughts in the past, she did not mention this to the police because, “I thought if I told them about it, they would keep me for longer and I didn’t want that.” When talking to the researcher, CS11 said that he had self-harmed in

the past, but he did not tell the police this; when asked why not, he replied, “I know I can’t call anybody to talk about it.” For safeguarding reasons, the researcher asked these two child participants further questions about how they were feeling, and both said that they were fine.

With the risk assessment focusing on children’s safety while held in police custody, we noted in our analysis of electronic custody records that variables relating to vulnerability were not always recorded consistently across police forces. From those where a more consistent approach was seen to be adopted, we noted that 13% of child suspects reported feeling suicidal, 25% gave a positive response when asked if they had self-harmed, 15% reported having a problem with drugs and 24% said they had mental health difficulties (although we made an assumption here that “mental disorder” meant the same as and/or children were assessed in the same way as for “mental health”). There were other important issues relating to vulnerability that were not always raised in electronic custody records, such as identifying whether the person was a looked after child or if they were known to social services.

With the risk assessment currently being dealt with as part of the booking-in process, and questions being focused on keeping the child safe in police custody, it would be helpful if a more detailed health and well-being assessment could be undertaken later on, with any issues raised helping to inform decisions made by the police. This could include the decision to authorise detention, which requires an ongoing review, and information obtained during the assessment could lead to child suspects being released from custody. For example, CS31 was a 14-year-old boy arrested at home for fighting with his stepfather, and detention was authorised at 01:00. The custody officer was unable to speak to social services until the duty officer became available at 08:00 and, at that time, he was told that there was a history of family violence against CS31, which had led to him being on a child protection plan and having an allocated social worker. With CS31 having been brought into police custody, the police priority was to conduct an interview, and so detention continued to be authorised. Liaising with social services and other agencies over the complex social welfare issues involved took a long time, leaving CS31 waiting almost 13 hours before he was interviewed, and he was detained for almost 18 hours in total. With CS31 having been identified as the victim at 08:00, questions arise as to why he was not released from custody to allow social services to deal with him, as there were no longer grounds to continue detaining him. Not surprisingly, “no further action” was taken when he was released from custody but, in helping to keep him safe, he was to be supported by social services while at home until alternative accommodation could be found for him.

7.3 Caring for child suspects in police custody

Once detention has been authorised, DDOs support custody officers by carrying out regular physical checks on detainees, with a minimum of 30-minute checks being required when people under 18 years old are involved. While the checks are concentrated on safeguarding issues, they do not provide an opportunity for child suspects to engage with DDOs. On the contrary, having responsibility for conducting regular checks of all detainees, DDOs’ contact with children was kept to a minimum. When conducting a check, this was generally seen to involve looking through the hatch or wicket to see if they were okay and, if required, asking detainees for a response. With the little time that DDOs spent with child suspects, instead of using their name, the practice of some DDOs was to refer to them by their cell number. While these cell checks provide an important safeguard, some child participants complained that they could be disturbed at night when their cell light was turned on. CS11 remarked, “They keep opening the shutter. It’s quite regular and that disturbs me.”

When recording the visits on custody records, standard words were generally used, such as, “DP [detained person] visited through an open wicket. DP was awake and spoken to. No concerns.” On some custody records, the DDOs can choose a tick-box response depending on whether a detainee was “Asleep” or “Awake” when the check was carried out. The checks have the desired effect of helping to keep detainees safe, but they do not mitigate a child’s sense of isolation while held in a cell. On the contrary, many child participants referred to this arms-length surveillance as leaving them feeling bored, anxious and frightened.

The level of observation of a child has to be increased if the custody officer requires a strip search or intimate search to be undertaken, which requires an AA to be present. One custody officer explained that if there are delays in getting the AA to the custody suite, child suspects are placed on level 4 observation, which either requires an officer to be in the cell with them or the child has to remain in handcuffs until the search has been conducted (FD:11.5.21). In one area, where a child brought into custody had a cord or ties in their clothing, this involved them having to change into custody clothing as this was a ligature risk, and this required a strip search to be undertaken. This situation occurred in CS2’s case when he was detained at 21:00; it was noted on his custody record, “Constant observations required due to having strings in bottoms and tops.” His father arrived at 22:05, at which time, acting as his AA, he was able to change clothing. A different situation was seen to occur with CS22, a 16-year-old who was brought into custody at 22:15 for an offence of robbery. With concerns raised that he might have concealed drugs on his person, a strip search was authorised, and he was kept under constant observation until an agency AA arrived at 00:45 and the search was undertaken.

Due to the vulnerability of many detainees, with them often having physical and/or mental health problems, the care and support given to those held in police custody is extremely high. In all custody suites observed, there were embedded nurses providing round-the-clock medical support to detainees. Liaison and diversion (L&D) workers are also located in most police custody suites,²² although in one area, mental health nurses were based in custody, but they were only trained to deal with adults. Nurses and L&D workers are available to assist custody officers in triaging detainees, and they have the skills to deal with physical and mental health problems, neurodivergent issues, learning disabilities, substance misuse and other vulnerabilities.

When talking to L&D workers in one area, they commented on it having a more integrated system than those found in other areas; this includes regular meetings with the police, CAMHS, mental health services and YOTs to help improve service provision for child suspects. One L&D worker commented on how helpful it was for them to be able to monitor custody “whiteboards” so that they could check on who was being brought into custody, particularly if a child was involved. While this L&D worker described it as a “good integrated system”, she also commented on its limitations, with support workers only being available during weekdays from 09:30 to 17:30. She also said that they have to manage a “huge caseload that is growing”, while also providing cover at court. While she believed things were moving in the right direction, the L&D worker said that a lot more could be achieved if social services and other agencies were given more resources so that they could get involved when children came to the attention of the police (FD.24.5.22).

In some cases, L&D workers can assist the custody officer if they note from the whiteboard that a child known to them has been brought into custody. This occurred in CS29’s case, when the L&D

²² Liaison and diversion teams are funded by NHS England and staffed by multi-skilled teams that may contain, among others, qualified mental health nurses, social workers and learning disability nurses.

worker contacted the custody officer to let him know important information that related to the child's welfare. The custody officer noted on the custody record, "Received a call from L&D and she stated that he is under investigation for CAMHS for ADHD. Family history of trauma due to a family member's death by violence." The custody officer brought this call to the attention of the researcher, saying how helpful it was to have this support from L&D (FD.17.5.22).

In another area, L&D workers based in custody suites provide cover seven days a week, from 08:00 to 20:00, and they are required to see all child suspects in police custody. From notes made on the custody records of our child participants, while some were willing to talk to the L&D worker, others refused to engage. L&D workers can also assist custody officers in carrying out health assessments. In CS26's case, for example, the custody officer wanted L&D to talk to her because he was concerned that she might self-harm. It was noted on the custody record that she had been seen by the L&D worker and that there were no self-harming issues. It seems that a more detailed mental health assessment had been undertaken by the worker but, for reasons of confidentiality, this was not noted on the custody record, although the interviewing officer said that he found the assessment helpful when dealing with this case (CS26:IO).

With social welfare issues arising in many cases involving child suspects, two of our police forces have a policy of contacting the local authority and providing details of a child detainee within an hour of them being booked into custody (but not at night). Having been contacted, the local authority let officers know of any safeguarding or welfare issues that could impact the child's stay in police custody. Based on the initiative first set up by the Metropolitan Police Service (MPS), this first hour is known as the "Golden Hour", and this approach has been adopted by other police forces.²³ There are also Multi-Agency Safeguarding Hubs (MASHs), set up in local authority areas, to which the police can refer vulnerable children if safeguarding and/or child protection issues arise.²⁴ This was the situation in CS1's case; the interviewing officer said, "I spoke to MASH because CS1 couldn't go back home, and we couldn't just release him. Social services and MASH found some local authority accommodation for him to go to." (CS1:IO).

7.4 Morale in police custody

Custody staff often having to cope with extremely vulnerable people in the highly pressured and stressful environment of police custody – particularly when also coping with low staffing levels – was seen to impact negatively on the morale of staff in some custody suites. While such pressure was not seen to have a negative impact on DDOs' treatment of detainees, it could lead to some resentment when caring for those in custody. As one DDO commented, "We get fed up having to look after people so well. They're mollycoddled and it goes too far. It's getting worse and the system needs to be harder on them." (FD.20.5.21). There were also comments made by a small number of DDOs regarding perceiving those detained to be "guilty" and viewing their time in custody as part of their punishment.

At times, when talking to some custody staff, they aligned themselves as being on the side of the "victim", helping to reinforce punitive attitudes in police custody. For example, on one occasion,

²³ The MPS also created the "Merlin system", a database that stores information on children who are known to the police, helping them to deal with issues of vulnerability not only while a child is detained but also on their release from custody.

²⁴ These hubs have been a feature of safeguarding processes since 2010, and they are aimed at increasing information sharing, joint decision-making and co-ordinated interventions between safeguarding agencies.

when custody staff were talking to the researcher about needing to treat children differently from adults, a custody officer intervened saying, “We have to remember that we’re here for the victim – for the elderly lady who’s been beaten up and has cuts and bruises to her face.” (FD.9.3.22). None of our child participants was being dealt with for such an offence, but this emotive depiction of an elderly victim was sometimes presented as one half of a dichotomy between the “innocent victim” and the “guilty offender”. In CS27’s case, a DDO commented on the circumstances of the alleged offence of possessing an offensive weapon, saying, “If you carry a flick knife and cut someone, you will end up in here.” (FD16.5.22). CS27 did not have a flick knife on him when stopped and searched by the police, but he was arrested as it was suspected he had earlier discarded the knife in a bin, and there was no allegation that he had injured anyone with the knife.

The negative attitudes about detainees held by some custody staff meant that while steps could be taken to try to improve the experience of children when they are held in a cell – such as letting them have a foam football to play with or to read a book – this was seen by some DDOs as being too “soft”. Instead of a Child First approach, such attitudes led to children being seen as an “offender first”, with a presumption of guilt rather than innocence among some custody staff. The morale in one custody suite was so low that staff were heard to remark that they would rather work in the local Tesco. For other custody staff, their despondency was borne out of the lack of support they could call upon from other agencies when dealing with children. This did not only regard children’s services: complaints were also made about courts not always dealing with children at the earliest opportunity, which meant that they had to be looked after while waiting in police custody.

It is important to reflect on the difficult job that DDOs have to do, particularly at busy times when looking after vulnerable detainees over a 12-hour shift, and with staff shortages in many custody suites often placing a heavy burden on them. Furthermore, as the hours go by, children can become more disruptive, particularly when trying to bring to the attention of custody staff how long they have been detained. Over time, child suspects can become more fractious, and this can lead to DDOs having more difficult relationships with them. This was seen to be the situation in CS27’s case, and after he had been held in custody for 19 hours at the time the researcher arrived in custody, she was told that there had just been an altercation with a DDO. The note on his custody record read, “DP [detained person] was aggressive and threatening when samples were asked for, he initially refused and became verbally aggressive. Though he did calm down and volunteer his samples in the end.” When the researcher saw CS27, she asked how he was being treated, and he replied:

It was alright at first but it’s not good. I’m getting wound up having been here for so long. It’s the time. It’s not good the way the officers talk to you. It’s like they’re above you and they disrespected me and that’s not good. I don’t take that well. They should have a better attitude with me and if I’m treated with respect, then I’ll give them respect. But that doesn’t happen.
(CS27)

In CS4’s case, he was angry with the police for holding him in a cell for many hours for breaking a plate. This led to an antagonistic encounter with a DDO, who said to the researcher, “CS4 is in a bad mood, and I haven’t helped because he wanted to see a copy of the Codes of Practice but when I went to get it off him he didn’t want to give it back to me. He wasn’t reading it and so I insisted he hand it over to me. He did but he was cross about this.” (FD.18.5.21). When carrying out a pre-release assessment, the custody officer felt the hostility coming from CS4, noting on the custody record, “I have attempted to hold a safeguarding conversation with the DP [detained person] and found him to be extremely rude, unwilling to listen and refusing a F61Y [listing contact details of

agencies that can provide help and support] and referring to X [the police force involved] as ‘useless cunts’.”²⁵

When children are detained, their dependence on custody staff for most of their needs leads to an extreme power imbalance between the power and control of adult custody staff and the child detainee. For Bevan (2022:10), “this ‘loss of autonomy’ is perhaps better described as a profound sense of helplessness, triggered on arrest and intensified through the process.” This helplessness was seen to be a particular source of resentment and anger for some child participants, and it could lead to an antagonistic relationship with the police, having the potential to create conflict in future dealings with them and also increasing the likelihood of further arrests and detention.

7.5 Accessing an AA through social services

The main concern raised by custody staff in all three police forces regarded the difficulties they experienced when trying to arrange for an agency AA to attend custody at night. While the times could vary, it seems that AA services tend to operate from 09:00 to 22:00 and, outside of these hours, custody staff have to contact the Emergency Duty Team (EDT) in social services to find an AA out of office hours. If staff are unavailable, however, some custody officers said that they could have difficulty in finding an agency AA after 17:00. In one custody suite, an inspector was observed spending over an hour trying to get hold of the EDT, only to be told that the arrangements for contacting them had changed. With no information having been circulated to custody staff about this change, the inspector was frustrated at having wasted so much time and said, “We need a joined-up approach here in custody.” (FD.20.5.21). The researchers observed custody staff spending many hours trying to get through to the EDT, with unanswered calls going through to an answering machine. Also noted on a number of child participant’s custody records are the efforts made by custody staff in trying to get through to the EDT, with contact often delayed until 08:00 onwards, when the day shift comes on duty.

One custody officer said that the problems they can experience in trying to get an AA into custody at night could put a child’s life at risk. He described a case in which an intimate search was required because the child was suspected of having placed drug-filled packages in his body cavities. This was at night and, not being able to contact the local AA service, the officer said he authorised the intimate search to be conducted in the absence of an AA because, “If the packages were to burst, this was an unacceptable level risk. It was in the child’s best interest to be kept safe even though it meant I had to go against PACE.” (FD:11.5.21). While trying to do the “right thing”, in what the officer saw as the “fixed” and “inflexible” requirements of PACE, this meant that by taking care of a child’s needs, custody officers could be put in the position of risking action being taken against them as an individual. He said, “We’re in a lose–lose situation. We’re damned if we do and damned if we don’t.” (FD.11.5.21).

Custody officers also complained about having to spend a long time trying to get hold of the EDT and going through the motions of trying to find alternative secure accommodation (known as PACE beds) for child suspects when they are charged and remanded to court (FD.11.5.21). While local authorities have a statutory responsibility to make this accommodation available, this rarely happens, leading to

²⁵ When releasing suspects from police custody, College of Policing Guidance requires custody officers to undertake a “pre-release assessment”, which includes a review of the risk assessment information noted on the custody record and speaking to the suspect about any potential risk of exploitation and/or victimisation. They also have to decide what action, if any, is appropriate to support young suspects on their release.

children being held in police cells overnight when they are charged, or longer if detained over the weekend.

7.6 Reviewing detention

PACE requires all persons in police custody to be dealt with expeditiously and, having authorised detention (as set out in the legal framework in Appendix 1), the custody officer has to regularly review the necessity to detain. A review of detention has to be carried out by an officer of at least the rank inspector, with the first review being conducted within six hours of detention and, thereafter, at nine-hour intervals. With long delays in dealing with child suspects in custody, however, one YOT AA (a social worker based in the local YOT) remarked, “There’s no concept of speed, in turning these kids’ cases over and getting them out of here.” (CS3:AA). The inspectors’ reviews of detention were seen to make little overall difference to the time our child participants were held in custody. On some occasions, particularly at night, the review is undertaken while suspects are asleep (or is carried out remotely), but even if they are awake, children are rarely aware of the purpose of the review, particularly that this is supposed to give them an opportunity to challenge their continued detention. The inspector does remind detainees of their right to legal advice but, at the time of the review, no children in our case studies were asked if they wanted to talk to their lawyer and so, not surprisingly, no representations regarding their continued detention were made.

The length of time that suspects are held in police detention has increased significantly over recent years, with all suspects being held on average for almost nine hours in 2009 (Kemp et al., 2011), and this figure rising to just over 14 hours in this study – with children being held on average for 11 hours and 36 minutes. Although the reviews of detention have not been effective in helping to reduce delays, they do provide an opportunity for a senior officer to check on the welfare of children, and they also help to identify cases that need to be expedited. Following one review, an inspector said that they can spend a lot of time chasing up investigating teams, but that they have little control over when the interview is conducted. When commenting on delays in the police interviewing children, one custody officer said he will tell investigating officers that a child will be released if they have not been interviewed within a certain timeframe. In practice, however, he said that children are seldom released, as the custody officer would be held to account if the child went on to commit an offence prior to being interviewed by the police (FD.17.5.21).

When an officer from the interviewing team based in the custody suite in Area A was asked why there could be long delays before some children were interviewed, he replied, “It depends on evidence gathering. The arresting officers will do the enquiries, but if it’s in the early hours of the morning, there isn’t scope to do much. Once they have the evidence, we pull it all together and conduct the interview.” (CS11:IO). In this case, when asked why CS11 had been waiting almost 16 hours before being interviewed, the officer replied, “There was a shift change in our team and so there was a delay while we found a new officer to interview him.” (CS11:IO).

One lawyer was critical of long delays caused by changes in policing shifts, remarking:

You can pick up a case at 9 am but it can then get passed on to three different shifts of officers. One shift can say they are dealing with it, but if they can’t get the AA or lawyer to attend at a certain time, it gets handed over to the next shift and it starts all over again. There needs to be more officers in custody who can conduct the interview. (FD:8.11.21)

Another lawyer complained that changes in police investigations over recent years meant that evidence gathering tended to be carried out after rather than prior to an arrest. She said, “It’s all reactive because of the resources and manpower issues.” (CS13:LA2).²⁶

There are inherent tensions in PACE: the police have responsibility for the investigation of offences and for upholding public safety while also being responsible for the welfare and rights of detainees. This can lead to a risk-averse approach being adopted, and PACE safeguards intended to protect the liberty of suspects being subordinated to other policing priorities. Another problem raised by some custody officers was with some investigating officers thinking that they have 24 hours to deal with cases. In CS12’s case, for example, the custody officer said, “I was chasing the officer after she had been held for seven hours, and he told me that there was no rush as he had another 17 hours to deal with her.” Commenting on cases being dealt with more quickly in the past, he remarked, “The mentality that we now have is that we have 24 hours, and we can use it.”

7.7 Assessing a child’s fitness to be interviewed

When the police are ready to interview child suspects, the custody officer has to assess their fitness to be interviewed. Under Code C (Annex G), this requires them to consider whether the interviewing of a suspect could significantly harm their physical or mental state or, due to their physical or mental state, whether their evidence might be considered unreliable in subsequent court proceedings. This effectively means that a custody officer has to check that a suspect is physically and mentally well enough to be interviewed, with no additional assessment required of their language and communication skills.

In most cases, when the police are ready to interview a child, the custody officer will look at that child’s custody record to check that no issues are arising, such as whether a child brought into custody intoxicated had since sobered up. If no issues had arisen, and the AA and lawyer (if requested) had arrived at the station, the custody officer would ask a DDO to escort the child to an interview room.

While there is no requirement for custody officers to take particular steps when assessing a child’s “fitness to be interviewed”, there are requirements when interviewing children as victims or witnesses. In the Ministry of Justice’s (2022a:24) report on “achieving best evidence”, for example, during the planning phase of an interview, it is noted that the interviewing officer has to consider if there are “any learning disabilities and/or mental health issues, communication skills, current emotional state and range of behaviours, likely to impact on the witness’s behaviour of recalling traumatic events”. If such issues are identified, the interviewing officer can arrange for intermediaries and speech and language therapist to be involved to help vulnerable witnesses to “achieve best evidence” at court (Gooch and von Berg, 2019).

When talking to interviewing officers involved in the case studies, it was found that they did not see it as their role to assess a child suspect’s fitness to be interviewed, and there was some confusion as to who was responsible. One interviewing officer said, for example, “It’s up to the custody officer to

²⁶ In an earlier study, it was noted that cuts to policing budgets had led to a reorganisation of investigation teams in some areas that had led to long delays in the time taken to deal with cases. Custody officers in one area said that it was due to such a reorganisation in 2016 that arresting officers were no longer required to conduct the first interview when bringing a suspect into custody, and instead cases had to be handed over to one of the investigation teams. They complained that there could be long delays before cases were picked up, particularly as interviewing officers did not work at night (Kemp, 2020b:579).

look at their fitness to be interviewed.” (CS14:IO), while another officer, when asked if she would assess a child’s fitness to be interviewed, replied, “No, that’s the AA’s role.” (CS11:IO). With CS13 having neurodivergent and other issues to cope with, including ADHD, autism, Tourette’s syndrome and dyslexia, when the interviewing officer was asked if she had made an assessment of his ability to give his best evidence, she replied, “I didn’t check that. I knew that his dad would be with him as his AA. He also had a solicitor and he had dealt with him in the past.” (CS13:IO). When his father, acting as his AA, was asked if he thought the police should be trained to deal with children and young people with mental health issues, he said, “Yes, because the trouble with youths is they don’t understand the damage of what they say and do ... I think some training would help officers to be a bit more understanding.” (CS13:AA).

When the YOT AA was asked about the assessment of a child’s fitness to be interviewed, she remarked:

We can have a serious conflict when it comes to a child being ‘fit for interview’ ... I also question the qualifications of people who are making that judgement. By the time we get there, if we raise any concerns we’re told that it’s too late, the assessment has been done and they’re ready to go ahead with the interview. If they insist on going ahead, we have to make sure our concerns are recorded on tape. (CS3:AA)

It is of concern that an AA can be told by the police that it is too late to raise any concerns over a child’s fitness to be interviewed, particularly when this is required to be an ongoing assessment. The AA also commented on the need to include consideration in the assessment of what impact being held for a long time in a cell could have on children in the police interview, particularly if they were refusing to eat and unable to sleep. She said, “Having to wait for a long time in a cell can bring on a lot of things that mean they are not ready for the interview. Because of fear, panic attacks, and because of their emotional well-being.” (CS3:AA).

When talking to one lawyer about what information was available to help in assessing a child’s fitness to be interviewed, he said, “There’s nothing about a child’s mental health included in the disclosure we get from the police.” He continued, saying, “I can sometimes detect problems when I first see a child. You can sense if something isn’t quite right and I might get a call the next day by mum saying, ‘Did you know he had Asperger’s?’ You know something is wrong, but it isn’t diagnosed.” (CS4:LA). When dealing with a child participant, another lawyer commented:

When I first see a child I’ll make my own assessment of whether there are any mental health issues, but often this means getting a briefing off a parent. If mother or father say that their child understands everything then fine. If I have concerns, I talk generally to the child to begin with and then drop something into the conversation which isn’t relevant, just so I can test his cognitive abilities and to see if he understands. (CS15:LA)

Although the lawyer acknowledged that he was not qualified to assess a child’s mental health, he was concerned that nurses and doctors embedded in police custody tend to be biased towards the police when making assessments. He said, “I think they lose focus and eventually, in about 90% of cases, they simply rubber-stamp any decision the police want to make.” (CS15:LA).

It is important that in an assessment of a child’s fitness to be interviewed, the police have accurate information about their cognitive ability to cope when questioned by the police. For example, CS19 was a 13-year-old boy arrested on suspicion of robbery, and it was noted in the risk assessment that

“he is being investigated for learning issues” and, in a later entry, “His mum says he’s suspected of being on the learning spectrum.” When the researcher first spoke to CS19 in the morning, she noted how he gave mainly monosyllabic responses to her questions, mainly agreeing with comments made. When asked if he understood his legal rights, for example, he said “Yes”, but when asked what these were, he was unable to say. When later talking to his mother, she said, “He’s undergoing quite a few tests at the moment for autism and ADHD. He won’t show emotion even if he’s scared. He has zero emotion. He’ll go along with anything you say to him.” (CS19:AA).

As the purpose of detaining a child suspect is to facilitate police questioning, the length of time they can be held prior to the interview – often with little or no food – raises important questions for Bevan (2022:815) over how they are “expected to engage with new information, make key legal decisions, and ultimately undergo questioning”. This is particularly so when many “reported that the exhaustion and distress generated by their experiences in detention had a profound effect on their ability to participate effectively in the proceedings, an important aspect of their fair trial rights in custody”. Accordingly, it is important that an assessment of a child’s fitness to be interviewed is required to consider a range of factors that can impact negatively on a child when they are being questioned by the police.

Within an assessment of a child’s fitness to be interviewed, it is important to identify any specific vulnerabilities they may have, as this could help with identifying any additional support they might require during the police interview. Such support could help to identify cases where instead of continuing with a police interview, a child could be released from custody and referred on to other services. This is important, because neuroscience is helping to identify the increased vulnerability of children who come to the attention of the police. In a study of male young offenders, for example, it was found that 74% of 16- to 18-year-olds reported a lifetime of traumatic brain injury, with more severe lifetime traumatic brain injury being found to be associated with higher levels of self-reported reactive aggression (Kent and Williams, 2021). Co-occurrence has also been found between traumatic brain injury and other neurodevelopmental problems (see Kirby, 2021), with 29% of young offenders being identified as having moderate to severe traumatic brain injury also having ADHD, and 36% also having speech and language impairments (Chitsabesan et al., 2015). From an examination of research across a range of countries, it is suggested that 60% to 90% of children in youth custody meet the diagnostic criteria for communication disorders (Day, 2022). Accordingly, an assessment of a child’s fitness to be interviewed needs to take into account such factors and – as is the case for vulnerable child witnesses – access should be provided to intermediaries and speech and language therapists to assist them in giving their “best evidence” in the police interview.

Following a recent review of police interrogation techniques based on international law, the Méndez Principles (2021) include safeguards that take effect both before and during the police interview. Prior to the police interview, for example, these guidelines require that the interviewee should be assessed to check if they are in a situation of vulnerability, and whether they require special attention. The actions taken, the guidelines state, “require a flexible, tailored response” by police interviewers and other relevant authorities to be determined on a case-by-case basis (2021: para. 143).

With research findings highlighting the increased vulnerability of children who come to the attention of the police, the Committee on the Rights of the Child (2019) have stated that those identified as having developmental delays or neurodevelopmental disorders or disabilities (for example, autism spectrum disorders, foetal alcohol spectrum disorders or acquired brain injuries) should not be in the

child justice system at all. If these children are not automatically excluded, the Committee requires that each child be individually assessed.

8. AAs' involvement with child suspects

8.1 Type of AA and time of first contact with the child

Of the 32 case studies, 21 child participants had a "familial AA", which was either a parent, relative or friend, and in the other 11 cases, an agency AA was involved. Of the familial AAs, 13 child participants reported seeing their AA shortly after being brought into police custody, which was mainly at night. It seems that in nine of these cases, when the custody officer spoke to a parent to inform them of their child's arrest and detention, they asked them to come down to the custody suite so that they could act as their child's AA.²⁷ In the other four cases, custody officers allowed parents to come into custody to see their child to help reassure them that they were okay. All but one of these 13 AAs were not able to see or speak to their child again until attending for the police interview. In CS2's case, after being detained overnight, he was allowed to speak to his AA in the morning. For seven of the other eight familial AAs, their first contact with their child was at the police interview. There was an exception made in CS29's case when his mother, acting as his AA, had arrived at the front desk at the station and was allowed to speak to her son over his cell intercom because he was having a panic attack and the custody officer felt this would help to calm him down (CS29:AA).

The way in which custody officers restricted children's access to their familial AAs is not acceptable, particularly as they have a right to speak to their AA at any time, including over the telephone. Most familial AAs were keen to know if their child was coping while they were in a cell, particularly as most had been held for a long time. Some familial AAs said that they had phoned the custody officer to check on their child, but they were not allowed to talk to them. Being worried about their child, some AAs came down early to the custody suite in the hope of seeing them, but they had to wait until the police interview.

Familial AAs coming down to the station early provided the researcher with opportunities to speak to them and ask questions about what contact they had had with their child and how they were feeling. In CS19's case, his mother said, "I'm feeling extremely anxious. They don't tell you much. We came down last night when he was arrested but apart from that we haven't had any phone call or anything. He's just a child, 13 years old and he's locked up in a small room." (CS19:AA). The mother of CS9 was also anxious, saying, "I've told them he suffers with ADHD ... They showed me the cell, don't get me wrong its clean but someone with his problem, I don't know how he'll cope." (CS9:AA). When CS12's AA, her mother, was asked by the custody officer to arrive at the station at 13:00, she did so, but there was then a delay and she had to wait for over three hours at the front desk before being taken though to custody to see her daughter.

There was confusion in some cases as to who was to take on the AA role, but this should not have delayed a child's access their AA. In CS17's case, for example, this 14-year-old boy, arrested for a serious assault and possessing an offensive weapon, had injured himself when kicking a foam football in his cell; as he was in a lot of pain, the custody officer called for an ambulance to take him to hospital. An hour later, after the pain had subsided, the ambulance was cancelled, but CS17 was still

²⁷ Some parents acted as their child's AA when they were informed of their rights and entitlements, when samples needed to be taken and/or when a strip/intimate search was required.

upset, and he told the researcher that he wanted to speak to his mother. The custody officer confirmed that his mother was acting as his AA and that he would arrange for a telephone call between them. An hour later, with no contact having been made, the researcher spoke to CS17's mother with the custody officer's permission; she said she was keen to speak to her son and she was available on the mobile number called. While this information was passed on to the custody officer, CS17 did not get to speak to his mother, and this made him anxious. He said, "I've been here six hours and I've not spoken to anyone other than the police. Not my mum, my solicitor, or anyone." The inspector then came into the cell to review detention (the six-hour review), and he told CS17 that the officers had arrived, and he would be interviewed shortly. At that time, the inspector said his mother was "on her way". CS17 was later interviewed with an agency AA being present, and the interviewing officer told him, "We haven't used mum [as the AA] because we don't know what's going to be said and she might end up being a witness." (FD.17.2.22). It seems that the interviewing officer arranged for an agency AA to attend as it was noted on the custody record that CS17's mother will be his AA but "a Polish interpreter is needed to assist her".

A similar situation arose in CS18's case; this 17-year-old was under the impression that his mother would act as his AA after he had been arrested for possession with intent to supply Class B drugs. He said, "I was brought in here at 14:00 and they told me that my mum was coming down to be my AA but here we are at 18:00 and nothing is happening." The custody officer had arranged for an agency AA to attend the interview, but CS18 was not told about this. He was upset, saying, "I didn't like the way the police didn't tell me a single thing. I thought all the time that my mum was coming to be my AA, but it turns out they hadn't even called her." (CS18).

The 11 child participants who had an agency AA said that their first contact with them was just before the police interview. With the police restricting access to child suspects, agency AAs confirmed that it was their practice to wait until the police interview before arriving at the police station. When asked if they would arrive early to try to speak to a child suspect, one agency AA replied, "No, there's no point. I was contacted at 16:30 by the police in CS10's case and told that he would be interviewed at 18:00. I arrived at 18:00 and went straight into the interview. I'd have to wait around at the front desk if I'd arrived any earlier." (CS10:AA).

There are different types of AA schemes operating throughout England and Wales, and NAAN has developed national standards designed to encourage and support ongoing development and improvement in AA services (NAAN, 2018).²⁸ These standards require that children and vulnerable people are supported throughout the detention episode and not just during the police interview, which includes being available in good time when required for certain processes (NAAN, 2018: para. 5.10). In the three areas observed, child participants said that their first contact with their AA was just prior to the police interview; however, there are other areas in which AAs attend for children from the start. In an inspection of Cumbria Police, for example, it was noted that force policy expects AAs to be contacted early and asked to attend as soon as possible. Inspectors found this to be happening, observing some good examples of AAs generally arriving promptly (HMICFRS, 2023:25).

While AAs have to be present when certain tasks are undertaken, this was seen by some agency AAs in the three areas observed to be a different role than that required in the police interview, as it did not require engagement with child suspects. When observing custody on one occasion, a custody

²⁸ NAAN's membership currently includes 73 public, private and charitable organisations responsible for local provision of AAs for children.

officer asked an agency AA who was dealing with another case if they would stand in while they read out to a vulnerable adult their rights and entitlements. Without talking to the vulnerable suspect, the agency AA stood by the custody desk so that they were physically present when this task was undertaken (FD:16.5.22). This was the situation in CS30's case; the researcher observed this 15-year-old Black boy being booked into custody after he had been arrested on suspicion of supplying Class A drugs, theft of a vehicle and handling stolen goods (he had not previously been arrested by the police). CS30 was booked into custody at 15:00, and when an agency AA was in custody dealing with another case at 17:40, the custody officer asked if she would be present while he was being informed of his rights and entitlements. While carrying out this task, the agency AA did not talk to CS30, and so he was unable to tell her that he was due to sit his first GCSE exam in the morning. The researcher first saw CS30 at 20:30, after being told he was not to be interviewed until the morning. He was extremely anxious at that time, telling her, "I'm worried about my exams. I've got my first one tomorrow and I haven't been able to tell anyone about it. I'm taking my GCSE's a year early and it will be for nothing if I can't sit the exam." (CS30). After passing this information on to the custody officer, he was able to chase the investigating officers and, after being interviewed at 02:30 with his father acting as his AA, he was released from custody at 05:30. While this meant that CS30 could sit his exam, this was clearly a highly unsatisfactory situation for him.

Custody officers know that children should not be held in cells overnight if this can be avoided but, at the same time, it is not always acceptable to interview a child in the early hours of the morning. When asked about the availability of agency AAs to sit in on interviews with children at night, one YOT AA said, "We won't attend after 12 o'clock, and that's stretching it – it will only be if the interview has started. We close down at 11 pm and no interviews should take place after midnight." (CS3:AA). As commented on above, the main problem raised by inspectors and custody officers in all custody suites related to the difficulties they can encounter when trying to get an agency AA to attend at night, particularly when having to go through social services. As set out in national standards, an AA is there to protect the interests of children and vulnerable people whenever it is required. The need for an AA to attend is driven by the authorisation of detention, not whether an interview takes place. An interview could take place at night if that were considered by all parties to be in the best interests of the child, particularly if this would avoid their detention overnight (NAAN, 2018: para. 5.2).

All AAs attended from outside custody. In a small number of areas, custody officers said that, prior to the pandemic, AAs had been embedded in some custody suites. While some police would like to revert to this approach, it is controversial and complex. One issue is cost-effectiveness. In the context of high volumes (i.e. large custody suites, with improved identification of vulnerable adults), it could be cost-effective. However, in other suites, with current levels of vulnerability identification and fewer children being detained, it may be a relatively expensive approach. A deeper issue is the effect of this on the independence of AAs, both perceived and actual. Embedded AAs may be perceived by children as trusted partners of the police, and therefore not to be trusted; AAs may also develop a shared culture with the police.

8.2 Role of the AA in supporting a child suspect

While agency AAs receive training on how to take on the AA role, there is little or no information available for family members when acting as their child's AA. For parents who have taken on this role on a few occasions, while they gain a better understanding of what is involved, their focus tends to be on the police interview. CS15's AA, for example, had acted as his stepson's AA on previous occasions, and when asked about his role, he said, "It was to make sure he said everything he wanted

to. That he wasn't confused. Making sure he was okay and checking if he needed to stop." (CS15:AA). Similarly, CS13's father had acted as his AA on a number of occasions and, when asked how he saw his role, he replied, "I'm there to keep him calm and to try and stop him getting agitated. His solicitor was there to deal with the questions, making sure he wasn't being put under any unnecessary pressure." (CS13:AA). When CS13's lawyer commented on his father taking on the AA role, she said, "He doesn't understand his role. He thinks he just has to be there. He's very challenged himself mentally and he shouldn't be able to take on the role as his son's AA." (CS13:LA1). For CS12's mother, this was the first time she had acted as an AA, and when asked about her role, she replied, "I had no idea what my role involved. No one told me what to do. I knew we needed a solicitor but that's all I did know." (CS12:AA).

It is not surprising that many familial AAs did not understand what was expected of them during the police interview. In CS9's case, his mother had acted as his AA once before, and when asked about her role, she said, "As my son is underage, I have to just sit there so he can give his side of the story. I'm there to help him feel safe. If there's something he doesn't agree with then he can mention that to me. I'm to be there for him, that's the most important thing." (CS9:AA). CS7's mother said this was the third time that she had acted as the AA for her son and, when asked how she felt when first taking on this role, she remarked, "I knew what to do because I'd seen it on TV." (CS7:AA). None of the familial AAs mentioned having received any information from the police that set out their role. In CS16's case, this was the first time that his Polish father had acted as his AA and, when asked if he understood what was required of him, he replied, "No, I wasn't given anything. If I'd been given a piece of paper I could have scanned it [with his mobile phone] and then translated into my own language. I could have then understood the words." (CS16:AA).

CS14's mother acted as his AA, and she said she understood what was required of her because she sometimes acts as an AA for people in housing cases. She said, "I know what to do. You need to make sure that things are proceeding as they should in accordance with the process. But I had to have one eye on my AA role and the other on supporting my child. It was important for me to be here for my son." (CS14:AA). When asked if she felt that parents should be able to take on the AA role, she said, "I don't think it's appropriate. They are more likely to be a hindrance than a help." (CS14:AA). One agency AA was of a similar view when recounting how she trained as an AA after having taken on this role when her son had been arrested after a child had been stabbed and died. Commenting on her earlier experience as a familial AA, she said:

I wasn't aware of the AA role when I was acting as my son's AA. I was told that I just had to sit next to him, and I didn't have to say anything. That's what I was told. I remember my son's friend having to wait longer for his AA to arrive because his mum wasn't available. I felt upset for him but now I realise that by having a trained AA he was in a much better position than my son. I didn't understand anything of the rights or the process. (CS17:AA)

When one YOT AA was asked if a parent should take on the AA role, she replied, "No, absolutely not. But that doesn't mean that they shouldn't be there for their children. They can provide support and they are important for a child's emotional well-being, but they don't know about their rights and entitlements, and that's where their position is useless – they just don't know." (CS3:AA). She also commented on agency AAs not having legal privilege as being a problem, as they could not reassure the children that what they told them would be in confidence. In one case, when acting as the AA in the police station for a case that went up to the Crown Court, she said, "The solicitor for one of the

other boys wanted to call me to court to question me about what the child had told me about the offence. We don't have legal privilege, and this can be dangerous for our clients." (CS3:AA).

Having been trained, another agency AA summarised their role by saying, "It is to make sure the interview procedures are carried out fairly. This includes ensuring that the child fully understands what is happening and what is being said and, amongst other things, to facilitate communication." (CS17:AA). Agency AAs see their role as being centred around the police interview rather than providing early help and support to child suspects.

In Quinn and Jackson's (2003) study, considerable difficulties were seen to exist in trying to get the prompt attendance of AAs in custody suites. At that time, however, just over half of child suspects were released within three hours of arriving at the station. With there now being long delays in the time taken to interview child suspects, we have seen custody officers restricting a child's access to their AA, which is mainly only allowed at the time of the police interview. This is contrary to PACE safeguards, which require children to have access to their AA at any time, including over the telephone. With very little being known about the role of family members when taking on the AA role and restrictive practices taking place in police custody, it is time for the AA role to be reviewed.

9. Lawyers and police station legal advice

PACE provides a right to free and independent legal advice for all people brought into police custody, which includes a fundamental right for suspects to consult privately with their lawyer at any time, including over the telephone (s.58(1)). In this section, we explore the importance of legal advice, the take-up of advice, delays in accessing a lawyer, police disclosure and a lawyer's consultation with child suspects.

9.1 The take-up of legal advice

In our 32 case studies, all but three child participants received legal advice; this was unexpected, as the average request rate for child suspects in 2009 was 45% (Kemp et al., 2011), rising to 56% of all suspects in 2017 requesting legal advice (Kemp, 2020b). Within our custody-record sample, 80% of children and 61% of adult suspects requested legal advice. It seems that although the number of children being arrested has declined significantly over the past ten years, this has led to children being brought into custody for more serious and/or complex cases, where custody officers recognise that a lawyer needs to be involved.

When child participants declined legal advice, this was mainly due to concerns that having a lawyer would delay the police interview. For example, when CS7, a 14-year-old, was asked why he declined legal advice he said, "I didn't want a lawyer because I didn't want to have to wait for them. I'm going to go 'no comment' anyway." (CS7). With his two co-accused having legal advice, they were held for around three hours longer than CS7, although this was because the two lawyers involved had not initially received the referral for legal advice from the Defence Solicitor Call Centre. When CS10, a 17-year-old, was asked why he did not have a lawyer, he remarked, "I didn't have one because I didn't know what they're supposed to do." He did have an agency AA, and they are trained to insist on a child having a lawyer; however, in this case, when asked why he did not have a lawyer, she replied, "It was his choice. He's older and he was very clear he didn't want one." (CS10:AA). CS16, a 16-year-old, declined legal advice, saying, "I didn't have one because I hadn't done anything wrong."

There were other child participants who initially declined legal advice but subsequently changed their mind, mainly because their AA insisted that a lawyer should be involved. For CS3 and CS4, for

example, these 17-year-olds initially declined legal advice, but their agency AA insisted that they have a lawyer. After the police interview, CS3 said, “I’m so pleased I had a lawyer. Before you make any decisions, you need someone to come and explain it all to you thoroughly.” CS19 was a 13-year-old who had been arrested for robbery; while he said that he did not want a lawyer because he wanted to be dealt with quickly, his mother insisted he have one because, she said, “You could tell him he’s done something wrong, and he’ll agree with you because he wants to get out of there.” (CS19:AA).

In CS29’s and CS32’s cases, they both declined legal advice but, as they were being dealt with in a custody suite that was piloting the new legal advice arrangements, the custody officers said they would arrange for a lawyer to come down to the station. CS29 was told that he could later decide not to speak to the lawyer, but only after discussing this with his AA. CS32 was told that he had to have a lawyer because he was underage. Both child participants agreed to having a lawyer.

When first undertaking fieldwork in mid-May 2021, legal advice was provided remotely in the first two cases, CS1 and CS2, because of safety issues arising from COVID-19. In responding to the pandemic, a Joint-Interim Interview Protocol (JIIP) was issued (in early April 2020)²⁹ allowing legal advice to be delivered remotely to suspects, including children, when held in police cells. Remote legal advice was only provided in the first two cases and, thereafter in our case studies, lawyers were present in the police interviews.

The protocol required children to consent to being interviewed remotely, but examples have been highlighted in which either the lawyer or the police pushed back against a refusal to consent, or where consent appeared to be assumed (Transform Justice et al., 2021). In CS2’s case, a custody officer said that he had been detained the week before for another offence and, when CS2 was asked by the researcher if he was content with having remote legal advice, he replied, “I expected them to be here. Last time I came here I had a lawyer here with me. They said COVID this and that, they can’t keep changing the rules every few minutes.” (CS2). The latest version of the JIIP, issued in October 2021, reflects changes in public-health restrictions and notes that the default position is that defence representatives should attend police interviews in person unless one of four exceptional circumstances apply. While three of these exceptions relate to the pandemic, the other exception is “where some other ‘exceptional reason’ applies”. With the ongoing dispute over criminal legal aid funding, and with a decline in the number of police station legal advisers, it is important that the “exceptional reason” does not apply when providing legal advice to children in police custody because of the complex legal issues involved.

9.2 Delays in accessing legal advice

Detainees’ access to legal advice has been constrained over the years, as small custody facilities have been replaced by large custody blocks accommodating 30 or more detainees. Access to this secure site is restricted by custody staff, with lawyers – as with AAs – generally only being allowed to enter the custody suite when the police are ready to conduct the interview. In one custody suite, a lawyer complained that they were no longer allowed access, saying, “There’s a notice on the custody door

²⁹ The JIIP was agreed between the NPCC, the CPS, the Law Society, the Criminal Law Solicitors’ Association and the London Criminal Courts Solicitors’ Association. Four versions of the protocol have been issued: v.1 April 2020; v.2 24 April 2020; v.3 01 May 2021; and the most current version is v.4 October 2021). See: <https://www.cps.gov.uk/legal-guidance/coronavirus-interview-protocol-between-national-police-chiefs-council-crown>.

that says, 'No Solicitors'. It's like a completely 'no go' zone. We don't get to see the sergeants [custody officers] to make representations, and they use it to their advantage." (CS13:AA.1). There were complaints made by lawyers regarding the difficulties they can experience when trying to get through to custody suites over the telephone prior to the police interview. As one explained, "We get a call to say that legal advice has been requested, but when we get through to custody they'll say that they're busy at the moment and ask us to ring back. Most of the time they don't pick up the phone. It can be several hours before we can get through." (FD.8.11.21).

In recognising the importance of suspects having early access to legal advice, the Legal Aid Agency (2017) has a contractual requirement for publicly funded lawyers to contact clients in custody within 45 minutes of receiving a referral. With the fee paid for police station legal advice being insufficient to cover the work required, and lawyers reporting difficulties in getting through to custody suites over the telephone, most accepted waiting until the police interview before having contact with their client. With the difficulties faced by lawyers, it is not surprising that in the 29 cases where legal advice was requested, 25 child participants reported first speaking to their lawyer at the time of the police interview, which was many hours following their detention. Four child participants did speak to their lawyer over the telephone prior to the interview, but the others were not aware that they had this right. In practice, with custody officers restricting access to lawyers and most lawyers not getting involved in cases until the police interview, seldom would a call between a suspect and their lawyer be allowed, even though this is a fundamental legal right.

It has been noted how some child participants were reluctant to have a lawyer because of concerns that this would lead to a delay. From our statistical analysis of police custody records, we noted that children who requested legal advice spent on average 140 minutes longer in custody than those who did not have a lawyer. In part, this delay can be explained by lawyers being involved in more serious and complex cases, which take longer to deal with. However, one custody officer raised concerns over investigating teams being too cautious in cases where a lawyer was involved, saying, "Often all they need is a statement from the complainant, or a CCTV image, but they spend ages trying to get all the evidence they can. It's a waste of time." (FD.23.5.22).

When talking to lawyers about the long delays in police custody when dealing with child suspects, some felt that requiring a shorter PACE clock for children could help to expedite matters. As one lawyer put it, "PACE needs to be updated to differentiate children from adults. Children need a shorter PACE clock, and I feel they should be dealt with within seven hours." (CS4:LA). This was the view of another lawyer when asked about a shorter PACE clock; he said, "That's a great idea, apart from when we're dealing with serious and complex cases. In Scotland there's a 12-hour clock and that's across the board, irrespective of age." (FD.18.9.21).

Long delays in child suspects accessing legal advice undermines children's legal rights, particularly as the early involvement of lawyers is required so that they can help a child to understand what is happening and to participate in decisions made about them. With lawyers and AAs concentrating their efforts only on the police interview, this leaves children waiting for many hours after requesting and receiving legal advice, denying them their right to participate early on in the criminal process.

This study has shown how child suspects need early access to their lawyer and, in the Criminal Legal Aid Review, Lord Bellamy (2021) recommended that additional funding needed to be directed towards the early stages of the criminal process, to "front load" the criminal justice system (CJS). In relation to the structure of the police station legal aid scheme, he states:

The recommendations set out above are intended to presage a major shift of focus to the ‘front end’ of the CJS, on the premise that if the system follows correct procedures and suspects have good and responsible advice early on, there should be important benefits – and cost savings – further down the line. (Bellamy, 2021: para. 8.20)

While such a change requires additional funding to enable lawyers to take on this wider role, it is not acceptable that many children in police custody are not able to access legal advice until the time of the police interview, particularly when access to appropriate legal advice and representation is a fundamental aspect of ensuring that children’s legal rights are safeguarded (Council of Europe, 2011).

9.3 Police disclosure

Prior to the police interview, the police must provide sufficient information to the suspect and their lawyer so they can understand the allegations made against them. While the information has to be sufficient for the suspect to understand the nature of any offence, it “does not require the disclosure of details at a time which might prejudice the criminal investigation” (Code C, para. 11.1A). The decision about what information needs to be disclosed rests with the investigating officer, and they have to make a note of any information disclosed.

Some interviewing officers commented on sending disclosure to lawyers via email since the pandemic. In CS1’s case, the interviewing officer said he always prepares written disclosure, and this is emailed to the lawyer, which, he said, “included photographs of the injuries suffered by the complainant” (CS1:IO). The interviewing officer in CS14’s case remarked, “I tried to disclose the CCTV evidence of him breaking the door prior to the interview but I had technical difficulties and so I had to show it during the interview.” (CS14:IO). When commenting on the need to hold back some information, in CS26’s case the interviewing officer remarked, “I provided disclosure to the solicitor, and I think she was happy with it. We didn’t give her everything because that isn’t always what we do.” He went on to describe why not, saying:

It can depend on the case how much disclosure we give solicitors, and that can be an area of potential conflict with them sometimes. If it’s overwhelming evidence we usually just give it to them. But it depends on the interviewing officer. (CS26:IO)

Lawyers said that their advice to clients can often depend on what information is disclosed by the police. As one explained, “The way it works is if we don’t get the disclosure we need, or we think something is missing – and the police don’t have to disclose anything until the interview – I’ll tell my client to go full ‘no comment’ until the disclosure is made.” (CS30:LA). When talking about the poor quality of the disclosure that they can sometimes receive, this lawyer said, “They never give you full disclosure. When you get into the interview, I jump up and down when they produce something that they haven’t mentioned to me.” (CS13:LA).

In some cases, lawyers said that the police did not have any evidence against their client, but they still wanted to question the child in case they revealed something in the interview. One commented, “You do get some interviews where the police use it as a ‘fishing trip’, hoping someone will say something incriminating.” (CS18:LA).

9.4 Consultation and legal advice

Lawyers commented on how important it is to deal with each case individually when advising clients on what to say – or not to say – in the police interview. They will listen to what their child client had to tell them about the alleged offence, and what is going on in their life, and they will also review any evidence disclosed by the police. Lawyers recognise the increased susceptibility of children when interviewed by the police and, accordingly, they acknowledged being more likely to advise “no comment” responses in the police interview. One, for example, said, “There may be a scenario, particularly when dealing with children, where you think they will make things worse if responding to police questions, so I’ll often advise them to make no comment.” (CS15:LA). CS29’s lawyer told him to make no comment because, he remarked, “she thought if I answered the questions, I could do more harm than good.” Some child participants said they would make no comment in the police interview, irrespective of their lawyer’s advice. As CS27 put it, “Most of the time I’ll make no comment. It doesn’t matter what my lawyer advises me to say, I mainly decide what to do.”

Working within an adversarial system, lawyers are likely to advise child clients to give “no comment” replies if the police disclose little or no evidence or, when dealing with domestic incidents, they anticipate that a parent or sibling will not make a formal complaint. Lawyers were also conscious that some children could get carried away when answering police questions and say something incriminating. Research supports such an approach, particularly as children are more vulnerable to pressure that investigators can place them under during questioning, which makes them more likely to confess and to make false confessions than adults (Kassin et al., 2010). Accordingly, lawyers play a key role when advising child clients, and they often find that it is in their best interest for them to exercise their right to silence.

Having received disclosure, lawyers will review this with their clients in a consultation prior to the police interview. While some lawyers said that they would include the AA in this consultation, particularly if this is what the child wanted, others were reluctant to do so. A lawyer explained that she would not allow an AA to sit in on her consultation with a client because, “AAs aren’t bound by legal privilege, especially family members. It’s always in the client’s best interest to make sure they’re not present during the consultation, so my client knows that anything they say to me is fully confidential. That isn’t the case if the AA is present.” (CS18:LA).³⁰

9.5 The importance of legal advice

In recognising the importance of children needing to have a lawyer when detained by the police, the Ministry of Justice and the MPS are piloting new arrangements that require children to “opt out” instead of “opt in” to having a lawyer. The new arrangements were initially piloted in two custody suites in early 2022. Anecdotally, they were considered a success in increasing the take-up of legal advice and helping to reduce delays in cases, so other police forces have set up similar pilot initiatives. In response to the Criminal Legal Aid Review, the Ministry of Justice (2022b) support this initiative and will continue to collaborate with the Legal Aid Agency and the Home Office to monitor the trial and its impacts, with a view to using the data to review rolling out the new arrangements for all children nationally.

³⁰ As the AA is under the same duty of confidentiality as the solicitor, practitioners’ concerns – at least in regard to trained AAs – are misplaced (see Zander, 2022).

The MPS have further developed these new arrangements and have introduced the C.H.I.L.D. initiative in London custody suites to help improve the way the police deal with children and young people in custody. The mnemonic C.H.I.L.D. is used as a prompt to custody officers regarding what action to take when dealing with a child in custody. The C reminds them of the “Change for the presumption of legal advice”, and H requires custody officers to “Have a conversation with the AA” to help facilitate their earlier involvement in helping a child. The letter I indicates they should “Inform the local authority” within the first hour that a child has been detained, and L is another reminder that a referral for “legal advice” needs to be put through to the call centre. The D is to “Direct the investigation progress without delay”, with custody officers needing to inform investigation teams that the AA and lawyer are on their way.

The C.H.I.L.D. initiative was launched in May 2022, just as the fieldwork for this project was coming to an end; however, it is to be hoped that this will have the desired effect of increasing the take-up of legal advice, enhancing legal protections for child suspects and helping to reduce delays. Findings arising from this study highlight the need for the changes required under this new C.H.I.L.D. initiative with regard to helping increase legal protections for child suspects. Under this new initiative, custody officers are required to expedite cases involving non-serious offences so that a child spends no longer than six hours in custody. With custody only to be used as a “last resort”, it is preferable that only children being arrested for serious offences should be brought into police custody in the first instance.

While the piloting of new arrangements to increase the take-up of legal advice for children is to be welcomed, this still relies on the discretion of custody officers in arranging for a lawyer to attend in cases where legal advice is declined. When observing a custody suite in which the pilot scheme was operating, it was found that not all custody staff were aware of the new arrangements, including those who were booking suspects into custody. Nevertheless, these are early days, and with a significant increase in requests for legal advice, the next step – as recommended in the Méndez Principles (2021: para. 138) – should be a mandatory requirement for all child suspects to have a lawyer.

9.6 Criminal legal aid reforms

Most practitioners we spoke to stressed the importance of child suspects having access to legal advice; however, over the years, the lawyer’s role has become more narrowly focused on only the police interview. This change occurred in 2008 when, instead of being paid for the time spent on cases, lawyers started to be paid a fixed fee. From the outset, this fixed fee was considered insufficient by lawyers to cover the advice and assistance required when undertaking police station work, and subsequently, not only has the fee not kept up with inflation, but criminal legal aid fees were also reduced by 8.75% in 2015.

While reductions in criminal legal aid are having a negative impact on access to legal advice, in November 2021, Lord Bellamy’s (2021) Review recommended that instead of lawyers being paid a fixed fee for police station work, the standard fee model operating in the Magistrates’ Court scheme could be used instead. In response, the government have agreed to consult on a standard fee scheme for police station work that would be based on the time spent, creating a lower, higher and nonstandard fee to help distinguish levels of case complexity (Ministry of Justice, 2022b). More importantly, recognising the underfunding of criminal legal aid work over many years, the Bellamy Review recommended that lawyers should receive at least a 15% increase in remuneration for criminal legal aid work “as soon as possible”. While defence fees for attending the police station did

rise by 15% in September 2022, with a gradual increase in the overall fees covering other areas of criminal legal aid work equating to an 11% increase by 2024, the Law Society issued judicial proceedings against the Ministry of Justice in March 2023 for making an “unlawful and irrational” decision when ignoring the recommended 15% increase in legal aid fees (Law Society, 2023). While the Bellamy Review recommends increases in funding to encourage defence lawyers to spend more time on police station work and to pay particular attention to “youth justice”, such changes will not take place unless changes in criminal legal aid remuneration help to prioritise them.

10. The police interview

The police interview tends to be the most significant aspect of a suspect’s time in custody, as it is when they are formally questioned by the police, and evidence may be gathered for subsequent prosecution. For children, the interview is perhaps even more important in cases where the offence is admitted, as instead of going to court, it could be dealt with by way of an out-of-court disposal. In these cases, the interview becomes the main arena in which the evidence against them is examined, leading to a shift from “judicial” to “administrative” justice, with decisions made behind closed doors rather than in the public arena of the court.

A high proportion of our child participants received legal advice, and in 22 out of 31 cases (where known), “no comment” replies were given in response to police questions; a prepared statement was read out by the lawyer in four of these cases. In the other nine case studies, responses were made to police questions: four made admissions; four denied the offences; and one child participant, being dealt with for two offences, made an admission to one and denied the other (there was one case in Area B where it was not known how the child responded to police questions). When considering how traumatising the criminal process is for children – particularly when they are waiting on their own in a cell for many hours – and how costly it is for the police to hold suspects, gather evidence and prepare a list of questions for the police interview, the small number of cases with usable evidence – either a comment interview or a prepared statement – is strikingly low. The high proportion of cases in which no formal action is pursued (20 out of our 32 case studies had no further action taken) raises questions about whether it is in the best interests of a child to be in an adversarial system of justice unless they are being dealt with for a serious offence.

Having given “no comment” replies in the police interview, most child participants said that they were happy with this approach and that they were not put under any pressure by the police to answer their questions. In CS3’s case, she said that she made no comment “because it was the best possible thing you can do in that scenario”. She also said that it was a quick interview, with the police accepting her replies. Although CS18 also gave “no comment” responses, as his lawyer had advised him, he was concerned about this approach, saying, “I replied ‘no comment’ to most questions, but I answered those that I could so that this didn’t lead on to them thinking that I’d done something. I didn’t want the police to think I was being awkward.” When the researcher said that he is entitled to make no comment, he responded saying, “I know, but it makes you look guilty doesn’t it?” (CS18). He said about the police interviewers, “They were really nice. I don’t really like the police, but these were okay.” (CS18).

It is disappointing that we were unable to listen to recorded police interviews in Area B, as it would have been helpful to have observed the style of interviewing and to examine any interventions taking place in the interview by the AA and/or lawyer. While most child participants said they were happy

with the police interview, particularly when making no comment, concerns were raised by some lawyers over the interviewing style of some police officers in Area B. One lawyer, for example, said:

There are some officers who will put children under pressure to make admissions, and it seems to be getting worse rather than better. It's more to do with the fact that once the police suspect you have committed an offence, the presumption of innocence flies out of the window. There's a presumption of guilt, and that determines the way that some officers treat suspects in the way that they do. (CS30:LA)

10.1 Recorded police interviews

Having listened to the recorded interviews in 18 out of 19 case studies in Areas A and C,³¹ the style of interviewing adopted in both areas was noted to be “active listening”, which under the “PEACE” model of investigative interviewing is the approach felt to elicit the best responses from suspects (Clarke and Milne, 2001).³² With officers using active listening – or what one officer referred to as a “conversational approach” (CS16:IO) – no officers were seen to use undue pressure to try and encourage an admission or a response to their questions.³³ Nevertheless, important issues were seen to arise in some cases relating to the support required by child suspects, not only during the police interview but also while detained.

In CS1's and CS26's cases, there were issues arising during the police interviews that highlighted the need for children's services to be involved in providing help and support to children while they are held in police custody. CS1 was a 15-year-old who had been arrested for the first time for assaulting his brother. He told the police that he had mental health issues and suicidal and self-harming tendencies, but after being held overnight, it was almost 16 hours before he was interviewed. CS1 made full admissions, accepting he lost his temper when his brother called him names about his sexuality. He said, “I blacked out and saw red. He's under me and I'm punching him. I couldn't stop.” He was remorseful, saying, “I literally didn't mean to hurt him. It was an instant reaction. I cried all yesterday before the police came. It upset me because I acted in that way. It was an instant regret.” (CS1). As CS1's mother did not want him to return home after the assault, the police liaised with the local MASH, and it was agreed that he would be taken into care. This decision was made without anyone talking to CS1, or his AA or lawyer: it was from the police that CS1 learned this upsetting news.

In CS26's case, this 14-year-old looked after girl had been arrested for an offence of arson after lighting three small fires in her bedroom. It was noted on her custody record that during the risk assessment, she told the police that she was on antidepressants and also that she had recently self-harmed (CS26:CR). CS26 was candid in the police interview, describing how she had lit the fires

³¹ There was one case in which a recorded interview did not take place because CS20's AA, his father, failed to attend the police station. With the police saying they were taking no further action in this case, the lawyer read out a prepared statement in which CS20 denied the offence. See Appendix 3 for a summary of issues arising from those recorded interviews.

³² The letters in this acronym stand for Preparation and Planning, Engage and Explain, Account and Clarification, Closure and Evaluation.

³³ This active listening approach is different from what a researcher found in 2014 when examining 12 audio-recorded interviews with child suspects. At that time, only three interviews were described as “active listening”, with the police being heard to put child suspects under pressure to make an admission, or at least to respond to their questions, in the other nine cases. The tactics adopted included “persuasive techniques”, such as repeating the same questions, being accusatory and/or being oppressive (Kemp and Hodgson, 2016).

without any intention to harm anyone or cause damage to her room. She also told the police that she had been placed in care several years ago after her father had died in a fire. During the interview, the officer produced her diary saying that this provided evidence of her fascination for fires. Her lawyer was annoyed with the officer, and she later told the researcher:

The diary contained details of her personal thoughts, and the police didn't tell me it existed. I wasn't aware of the content of the book, and I wanted to talk to her about it but, having been held for 13 hours already, she just wanted to go on with the interview. The diary wasn't relevant to the allegation, but it could have made things ten times worse, so the police should have told me about it. (CS26:LA)

There was no mention made during the police interview that CS26 was on medication, even though the agency AA later told the researcher, "She's only been on antidepressants for three weeks and they've not kicked in yet." (CS26:AA). When CS26 first saw the researcher prior to the police interview, she said that after 15 months, she was happy and settled in the care home. After the interview, however, and without having spoken to a social worker or a care worker, she told the researcher, "I'm upset because I've just been told by the police that the care home will give me notice to end the placement." (CS26). From a police perspective, while the interviewing officer said to the researcher that he saw CS26 setting the fires as a cry for help after seeing "distressing images and comments drawn by her" in her diary, he also said that his view of her had changed from having "an image of a girl who sets fires in a building and doesn't care who she hurts or what she damages" to one of where the issues "need to be seen through the eyes of social services". Being unable to hand the case over to social services, following CPS advice, CS26 was prosecuted for the offence of arson.

There were other cases in which child suspects were experiencing neurodivergent and other issues, and while lawyers were seen to intervene to protect their legal rights, the potential for them requiring additional support in the police interview was raised. In CS13's case, for example, this 16-year-old had been arrested on many occasions and, while generally being advised to make no comment in police interviews, on this occasion, his lawyer said, "When I saw him, he was having a good day, and so I asked if he wanted to answer police questions and he said yes." (CS13:LA). There were several occasions during the interview when the lawyer had to intervene, either to help CS13 or to challenge the police over "leading" questions. On one occasion, for example, when the officer asked CS13 if he had any injuries he replied, "Yes, but these don't matter."; the lawyer interrupted, saying, "Yes it does matter. Tell the police about your injuries." The lawyer also intervened when the police asked CS13 why his girlfriend had made allegations of assault against him, saying, "This is a difficult question to answer. You don't have to answer that." He was also asked if he was driving the car dangerously, and his lawyer remarked, "You don't have to answer that question. It's called self-incrimination." (CS13:RI).

In CS17's case, this 14-year-old was arrested for the first time for an offence of wounding with intent to cause grievous bodily harm (s.18 GBH) and possessing an offensive weapon. While advised by his lawyer to exercise his right to silence, CS17 found it difficult to maintain "no comment" responses to police questions, and his lawyer often had to intervene to remind him of his advice (CS17:RI). While CS17 had told the police and the researcher that he had no health problems, after being assessed by an L&D worker, it was noted on CS17's custody record that he "is being investigated for ADHD but there is no diagnosis at this time. He has a social worker involved with the family" (CS17:CR). With the police interview often being the main evidence if a case proceeds to trial, it is important that

children are helped with giving their best evidence, including when this involves not responding to police questions. This is particularly important for children with particular communication needs, and an assessment by a speech and language therapist, or intermediary, could help identify whether additional support is required in the police interview.

While in some cases lawyers were seen to be proactive during the interview, this was not the situation in all cases. In CS19's case, for example, having been arrested and detained at midnight for an offence of robbery, it was not until 13:37 the following day that he was interviewed. From the outset, the officer accepted that CS19 was not involved in this offence, saying that the 13-year-old did not fit the description given by the complainant of the two adults who had robbed him at knifepoint. The officer, however, did take the opportunity to tell CS19 off for "sneaking" out of the house late at night and for running away from the police. While the police accepted there was no evidence against CS19, his lawyer did not intervene either during or after the interview to insist on his immediate release. Instead, following the interview, and with no other issues raised, CS19 continued to be detained. Almost an hour after the interview, an inspector reviewed his detention and noted on the custody record, "Satisfied enquiries are being conducted diligently and expeditiously." (CS19:CR). It was not until two hours after the police interview that CS19 was eventually released, with no further action being taken.

With lawyers being involved in most cases, there were only a few in which AAs were seen to intervene during the police interview and, in two cases involving familial AAs, these interventions were unhelpful. In CS15's case, while the AA tried to help his stepson by providing the police with additional information, this was not always helpful. It was during his sixth intervention, after CS15 told the police that he did not have a telephone number for a witness, that his AA said he did have this number, but the lawyer interrupted saying, "It's better if CS15 answers his questions and not his stepdad." Recognising the lawyer's rebuke, the AA did not intervene again in the interview.

In CS24's case, this 16-year-old had been arrested after a fight during which someone had been stabbed. Not having been in trouble with the police before, CS24 was helpful in the interview, telling them what had happened during the fight and who was involved. Later on in the interview, the police asked him questions about a box of cannabis found in his bedroom. While CS24 said that he was looking after the box for a friend, he said he was not aware of the contents of the box. Acting as his AA, his sister intervened to tell the police that she had smelt "weed" coming from his bedroom a couple of nights ago. While this unhelpful intervention led CS24 to admit to smoking cannabis, he denied that this was taken from the box.

There has been very little research into the police interview over recent years, which is surprising given the importance of what is said – or not said – particularly in cases that proceed to trial. It is also of concern that, apart from cases that do go to trial, it seems that what is said in the police interview is rarely checked as part of supervision and training by the police or lawyers, but this would be helpful for checking that suspects' legal rights are upheld in police interviews. The Méndez Principles (2021) promote rapport-based, non-coercive methods for interviewing as being the most effective for gathering information, and they provide a framework for training police officers and other practitioners involved in the interviewing of child suspects.

10.2 Training requirements for the police and lawyers when interviewing child suspects

Within England and Wales, neither interviewing officers nor lawyers are required to have specialist training when interviewing child suspects. When planning for an interview, one officer said:

I plan the same whether I'm interviewing an adult or a child. I'm more cautious when asking questions with a child. I'll change my tone as I don't want to intimidate them, and you want them to give their best evidence. I've been trained to carry out an interview, but not when dealing with a child. (CS11:IO)

Another officer commented on his approach when interviewing a child suspect, saying:

You obviously have to treat children in different ways. I take care over safeguarding issues, checking if they are into drugs, or if they are scared, trying to let them know that they can talk to me. Training would be helpful though. (CS1:IA)

When explaining what training was required of interviewing officers for interviewing a child, one officer said:

We have basic training when you become a police officer, and when you're an investigator you go onto another level of training, which is Tier 2 suspect interviewing. This is the level that all investigators are at, CID etc. There are higher levels, Tier 3 or 4, required when you deal with murders and serious offences. I'm tier 2. (CS14:IO)

When this officer was asked if she thought police officers should be required to have training before interviewing child suspects, she replied, "Yes, we have to when interviewing child victims and witnesses, so why not for child suspects?" (CS14:IO). When considering the "achieving best evidence" model of police interviewing above, while the police are required to have training before they can interview vulnerable children as witnesses (Ministry of Justice, 2022a), the same model for interviewing suspects is used whether dealing with a child or an adult.

While lawyers were generally of the view that police officers should be trained before they can interview a child suspect, not all were convinced that lawyers also needed to be trained. When asked if there was a need for specialist youth lawyers, for example, one lawyer replied, "I'm not sure about that. I take a file with me that deals with issues that are specific for the youth court. I will treat children differently, but whether I need a specialist role for that, I don't think so." (CS3:LA). Another lawyer said:

I personally haven't had any training to deal with child suspects. It comes with experience, so I don't think it's 100% necessary for every legal representative to be trained to deal with children. We have a certain standard of client care, and if you are dealing with someone who is vulnerable, a youth or mental health, your client care is changed to adapt to the situation. (CS30:LA)

Other lawyers were more positive about requiring training for lawyers. For example, one commented, "It isn't something we're taught. We are taught the substantive materials that you need to know and what situations might crop up. We're not taught how to deal with youths or the vulnerable. That would be something that would aid representatives at the police station." (CS18:LA).

The training of practitioners when dealing with child suspects is important when considering the implementation of guarantees for a fair trial; the Méndez Principles, commented on above, provide guidelines on non-coercive interviewing, and they require police interviewers to have specialist training before questioning children (Méndez, 2021: para. 138). This training requires interviewers to be aware that certain behaviours in a child may increase their vulnerability, and they need to ensure that these do not affect responses to their questions. These behaviours include: "suggestibility",

whereby children with psychosocial or intellectual disabilities can be easily swayed and are acutely vulnerable to being asked leading and misleading questions, or being subjected to interrogative pressure and deceit, which can lead to false or unreliable information; “acquiescence”, with children having a tendency to respond in the affirmative without thinking, usually to get the interview over as quickly as possible; and “compliance”, whereby a child says what they think the interviewer wants to hear to get a favourable response and avoid disapproval or ill-treatment (2021: para. 140).

It is due to the increased vulnerability of child suspects that the Committee on the Rights of the Child (2019) emphasises that “continuous and systematic training of professionals in the child justice system” is crucial in upholding guarantees to a fair trial. In addition, it states that:

Such professionals should be able to work in interdisciplinary teams, and should be well informed about the physical, psychological, mental and social development of children and adolescents, as well as about the special needs of the most marginalized children. (para. 49)

11. Case outcomes

Following the police interview, if the investigating officer believes that there is sufficient evidence to provide a realistic prospect of a conviction for the offence, they inform the custody officer, who is responsible for considering whether a suspect should be charged (Code C, para. 16.1). In cases where more time is required in gathering evidence, suspects can either be bailed to return to the police station (with a maximum 28-day bail period during our study, but which was extended in October 2022 to three months) or “released under investigation”, with the suspect being contacted in due course when the police are either ready to proceed or to inform them that “no further action” will be taken. In consultation with police investigators, the custody officer can impose an out-of-court penalty which, if requiring an intervention, will usually involve referring them to the local YOT so that their suitability for such a disposal can be assessed. In cases involving serious offences, the custody officer will make a referral to the CPS to obtain a charging decision. With child suspects, the AA usually has to be present when the custody officer informs them of the case outcome.

The case outcomes of the main offences in our 32 case studies are set out in Table 11. This shows the outcomes when they were released from police custody and thereafter, if known, in relation to the final case outcome. While based on low numbers, over three-quarters of our child participants’ cases were effectively adjourned when they were released from custody, being “released under investigation” (RUI) or bailed to return to the police station. Of the cases now disposed of, 63% of our child participants had no further action taken, four were taken to court, three received an out-of-court disposal and five cases are still outstanding.

Table 11: Case outcomes.

Case outcome	No further action	Charge	Out-of-court disposal	RUI	Bail
On release from custody	7	0	0	15	10
At the end of cases/ongoing	20	4	3	5	0

As noted above, in relation to the final disposal in the electronic dataset, we found that 56% of children had no further action taken, 21% were charged, 14% received an out-of-court disposal and

5% remained outstanding.³⁴ Of most concern is the proportion of cases in which no further action is taken, which rose from 32% in 2009 to 56% in this study. Despite the time and cost to the police and other agencies in bringing children into police custody – not to mention the trauma and upset experienced by children while detained – it is unacceptable that over half of cases in which children are detained result in no further action. It could be that with more children having legal advice and exercising their right to silence, the police are not able to impose an out-of-court disposal, as an admission to an offence is required. While this can be seen to be a good result for a child as it avoids them receiving a formal criminal sanction, it also means that most children do not receive any help or support after having come to the attention of the police.

There has also been a reduction in the proportion of children receiving a formal outcome, with 42% charged and 26% receiving an out-of-court disposal in 2009 (Kemp et al., 2011) compared to 21% and 14%, respectively, in this study. Interestingly, in our analysis of electronic custody records, we note a higher use of out-of-court disposals by Welsh forces, 22%, compared to 11% in English forces. While the proportion of children charged has reduced, it is interesting that the use of out-of-court disposals has not increased. From our observations in police custody, while there was seen to be very little discussion taking place between practitioners over the imposition of an out-of-court disposal either in Wales or England, the police said that such discussions tended to be raised when they first handed over disclosure to the lawyers.

One YOT AA in England said that more flexibility was required when considering out-of-court disposals for child suspects. In cases where there is sufficient evidence to prosecute but the child makes no comment to police questions, without an admission, the case has to be taken to court. She explained that in her role at court, if she considers that an out-of-court disposal is an appropriate alternative to continuing with the case in court, she will liaise with the CPS and, if they agree, they will approach the defence. If both the child and their lawyer agree, she said that they would then arrange for a written admission, signed by the defendant, to be handed over to the CPS so that the case can be diverted from court. While such an approach can happen at court, it seems that this is rarely the situation at the police station, which means that cases can be taken unnecessarily to court.

There were some cases observed in which a punitive approach seemed to be adopted by the police when deciding on the case outcome. In CS2's case, with no previous convictions, he had no further action taken for the main offence of s.18 GBH, but he was charged with possessing a Class B drug after he had been found to have a small amount of cannabis in his possession when arrested. A custody officer brought this case to our attention, saying, "he was here a few days ago, brought in at night, and he had to wait all day for an AA to arrive. I'm concerned he's being picked on because of his offending behaviour." (FD.12.5.22). There were other child participants who had small amounts of cannabis when arrested, but he was the only one to have action taken in relation to this secondary offence.

Concerns were also raised in some cases in which a child participant was released under investigation but with no evidence and "no comment" replies in the police interview; in these cases, the outcome seemed likely to be "no further action". When dealing with three co-accused for an offence of criminal damage, for example, while someone had reported some boys damaging a padlock, the three boys who had been arrested were not identified and, as they exercised their right to silence, the police had no evidence to proceed. It was unlikely that they would put resources into

³⁴ The percentages do not sum to 100, as some had other disposals such as being transferred to another force.

investigating this case further, particularly as CS9 said, “I was told by the police that it isn’t serious, and I won’t get charged with it.”

From comments made by the custody officer and the police officer in CS16’s case, it seems that delaying the disposal in this case was part of the child’s punishment. CS16 had been arrested for burglary after entering a pub in the early hours of the morning. He told the researcher what had happened, saying, “The pub was open and so we walked around as I wanted a glass of water.” (CS16). After the interview, the custody officer told him that the police would be keeping his mobile phone and it would be over six months before he got it back. When the researcher asked the interviewing officer if the phone was to be forensically examined, she replied, “No, he can have it back, I just thought I’d let him think that he’d be without it for a while.” The researcher asked the officer what next steps were to be taken as CS16 was to be released under investigation and she replied, “I don’t think anything will happen. There won’t be another interview as I think he’s telling the truth.” (CS16:IO). Instead of delaying the decision in this case, it seems no further action could have been taken in CS16’s case when he was released from police custody. It is not acceptable for the police to use the criminal process as a way of punishing child suspects, but such practices can continue as there is no review required of the quality of police interviews and outcome decisions, including when imposing an out-of-court disposal.

It would be helpful to know to what extent police investigators are able to follow up on cases that are released under investigation, particularly when dealing with non-serious offences. Furthermore, with most child suspects making no comment in the police interview, we have seen how this can lead to a high proportion of cases having no further action taken. This raises questions about continuing with a dominant “justice”-based approach, particularly with the human and financial costs involved in locking up children for many hours, investigating offences and providing due process safeguards, but with no action being taken in the majority of cases.

12. After the police interview

Child participants were generally relieved once the police interview was over, as most recognised that they would soon be released from custody. In most cases, they were released within an hour or so, although an outcome decision can take a lot longer if the CPS is involved (in more serious and complex cases), and also, in a small number of cases, if the police charge children and keep them in police custody until the next available court hearing. This was a concern of CS2 after he had been interviewed by the police over a serious offence of wounding with intent to cause grievous bodily harm. When he was seen by the researcher following the police interview and was asked whether he knew what was happening, he replied, “I’ve been sat in a cell, stressing about whether I’m going to get out or not. It’s not a good fucking mentality to have. I’m sitting between four walls, wondering if I’m going to jail.” (CS2). In this case, CS2 had been held for over 18 hours; however, without any evidence against him, and following a “no comment” interview, the police decision was to take no further action in relation to the alleged offence of violence. Nonetheless, as noted above, because a small amount of cannabis was found when he was searched by the police, he was charged with possessing a Class B drug.

Apart from CS1’s case, which was when COVID-19 restrictions were first being lifted in May 2021, AAs were seen to be present when child participants were informed by the custody officer of the case outcome. In CS1’s case, the trained AA involved was present during the police interview, but she then returned home and dealt with his release from custody remotely.

After the police interview, most lawyers accepted that they would leave custody after speaking to their child client. While they said that they would ask the interviewing officers to let them know the case outcome, most complained that this rarely happened. As one remarked:

We can spend a lot of time chasing the police for an update. I left CS13 when the interview had finished – the police said they would let me know the outcome, but they didn't. I'd say in 95% of cases the officers don't follow up and tell us what happened. My secretary has to chase the police for answers. At every available opportunity, the police try to cut us out. (CS13:LA1)

In another area, when talking about following up on cases, one lawyer said:

We do chase the police for the case outcome. When they're released under investigation, we check on what's happening every 28 days until there's an outcome. There may be occasions where the officers don't respond, or don't do so quickly, or they tell our client what's happening before letting us know. (CS30:LA)

With lawyers leaving after the police interview, they are not available to make representations over the case outcome. In cases where an out-of-court disposal might be considered, they said that they would have discussed this with the police at the time of being given disclosure. If lawyers were funded to have a wider role in the police station, they could liaise with the police to help avoid cases being released under investigation where there is no evidence against the child and it is evident that no further action will be taken as the final outcome. They could also make representations in cases following the police interview where they feel an out-of-court disposal is appropriate, or where a child suspect could be diverted out of the criminal justice system altogether.

13. Social services and other support services

What is striking in this study is the extent to which the police are often left on their own to deal with children when they are brought into police custody. Without police being able to turn to social services or other health and welfare agencies, we have seen how some child participants are detained when this is not in their best interests. With the police being the lead agency, the child is then drawn into a criminal process that revolves around the police interview. In this section, we explore the extent to which social services are already involved in some cases, or subsequently will be involved after the child has come to the attention of the police. It is also helpful here to consider the help and support that the police can call upon from other agencies, including both those embedded within police custody and external agencies.

In 10 of our 32 case studies, child participants were involved with social services, with four being looked after children, five having a social worker allocated either to them or their family and one being in supported lodgings. When commenting on social services' involvement in his family, CS11 said, "When I was born, we had a social worker helping the family. We'd sometimes have a social worker stopping overnight. It stopped, but now they are back again." CS1 said that his father had a negative reaction when he found out about his sexuality, saying, "He would be screaming and shouting at me. It isn't so bad now, but I kick off when he gets in my face looking for a fight and he lunges at me." (CS1). Because of these difficulties within the family, CS1 had been placed in care and, following this latest incident, he was to be taken back into care.

For some of the young participants, although they had a social worker allocated to them, there had been no contact with them over recent years. For CS30, it was noted on his custody record that he

last saw his social worker in 2015 and, following this incident, support from social services would be revisited. CS26, a looked after child, had a social worker allocated when she was living in a care home 300 miles away but, when she was moved over two years prior to being arrested, she did not get a new social worker. This is of concern, particularly when the interviewing officer recognised that “setting fires was a cry for help” (CS26:IO), and when asked what help she wanted, CS26 replied, “I just want someone to talk to.” When asked what support she gets in the children’s home, she replied “We get a lot of support, but we also get ignored a lot. They don’t listen to us.” For CS26, her main concern arising from this incident was that she would be able to stay at the care home; however, after the police interview, she informed the researcher, “I’ve just been told that the care home are giving me notice to end the placement.” She was extremely upset at this news, particularly as she was not able to discuss this decision with the care home.

Although we engaged with 32 child participants in police custody, there was just one case in which a social worker came into custody to talk to the child; in two other cases, child participants spoke to a social worker over the telephone. There were other cases where the police had contact with social services, and/or other agencies, but it was difficult for the researcher to know the extent to which this led to help and support being provided to a child, either while detained or on their release from police custody. In some cases, particularly where minor “domestic” incidents were involved, the reason that some child participants were brought into police custody in the first instance was that the police were not able to call upon social services to intervene at that time. In recognising the links that the police have with social services, one YOT AA said that in those cases, “We need another resource at this early stage to prevent a child being brought into custody. A much cheaper resource to help tide things over, to help the family, and tide them over until the morning.” (CS3:AA).

There are resourcing issues for health and social welfare agencies that limit the amount of help and support that can be directed towards child suspects. In CS4’s case, for example, while he was detained by the police for breaking a plate, there were issues going on in his life that had led to him turning to social services for help, but without success. As his YOT AA explained:

He told me that he’s asked for help because he’s seen this coming. I’ve tried to get support from social services but there’s no one available to help him ... I’ve told him I could trigger an intervention and asked if he’d engage with them, but he said no, as they didn’t help him before, and he now thinks it would be a waste of time. (CS4:AA)

She also said, “I think the police could sometimes use their power a bit better. They have a uniform, and that can be powerful, and so instead of arresting the child, why don’t they talk to the mum and the child instead of bringing them in here. It would probably work better.” (CS4:AA).

There were some case studies in which the police had been called in response to an incident, but due to complex social welfare issues arising, it would have been more appropriate for social services to have dealt with these cases instead. In CS31’s case, as was noted above, detention was authorised at 01:00 after the child had been brought into detention for fighting with his stepfather. It was at 08:00 that the custody officer was first able to speak to the duty social worker, and they were told of a family history of violence against the child, for which he was on a child protection plan. Thereafter, instead of releasing the child from custody so that he could engage with social services in trying to keep him safe, he continued to be held in police custody. With no evidence against CS31, no further action was taken by the police; instead, with ongoing support from social services, he had to be returned home, with a support worker allocated to link into the family home to help keep him safe until a suitable foster replacement could be found.

As noted above, complex social welfare issues arose in CS26's case after this 14-year-old girl set fires in her care home. The interviewing officer accepted that social services would have been the best-placed agency to deal with this matter but, having been called by the care home, he said the police had to deal with the case. He remarked, "We're the worst agency to be involved because we'll criminalise her but not give her anything out of it." (CS26:IA). On CPS advice, CS26 was taken to court, and a Referral Order was imposed.

It is important to consider further the extent to which the police can call on other services when dealing with child suspects, particularly looked after children. From research, we know that children in care are particularly vulnerable, disproportionately displaying problems with educational engagement and achievement, and having high levels of substance misuse and emotional and behavioural difficulties, each of which is predictive of offending (Day et al., 2021). Within police custody, L&D workers are seen to be an important resource for custody officers to call upon, although their role in police custody can vary, with steps being taken in some forces to extend what help and support they can provide. Questions also arise about the relationship between the police and social welfare agencies and, in developing a model for integration, it is important to review that relationship to ensure that a Child First model is adopted.

PART 3 – Conclusions, recommendations and next steps

14. Conclusions

Our findings are powerful, as they highlight the importance of talking to children while they are held in police custody. When listening to their voices, we find that custody is experienced as harsh and punitive, fostering resentment and undermining trust in the police and the wider youth justice system. It can also alienate children and their families when the desistance process most needs their engagement. For children drawn into police custody, of most significance has been the lack of suitable information available about the process, and their legal rights and options, both in terms of the format of information provided to them and the availability of appropriately skilled adults to support them to digest information and make informed decisions. There are also found to be long delays, and increasingly long delays when compared to the length of time children spent in police custody previously (Kemp et al., 2012). Despite having to wait for many hours in a cell before being interviewed by the police, it is only in a minority of cases that formal action is taken. This raises questions about the extent to which it is appropriate to put children into an adversarial system of justice when coming into conflict with the police unless they are being dealt with for very serious offences.

The PACE regime was designed to bring much better protections to the way suspects are treated when taken into police custody following an arrest when compared to the Judges' Rules, which were not rules of law but practice guidelines for the police. PACE offers children much greater protection when they are held in police custody, and this includes a mandatory requirement for an AA to be involved and providing access to free legal advice. Apart from the AA requirement, however, there is little difference in the way that children are dealt with when compared to adults. Although PACE has been in force for almost 40 years, there have been many revisions to the Codes of Practice during this time. The main change in relation to children occurred in 2013, and this was to increase the age at which a suspect is to be treated as a child from 16 to 17 years.

While PACE provides a comprehensive body of rules governing the treatment of child suspects in custody, we have found inconsistencies of practice in the way that children are treated across England and Wales, and within individual custody suites. This was not because custody officers did not carry out their duties in relation to PACE – indeed, most were seen to act conscientiously and did their best to comply with the rules. Rather, it seemed that the PACE regime itself tolerates a degree of inconsistency of practice, on occasions leading to custody officers making decisions they consider to be in the best interests of the child, even if they could be seen to be in breach of PACE rules.

When child suspects were first dealt with within the custody process, we found an almost automatic authorisation of detention, with this being refused in less than 1% of cases. While College of Policing (2013) guidance requires detention to be used "as a last resort", this requirement is not set out in Code C. There were some cases observed in which detention was authorised even when dealing with minor offences, including with children brought into custody for the first or second time. It seems that some officers are of the view that bringing children into custody will have a deterrent effect against reoffending, even though research has found such "shock tactics" to have the opposite effect (Petrosino et al., 2013). In other cases, custody officers were authorising detention in relation to minor offences that arose out of an argument in the family home but where the officer attending felt that the child needed to be removed temporarily to help calm them down. If the custody officer was

not able to engage with social services or other agencies that could deal with the child instead, they could be detained to help keep them safe, particularly at night.

In all cases observed, once a child was detained, even if custody was being used as a place of safety, the priority for the police was to conduct an interview. We have noted that this can include cases where a child is detained as a suspect but prior to the interview they were identified as the victim, and also if the police have no evidence against the child at the time of the interview. The police are not supposed to interview children in such circumstances but, without challenge from custody officers, lawyers or AAs, it seems extremely rare for a child to be detained and then not interviewed by the police. Not surprisingly, after being held for many hours in a cell, especially for those who know that they have not committed an offence, children can resent such practices, leading to some having an antagonistic relationship with the police. This has the potential to create conflict in future dealings with the police, increasing the likelihood of further arrests and detention.

Once detained, PACE Code C requires custody officers to expedite cases, and College of Policing (2013) guidance requires cases to be dealt with in the shortest possible time. There must be an ongoing review of detention, with an inspector required to review the detention of all suspects once they have been detained for six and then 15 hours. These reviews are intended to help reduce delays, but they were seen to be a perfunctory exercise having little impact on the release times of child suspects. We have, over the years, seen a significant increase in the average time that suspects are held in police custody, as previously mentioned, rising from an average of almost nine hours for all suspects in 2009 (Kemp et al., 2012) to just over 14 hours for adults and 11 hours and 36 minutes for children in this study. Cuts in policing budgets have put pressure on the police, particularly with fewer investigators being available to interview suspects, but this means that the administrative convenience of the police is being prioritised over the liberty of children.

It is problematic that while PACE and the Codes of Practice provide important safeguards for child suspects, what is stated in law and guidance is not always available in practice. When children are charged and remanded to the next available court, for example, Code C requires them to be transferred to local authority accommodation prior to the court hearing (para. 16.7), but it seems that this rarely happens in practice. Nevertheless, we have observed custody officers spending a lot of time trying to arrange this temporary accommodation, as required, but knowing that it was not available. Code C can also be contradictory, stating that a child should not be placed in a police cell (para. 8.8) but going on to say in the same sentence that a cell can be used if no other secure accommodation is available and the custody officer considers it impracticable to supervise a child outside of a cell. In one of the three forces examined in this study, there is a separate wing for dealing with children in the cell block, but the cells are identical to the ones used for adults. With no other suitable accommodation being available, in most custody suites, children are held in police cells.

When talking to custody officers, there were two main concerns raised over PACE safeguards: not being able to access an AA from a local scheme outside office hours, and not being able to contact social services at night. Without the police being able to engage with other public bodies having a statutory responsibility to safeguard and promote the welfare of children, they are effectively left alone to deal with vulnerable children in police custody.

From the child's perspective, PACE and Code C require that they can have access to their AA or lawyer in private at any time, including over the telephone; however, in practice, access to these adults tends to be restricted by the police. Apart from the early contact that some children had with

their parents when they were acting as their AA when first brought into custody, subsequent contact was generally not allowed by the police until the time of the police interview. Similarly, with trained AAs, while the police may require their help briefly when dealing with a child early on in custody, such as when observing a strip search or when samples are taken, the AA dealing with the case will generally wait until the police interview before first talking to the child. It was of concern in this study to see children having to wait in a cell for many hours having little or no contact with their AA or lawyer until the time of the police interview. In most cases, the children were seen to be anxious and upset; they did not know what was happening, had no one to speak to and did not know how long they were going to have to wait in a cell with little or nothing to do until the police interview.

Most children were not aware that they had a right to speak to their AA at any time, although some did ask the police if they could speak to a parent or carer who was acting as their AA, but this request was generally refused. There was a similar situation in relation to legal advice, with just four out of 29 children speaking to their lawyer prior to the police interview, and with most not knowing that they have a right to speak to them earlier on. The payment of a fixed fee for police station work, which does not cover the true cost of providing legal advice, means that many lawyers wait until the police interview before first making contact with their young client.

What was most shocking in this study was the isolation and distress experienced by many children when left alone waiting in their cell for many hours to be interviewed. While some children knew that they were waiting to be interviewed by the police, they did not know why they were having to wait for so long or who they could turn to for help. With few children having the support of an adult outside the police interview, they were unable to participate in decisions made about them and, without the input of an adult who was on their side, decisions were not always made in the child's best interests. The key decision to authorise detention, for example, was often made without any input from the child and, thereafter, neither the child, their lawyer or their AA were able to challenge detention or help to expedite cases and thereby reduce the time they spent in a cell.

It is important to note that while detained, children are well cared for and kept safe, with DDOs checking on them regularly, at least every 30 minutes. With DDOs having many detainees to review, and within strict time limits, this contact tended to be experienced by children as little more than "arms-length surveillance", with the checks generally involving the DDO looking through a hatch, and with short exchanges taking place with children (see also Bevan, 2022). It was this isolation and boredom that was most difficult for children to cope with, and not having access to their AA or lawyer undermines their fundamental legal rights.

When seeing police custody through the lens of a child, it is evident that changes to PACE and legal safeguards for children are required. This is particularly so when a child is detained to facilitate police questioning but, having to cope with the pains of police custody, questions arise over how they are "expected to engage with new information, make key legal decisions, and ultimately undergo questioning" (Bevan, 2022:11). Many of our child participants were exhausted, hungry and distressed by the time of the police interview, and this can have a profound effect on their ability to participate effectively when questioned by the police.

It is the questioning of suspects that is the priority for police investigators, and it is at this stage that both the AA and the lawyer, if requested, become available to assist the child. Within an adversarial system of justice, the punitive approach adopted does not always encourage children to engage with the police, leading to 22 children out of 31 case studies (where known) exercising their right to silence (with a prepared statement being given in four of those cases). With little or no engagement

from children in the police interview in most of our case studies, and with the police having little or no evidence against the child in some of these cases, in 20 of the 32 case studies, no further action was taken. Within our custody-record datasets, the proportion of child suspects receiving no further action was lower, at 56%, although this is significantly higher than the 32% of children with no further action taken found in 2009 (Kemp et al., 2011). The proportion of children charged has also decreased from 42% in 2009 to 21% in this study, and it seems that with a backlog of cases at court, exacerbated by the COVID-19 pandemic, the police are not taking so many cases to court.

With fewer children being charged, it could be anticipated that the number of out-of-court disposals, imposed as an alternative to going to court, would increase. However, this was not found to be the case, with 26% of children receiving this disposal in 2009 (Kemp et al., 2011) compared to 14% in this study. It is in relation to out-of-court disposals that we notice an important difference between Welsh and English forces, with 22% of children in Wales receiving this disposal compared to 11% in England. With a children's-rights approach being adopted in Wales, based on the UNCRC, it seems that this child-focused approach has helped to increase the use of diversionary outcomes, at least when compared to English forces (Ministry of Justice and Welsh Government, 2019). Fewer children now being charged or receiving an out-of-court disposal, however, raises questions about the lack of proportionality inherent in a harsh custody process that seldom results in formal action being taken against child suspects.

First coming to the attention of the police provides an early opportunity for children to be assessed and receive help and support that can assist in addressing the underlying causes of the offence or the offending behaviour. Many children, for example, are identified as neurodivergent, although many will not have a diagnosis. An early referral to CAMHS, or other relevant services, could help a child and their family to cope with behaviour that increases the likelihood of that child coming to the attention of the police. With fewer children being brought into police custody, those detained are now more vulnerable and have more complex needs than previously (Day, 2022). In addition to asking children about physical and mental issues during the risk assessment, it is important to also note any trauma or adverse childhood experiences so that their needs can be addressed both while detained and on their release from custody.

Improved links between the police and health/social welfare agencies, and with additional funding to agencies to assist in facilitating change, should help to maximise opportunities for diverting children out of the criminal justice system, or at least away from court. This is important, as research has found evidence of the need for child-focused youth justice to be developmentally informed, and this includes raising the minimum age of criminal responsibility, prioritising diversion and promoting educational inclusion (McAra and McVie, 2018). From our analysis of police custody records, it is of concern to note that 10- to 13-year-olds are the least likely of all people under 18 years old to have a lawyer, and they are also less likely than older children to have no further action taken against them. This was also the finding when analysing 2009 custody records (Kemp et al., 2011), and it is therefore disappointing that our recommendation for mandatory legal advice for people under 14 years old made at that time has not been actioned. It is also important to reflect that the minimum age of criminal responsibility in England and Wales is low, at 10 years, even though the Committee on the Rights of the Child (2019) requires the minimum age to be at least 14 years. Below, we examine the approach to be adopted when considering how Case and Browning's (2021) "Child First" approach, requiring child-friendly and child-centred strategies, can be adopted in police custody.

From both our quantitative and qualitative findings, we have seen how discriminatory decision-making can contribute to Black, Asian and minority ethnic children being overrepresented in the criminal justice system. The Youth Justice Board (2019:8) seeks to “challenge discrimination and promote equality”, as well as to work with others to try and eliminate bias in the youth justice system, but we still have over half of children in youth custody coming from a Black, Asian or minority ethnic background (Youth Justice Board, 2022). While the youth custody statistics and findings from our electronic custody records show that racial bias still exists, it is difficult to identify such bias operating at an individual case level.

Research has identified looked after children to be consistently overrepresented among those drawn into the criminal justice system, with Black, Asian and minority ethnic children also being overrepresented among those in care (Day et al., 2021). Although looked after children are particularly vulnerable in police custody, there is no variable in police custody records that can be downloaded electronically to identify children in care. This needs to be changed as a matter of urgency so that their increased vulnerability can be explored when examining the treatment of and outcomes for those taken into police custody. Research also needs to further explore the relationships between health, social welfare and youth justice agencies and the police when dealing with looked after children taken into police custody.

It is important that these key themes arising from our engagement with children held in police custody are further explored. Crucial to this study has been the researchers’ engagement with children when detained and, from the child’s perspective, the identification of what changes are required to ensure that legal rights and safeguards are upheld when they are detained and questioned by the police. Crucially, for Bevan (2022:13), the very adult punitiveness experienced by child suspects could often be traced directly to the effective denial of their status as a child, first and foremost in police custody. Changes are required to ensure that children are not only dealt with differently from adults in police custody within a child-centred system of justice, but also to ensure that only children arrested for the most serious of offences are allowed to be brought into police custody in the first instance.

15. Recommendations

Having examined the impact of PACE on the detention and questioning of child suspects, the following recommendations are put forward to enable a Child First approach to be adopted when dealing with children arrested and detained by the police. The recommendations are first intended to help restrict the number of children brought into police custody; second, they are aimed at requiring a differentiated approach when dealing with adult and child suspects in police custody. Third, we set out what changes are required to support a child in custody before, during and after the police interview. The fourth set of recommendations are concerned with the collection and analysis of electronic custody-record data, and for this information to be used to help increase the involvement of government departments in providing strategic oversight of PACE safeguards. It is recognised that many of the recommendations have resource implications, and an important first step in taking these changes forward would be to require key stakeholders to get together to agree where responsibility for funding them would fall.

Restricting the number of children being brought into police custody

1: Detention should only be used as a last resort.

College of Policing (2013) guidance and the UNCRC require police custody to be used only as a “last resort”, but this is not always the case in practice. We recommend that PACE is amended to include a presumption that children will not be detained in police custody save in exceptional circumstances.

We further recommend that PACE Code C be revised to include an express requirement that custody officers, in exercising their powers under Part IV of PACE, have regard to the UNCRC, and in particular the prohibition on detention of children other than as a “last resort and for the shortest appropriate period” (Article 37(b)). PACE Code C should provide clear guidance on what might amount to “exceptional circumstances”, including, for example, arrest for serious sexual or violent offences or where detention is required for public protection or safeguarding reasons.

We also recommend dedicated Annexes to Code C providing both a “Summary of provisions relating to children” and a “Summary of provisions relating to voluntary interviews”, with the two being cross referenced.

2: A digital screening tool should be provided to assist front-line police officers.

We recommend that a digital screening tool is developed to assist front-line police officers to triage children when arrest and detention is being considered. This would include:

- a. a gravity threshold for police custody in line with the statutory presumption;
- b. screening questions concerning the child’s circumstances and support network to identify whether they can be invited for voluntary interview or street-bailed to attend for interview at a convenient time as an alternative to custodial arrest;
- c. screening questions asking about a child’s health and well-being to assist officers in identifying what agencies could be involved to avoid detention for safeguarding purposes;
- d. guidance and local information on the adoption of problem-solving and/or restorative justice approaches, providing an alternative to drawing children into an adversarial system of justice;
- e. a requirement for front-line officers to liaise with a custody officer before bringing a child into police custody.

The purpose of this digital screening tool is to avoid the child being brought into police custody, and it will have the key aim of preventing offending by addressing children’s needs in the community wherever possible, while also providing help and support to victims through restorative approaches where appropriate.

3: There should be support for the police from health, social welfare and youth justice agencies.

Police officers should be provided with 24/7 access to local authority-led MASHs – places to which they can transport a child as an alternative to a police station – where decisions about next steps can be taken in the best interests of the child. These spaces would be based on the statutory responsibility of the local authority to safeguard and promote the welfare of children and operate according to the Youth Justice Board’s Child First principle. They would enable a range of co-located services, potentially including AAs, overnight accommodation and the facilitation of pre-arranged voluntary interviews. This would help to ensure that police detention is only used as a last resort.

4: Police interviews of child suspects outside of police custody should be prioritised.

In cases where a police investigation is required, in line with the statutory presumption that custody will only be used as a last resort, the police will arrange a time for the child to be interviewed and either bail them to attend the station or arrange for them to attend on a “voluntary” basis, avoiding the need to bring children into custody unless there are exceptional reasons to do so.

These interviews could take place in police stations or in other nominated sites adapted to facilitate police interviews, which could include in “Achieving Best Evidence” (ABE) police suites or adjusted spaces within YOT offices.

The revised PACE Code C should include a requirement for an electronic “investigation record” for voluntary police interviews similar to the custody record, which would record how the child’s rights and protections had been met, for example, in relation to free legal advice and the mandatory requirement for an AA to be involved.

To ensure that children who engage in voluntary interviews are afforded their rights and the protections to which they are entitled, we recommend that PACE Code C should be revised to include specific guidance on the conduct of voluntary interviews with child suspects and that the College of Policing should produce APP guidance specifically focused on this process.

Adopting a Child First approach to children in police custody

5: There should be a shorter PACE clock for children.

With long delays being seen to be a particular problem in police custody, it is recommended that PACE be amended to impose a shorter PACE clock when dealing with people under 18 years old – a 12- rather than 24-hour clock. This change is important for differentiating children from adult suspects and, with a maximum of 12 hours, it is anticipated that the average time that children are detained will reduce to around six hours. There will be serious and complex cases where the police need more time to deal with children and, in such cases, detention can be extended to 24 or even 36 hours (as is the case with adults) on the authorisation of a senior police officer.

A shorter PACE clock would require changes to inspectors’ reviews of detention. It is recommended that an initial review is undertaken after a child has been detained for two hours. This should include checking that investigators are actively gathering evidence and that an officer has been identified to conduct the interview. Where a looked after child is involved, this review must ensure that contact has been made with those responsible for the child’s care and should incorporate information provided by them. We recommend that inspectors should have a presumption of release as soon as detention is no longer necessary. Within a 12-hour PACE clock, after the six-hour review, a further review would be required at nine or ten hours.

Officers should use information provided by the local authority and other external agencies (including education, health, social welfare and youth justice agencies) when reviewing the ongoing need for detention. The information provided should also be used to maximise opportunities for diversion, including: early release of children from police custody (if required, arranging a voluntary interview instead), taking children out of the criminal justice system altogether or avoiding cases going to court.

6: Children should be provided with age-appropriate and child-friendly information.

Children detained require age-appropriate and child-friendly information about their legal rights and to set out what happens in the criminal process. The information also needs to explain the role of the different police officers involved and what a child can expect from their AA and lawyer.

7: Child suspects should be separated from adult suspects.

We recommend that section 31 of the Children and Young Persons Act 1933 is revised so that once detention of a child is authorised, they are not only separated from adults who are charged with an offence, but the separation of children and adult suspects should be required at all times while they are in custody, and not just when a child is in a cell.

8: The digital screening tool should be used to assist custody officers.

With the presumption that a child will not be brought into police custody, it is recommended that the information collected by the arresting officer in the digital screening tool is shared with the custody officer to avoid duplicating the information recorded and to assist them when deciding whether to authorise detention. This will include information on the gravity of the alleged offence and on issues relating to the health and well-being of child suspects as captured by arresting officers. L&D officers based in police custody are well placed to assist custody officers when deciding whether to authorise detention.

In addition to questions asked in the risk assessment, we recommend that the digital screening tool is used to capture additional information on the health and well-being of children. This should include questions on a child's specific learning difficulties, developmental delays or neurodevelopmental disorders and disabilities, and social welfare issues. When asking these additional questions, it should be required that children are taken to a separate private space, with a tablet being used to record information. Certain responses by a child to particular questions should trigger a referral to an L&D officer to carry out a more detailed assessment and, if required, to link with external agencies.

9: There should be a presumption of the provision of legal advice and restrictions on its waiver.

There should be a presumption that legal advice will be provided, and there should be a rule that a child can only waive this right if they first speak to a lawyer in person, who can advise them on what having legal advice could do for them. The role of the lawyer in police custody needs to be wider than focusing on only the police interview, so that a child has access to legal advice when key decisions are made about them, including decisions to authorise and review detention and deciding on case outcomes. This enhanced role would require an increase in the legal aid fee paid for specialist youth lawyers providing police station legal advice.

10: The local authority should be notified of children brought into police custody.

We recommend revising paragraph 3.13 of Code C to specify that the police should be required to notify the local authority of all children brought into police custody within an hour of them being detained. The local authority should then be required to report back to the police within an hour of being contacted, detailing any safeguarding or welfare concerns that could impact on the child's detention and their safe stay in police custody.

Other essential data to be collected and recorded by custody officers at the time of booking children into custody include the child's looked after status and self-defined ethnicity. Local authorities and other external agencies should be required to provide specific information on looked after children and Black, Asian and minority ethnic children so that these details can be used early on to challenge discriminatory decision-making which, if left unchallenged, will lead to the continued overrepresentation of these children in youth custody.

11: Additional information should be gathered to assess a child's fitness to be interviewed.

Although custody officers are responsible for deciding on a child's fitness to be interviewed, we recommend that L&D officers carry out a specific communication and fitness for interview assessment to assist with decision-making. In addition to information contained in the digital screening tool, L&D officers can gather additional information from the local authority, CAMHS and from the child's family and school. This separate assessment should be focused on the child's speech, language and communication needs in relation to their ability to undergo questioning and to identify whether additional support is required for that purpose (for example, the need for the presence of a support worker or intermediary, or for an adjusted questioning style). This assessment should be reviewed if there is a long delay prior to the child being interviewed.

12: AAs should attend the police station as soon as possible.

We recommend that paragraph 3.15 of Code C is revised to specify that AAs should be requested as soon as possible following the detention of a child, and they should physically meet with child suspects within one hour of the request.

Subject to significantly reduced detention times, we also recommend that AAs are expected to remain with the child while detained, and suitable spaces should be provided for this purpose.

Where the AA is attending as part of a scheme, the YOT or any provider acting on its behalf should require the AA to attend within one hour of the request, regardless of the time of arrest and detention, unless there are exceptional circumstances. If the AA is not present in custody, a child suspect should be able to speak to their AA in private at any time over the telephone or virtually, as currently required by PACE.

13: Information should be provided to AAs about their role.

While untrained people such as family members continue to take on the AA role, they need to be provided with written information that sets out their role in plain English, and with copies being available in different languages. Online translation services could also be used if the language required by the AA were not available. There is an excellent animation that provides information to familial AAs as to what to expect when taking on this role in police custody, created by Dr Miranda Bevan and NAAN (see: <https://vimeo.com/672820069>). Police should provide a link to this video when contacting a person to act as an AA. A poster with QR code via which the animation can be viewed is available, and this should be placed in the waiting rooms of custody suites so that it is easily accessible.

14: The AA safeguard should be reviewed.

It is important that while a child suspect is detained, they should have support from an adult who is independent of the police and understands this early stage of the criminal process so that their interests are safeguarded. While we recommend that specialist youth lawyers should take on a wider role, children's needs go beyond the tight legal focus of lawyers.

We recommend that there is a review of the AA safeguard, particularly when considering the challenges for family members and friends taking on the role in an emotional context and without training. This will help to ensure the effectiveness of this important role. It is important that children can have contact with their parent or carer while in custody (and vice versa), but without understanding the legal context within which children are detained and questioned by the police, familial AAs are not effective in upholding PACE safeguards. In re-imagining the AA role, consideration also needs to be given to alternative ways in which children can be assisted by adults

while held in police custody. The issue of legal privilege for AAs when talking to child suspects also needs to be considered.

15: *The conditions of detention should be changed.*

In relation to the conditions of detention, we recommend that paragraph 8.8 of Code C is revised so that there is a presumption that a child will be allowed to sit with their AA and/or lawyer in a suitable waiting area if that is their preference, subject to risk assessment. In the future, we recommend that custody block renovations and building plans incorporate secure waiting areas where children can be accommodated with their AA.

We recommend that Code C is revised so that when waiting in a cell, children are required to be provided with age-appropriate reading material and distraction activities, subject to risk assessment.

16: *There should be specific training of custody staff for dealing with child suspects.*

Training is required for custody staff (including custody officers and DDOs) dealing with child suspects. This should include training on:

- a. child development and its impact on a child's ability to make decisions and manage in the custody environment;
- b. developmental disorders, learning disabilities and other challenges commonly experienced by children who find themselves in police custody;
- c. issues of deterrence and resistance, with the intention of preventing custody being used as a form of punishment and helping people to recognise the vulnerability of detained children;
- d. techniques for communicating effectively with children and young people;
- e. age-appropriate restraint techniques.

Supporting child suspects prior to, during and after the police interview

17: *A child's fitness to be interviewed should be re-visited prior to the police interview.*

The assessment of a child's fitness to be interviewed (recommendation 11 above) should be reviewed prior to the police interview, with the custody officer also checking on the child's current state of mind and ensuring they are not intoxicated, under the influence of drugs or sleep deprived. Furthermore, as part of the assessment at this stage, the child, their AA and lawyer should be asked specifically about what help might be required to support the child's effective participation in the police interview.

Having found cases in which it seemed inappropriate for the police to question a child suspect, we recommend that the assessment of a child's fitness to be interviewed includes a review of whether an interview is required at all. This includes cases in which, prior to the interview, a child has been identified as the victim rather than the perpetrator, or in domestic cases if a parent or carer has declined to make a complaint against their child and there is no corroborating evidence. An interview should also not be used as a "fishing trip" in cases where there is no evidence against the child but the police are hoping that they will incriminate themselves when responding to questions.

18: *There should be a different model for interviewing child suspects.*

The UNCRC requires additional safeguards for children when interviewed by the police; however, at present, there is no difference in the approach used when the police are interviewing a child as opposed to an adult. We recommend that a different model based on the Méndez Principles (2021) is applied. These guidelines require specialist training of officers interviewing children, the

mandatory involvement of lawyers and the support of intermediaries to assist children in giving their best evidence.

Where possible, we recommend that child suspects are interviewed in ABE suites, subject to risk assessment. We also recommend that police interviews with child suspects are video-recorded, as required under the ABE model when interviewing vulnerable child witnesses.

19: Specialist training should be given to those involved in the questioning of child suspects.

In accordance with UNCRC requirements, continuous and systematic training of all practitioners involved in the questioning of child suspects should be undertaken, including police interviewers, lawyers and agency AAs. This training is needed to give practitioners a better understanding of the social and psychological development of children, including the implications of recent neuroscience findings, the special needs of the most vulnerable children and disparities that can lead to discrimination, as well as providing information on available diversion measures.

For police officers, we recommend that this includes a specialist accreditation programme for interviewing children, as there is under the ABE model when interviewing vulnerable child prosecution witnesses. Training for defence lawyers will lead to specialist youth lawyers being available to deal with child suspects.

20: Legal advice for children should be given in person for police interviews.

While safety measures during the COVID-19 pandemic led to lawyers providing legal advice remotely in some cases, recognising the vulnerability of children, it is essential within a complex legal process that a child's lawyer is present in the police interview.

We also recommend that a child suspect receives help and support from their lawyer when dealing with the case outcome. If the lawyer is no longer present at the station following the police interview, legal advice should be available remotely.

Collating and reporting nationally on electronic custody-record data

21: Requirements for obtaining electronic custody records from forces should be standardised.

Electronic custody-record data held by individual police forces provides important information through which to monitor PACE safeguards. Instead of individual forces requiring their own bespoke arrangements to obtain this data, we recommend a standardisation of requirements. This could include a police force recognised by other forces as having expertise in this area being responsible for drawing up a data-sharing agreement that can then be used as a template to be shared with other forces.

22: The collection of electronic custody-record data should be standardised.

The poor quality of data received from forces has been a key finding arising from our study, with inconsistencies in the collection of variables found between police forces. We recommend standardisation of data collected in relation to the following issues:

- a. To aid comparisons between police forces, there needs to be consistency in electronically recorded categories. Using the same categories for officer-defined and self-defined ethnicity would add clarity and enable comparison of whether officer-defined and self-defined ethnicity frequently differ. Consistency is also required in recording a person's vulnerabilities and offence descriptions.

- b. In addition to recording how many people request legal advice, it is important to know whether legal advice was received. We recommend capturing electronically whether a lawyer was involved in the police interview, either in person or remotely.
- c. An electronic record should be made regarding whether or not the suspect is a child in care of the local authority.
- d. Information on vulnerability flags should be captured consistently across police forces.
- e. The type of AA involved should be captured electronically, for example, whether this is a family member, carer, friend or a trained AA from a local scheme.
- f. The times of the first in-person contacts that the child suspect has with their AA and lawyer should be captured electronically.
- g. There should be compulsory electronic recording of case outcomes and the PACE clock.
- h. There needs to be clearer recording of initial vs return detention episodes.

23: There should be regular reporting of anonymised electronic custody-record data.

Through multi-agency arrangements with partner agencies, it is recommended that the findings from electronic custody records are regularly monitored to provide strategic oversight of suspects' legal rights. In addition to the Home Office PACE Strategy Board and the Welsh Assembly, it is recommended that the Ministry of Justice sets up an Advisory Board to report to the Lord Chancellor on the efficacy of PACE safeguards of suspects' legal rights. For example, monitoring of data could help to increase access to legal advice, reduce delays and challenge discriminatory decision-making. Having information on a child's vulnerabilities will help to improve access to support services and enhance gatekeeping mechanisms intended to restrict police custody for children as a last resort and help to maximise opportunities for diversion.

16. Next steps

Having brought together an evidence base of what happens in police custody from a child's perspective, the next steps involve working in partnership with the police, lawyers and AAs in piloting a Child First approach in police custody. With funding from the Nuffield Foundation, and based on recommendations in this report, we will pilot a comprehensive set of measures aimed at achieving a Child First approach for child suspects in England and Wales. From a policy perspective, a Child First approach is founded on children's-rights principles derived from the UNCRC, with the overall aim being to reduce the number of children arrested and detained by the police and to instead encourage the increased use of diversion, minimum intervention, problem-solving and restorative approaches. For those children who must be detained, the project will seek to revolutionise police custody by producing a child-focused, rights-based approach. It will also seek to reduce the disproportionate impact of the youth justice system on Black, Asian and minority ethnic children, as well as looked after children.

Case and Browning (2021) have provided a set of evidence-based tenets that underpin a complete model of practice for a Child First approach. These include: prioritising the child's best interests; adopting a constructive and future-focused approach; promoting the development of a prosocial identity for sustainable desistance; and working collaboratively with children and their carers to encourage participation, engagement and social inclusion. Child First justice also requires a focus on prevention, diversion and minimal intervention to reduce the stigmatising effects of system contact (McAra and McVie, 2018). While many youth justice services have been adapting to a Child First approach (Smith and Gray, 2019), this concept will be new in most custody suites. From the outset,

therefore, we will work with government departments, the police, lawyers, AAs and other agencies to identify what changes are required to PACE to promote a Child First approach in police custody.

It is important to recognise differences in youth justice when comparing approaches adopted in England and Wales. It was in Wales that 25 years ago, Haines and Drakeford (1998:xiii) commented on a Child First ethos being required to embrace values of maximum diversion and minimum intervention, and to provide support to children “outside of the criminal justice system as well as within in it”. This has led to a “whole systems” approach in youth justice being adopted that is distinctly Welsh, and this has children’s rights at its heart (Ministry of Justice and Welsh Government, 2019).

While devolved institutions in Wales have extensive responsibilities for agencies that have a significant role in youth justice, including health, education, social services, housing and drug policy, criminal justice and policing have not been devolved. After reviewing the criminal justice system in Wales, the Thomas Commission unanimously concluded that “the people of Wales are being let down by the justice system in its present state” (Thomas, 2019:8), recommending that criminal justice powers should be wholly devolved. Subsequently, when reviewing devolved powers between England and Wales, the Brown (2022) report recommends devolving youth justice and probation but not policing or criminal justice. With the current state of affairs, Jones and Wyn Jones (2022:167) map out how “the Welsh criminal justice system straddles a jagged edge of devolved and non-devolved responsibilities”, leading to features of criminal justice in Wales that they argue are “structurally and endemically dysfunctional” (2022:171). When piloting a Child First approach in Wales, it is important that this includes working with the Welsh Government and other Welsh agencies to ensure that the approach adopted is based on its own distinctive policies towards children in conflict with the law.

In relation to electronic custody-record data, in the next Nuffield study, we will continue to gather data from police forces so that this information can help to monitor PACE safeguards and evaluate changes made to PACE, including comparing differences in the treatment of and outcomes for child suspects in England and Wales. In addition to requesting additional data from the 12 participating forces, we will ask other forces to consider participating in this study by providing anonymised custody-record data. We appreciate that some forces are unable to provide this data and so, working with the Ministry of Justice and with the support from the NPCC, we will ask those forces not providing data to complete a survey so that we can identify areas where this information can and cannot be obtained.

The research team will also seek to engage with analysts in the Home Office, the Ministry of Justice and the Welsh Assembly so that fully anonymised electronic custody-record data can be shared, subject to permissions set out in data-sharing agreements entered into with individual police forces. With access to the raw data, government analysts will be able to identify the extent to which the data can help with monitoring PACE safeguards and also highlight where gaps in data could be addressed by requiring new variables to be collected electronically.

PART 4 – References and Appendices

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Appendix 1: The legal framework

Within PACE and its associated Codes of Practice, the custody officer plays a key role in authorising the detention of suspects, including people under 18 years old. They must also ensure that suspects are treated in accordance with the requirements of PACE, deciding when they should be released and whether they should be charged or reported for an offence. These decisions are of vital importance to child suspects, as they affect their liberty and how they will be dealt with after detention. A custody officer has to be at least of the rank sergeant, and they are assisted in their duties by Designated Detention Officers (DDOs), who help with the day-to-day business of running the custody suite.

When a child is first brought into police custody, the first decision a custody officer has to make is whether to authorise their detention. The College of Policing (2013) Guidance states, “Detention is always the last resort and custody officers should authorise detention only when it is necessary to detain rather than when it is convenient or expedient.” If authorised, which is almost automatic (Kemp, 2020a), the custody officer opens a custody record, on which must be recorded all significant steps that are taken in relation to child suspects while they are detained, including the grounds for detention. Authorising detention is a key gatekeeping decision, but while making this decision, the custody officer is not allowed to question the child about the offence or invite them to make any comments (Code C, para. 3.4), nor are they required to arrange for a child’s AA or lawyer to assist them at this stage. In relation to non-terrorism offences, once detained, an inspector has to conduct a review within six hours of detention and thereafter at nine-hour intervals up to a maximum of 24 hours, with the same timescales applying whether dealing with an adult or child suspect.³⁵ In all cases, people in custody must be dealt with expeditiously and released as soon as the need for detention no longer applies (Code C, para. 1.1).

Having authorised detention, a custody officer has to book the suspect into custody. In the case of people under 18 years old, this includes telling them that must have an AA and to explain their role, which is to safeguard their interests, rights, entitlements and welfare by ensuring that they are treated in a fair and just manner and are able to participate effectively.³⁶ A child is also told that they can contact their AA “at any time”, which includes a private telephone call (Code C, para. 3.15). While Code C prioritises that the child’s parent or guardian should take on the AA role, if they are not available or are not suitable to take on this role, a trained AA will be provided by a local scheme (Code C, para. 1.7). The custody officer also has to arrange for an AA to be present when dealing with certain procedures, such as when a child is informed of their legal rights, when conducting searches or taking samples or fingerprints, during the police interview and on their release from police custody (NAAN, 2020).

Furthermore, when dealing with a child, custody officers must contact the person who is responsible for their care, telling them of their arrest and where they are detained (Code C, para. 3.13). Custody officers also have to clearly inform suspects of their legal rights when they are first detained, which includes the right: to free legal advice and to consult privately with a lawyer; to have someone informed of their arrest; and to consult the Codes of Practice (Code C, para. 3.1). They should also be given a written notice that sets out these and other rights and entitlements. PACE provides a

³⁵ If the police wish to hold a suspect for longer than 24 hours, an extension has to be authorised by a superintendent and, beyond 36 hours, this has to be authorised by a magistrates’ court.

³⁶ See also the National Appropriate Adult Network’s website, which sets out the role and duties of AAs: <https://www.appropriateadult.org.uk/>.

fundamental right for suspects to consult privately with their lawyer at any time, which includes over the telephone (s.58(1)).

Code C also requires custody officers to provide appropriately qualified independent persons to act as interpreters and to provide translations of essential documents for suspects who are determined as requiring an interpreter (para. 13.1).³⁷

Before placing a child in a cell, the custody officer has to undertake a risk assessment, which is mainly focused on safeguarding issues that could arise while the child is detained. This assessment assists in identifying the level of observations required in a child's care plan, with physical checks being required at least every 30 minutes when dealing with people under 18 years old.

Suspects also have to be "processed" when brought into police custody, which includes the taking of fingerprints, photographs and DNA samples. While these tasks have to be undertaken in the presence of an AA when dealing with people under 18 years old, they can be delayed until later on in the process, either before or after the police interview.

When detained, suspects must hand over all of the property in their immediate possession to the custody officer for safekeeping until their release. PACE requires that they will be searched by an officer who is the same sex as them (s.54(9)), which involves "patting down" to feel if they have any items on them and using a metal-detecting wand. While most suspects agree to be searched, the police can use force to conduct the search if it is resisted. If the police think that a suspect might have hidden certain items on their person, such as a bladed weapon, sharp instrument or concealed drugs, the custody officer can authorise that a strip search or intimate search is undertaken. For people under 18 years old, these searches must be conducted in the presence of their AA (Code C, Annex A, paras. 5 and 11(c)). With the intrusive nature of an intimate search, which involves a physical examination of a person's body orifices other than the mouth, Code C cautions against underestimating the risks involved, and it requires these searches to be conducted "with proper regard to the dignity, sensitivity and vulnerability of the individual" (Annex A, para. 6).

The custody officer has to call a medical officer if the child suspect appears to be suffering from any physical or mental illness, if they fail to respond normally to conversations or if the custody officer has information about the child needing medication or other medical assistance. In all custody suites, nurses are embedded and available to see detainees 27/4. Liaison and diversion (L&D) workers are also embedded into some custody suites, and they are from multi-skilled teams that may contain, among others, qualified mental health nurses, social workers and learning disability nurses.³⁸ Code C requires that a "juvenile shall not be placed in a police cell unless no other secure accommodation is available" (para. 8.8); however, in practice, no such alternative accommodation is available, and all child suspects are placed in a cell, although there are some custody suites with wings for "juveniles" where they can be kept separate from adult detainees.

When investigating officers are ready to interview child suspects, custody officers are responsible for deciding whether to deliver the child into their custody. At that time, the custody officer has to review whether conducting the interview could significantly harm their physical or mental state, or

³⁷ There is also a right for foreign nationals to communicate with their High Commission, Embassy or Consulate.

³⁸ Following Lord Bradley's (2009) review of people with mental health issues or learning difficulties in the criminal justice system, L&D officers are now available in nearly all custody suites, funded by NHS England.

whether their physical or mental state might lead to their evidence being considered unreliable in subsequent court proceedings (Code C, Annex G).

A child's AA has to be present when they are interviewed by the police, and they must be informed of their role in the interview. Prior to the commencement of the interview, the interviewing officer has to remind suspects of their right to legal advice, and the interview can be delayed to allow the lawyer time to arrive at the police station. The interview must also be carried out under caution. This is a complicated form of words that police officers will often try to explain prior to asking any questions.

When conducting the interview, interviewing officers are not allowed to try to obtain responses to questions by using oppression or by indicating what action could be taken by the police if they answer or do not answer their questions. The interview in police custody is recorded in accordance with Code E.

After the interview, the investigating officers may decide that they need to make further enquiries before deciding how to proceed with the case. In these cases, child suspects can be released on bail to return at a later date, or they can be "released under investigation", with the police contacting them in the future when ready to proceed. In other cases, the custody officer – either alone or in consultation with investigating officers and sometimes the CPS – decides on the case outcome, which can be to take "no further action", to impose an out-of-court disposal or to charge or summon a child to court.

When releasing child suspects, an AA should be present when they are notified of the case outcome, and the custody officer has to undertake a pre-release risk assessment. This assessment reflects all risks identified during the person's stay in custody, and they are offered and provided with advice, information and referral to other agencies if necessary to support their safety and well-being on release. If a child is refused bail after charge, s.38(6) of PACE stipulates that they should be transferred to local authority accommodation, but such accommodation is seldom available.

Appendix 2: Statistical models

Theoretical assumptions

We designed the statistical models according to the assumptions outlined in Figure A2.1. We assume that individual characteristics, past history and the immediate circumstances of the arrest are associated with whether the detainee requested legal advice (the thin arrows represent these relationships).

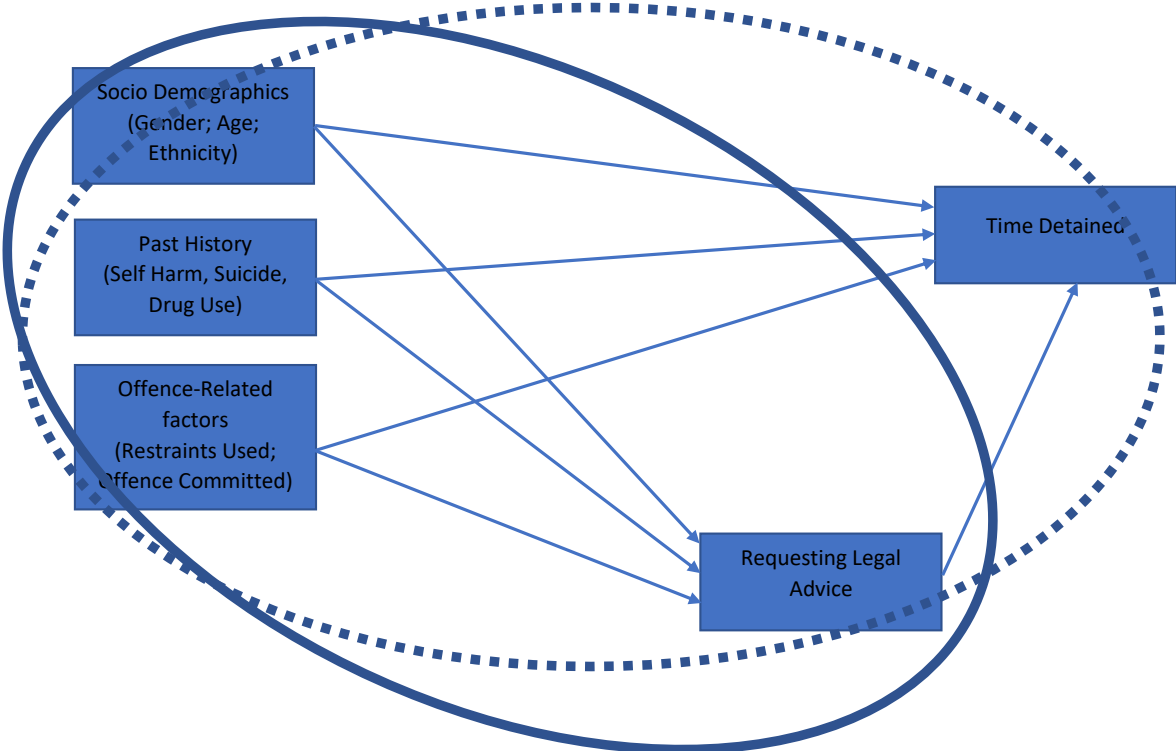


Figure A2.1: Schematic of statistical model structure.

Factors affecting requests for legal advice

A generalised linear model (logistic regression) was used to model factors associated with an individual requesting legal advice (a binary outcome variable). Variables were entered in three blocks: socio-demographics (gender, age and ethnicity); whether they were assessed as having vulnerability factors (being at risk of self-harm, suicide or having used drugs); the type of offences for which they had been arrested and the extent to which force was used prior to their detention.

Table A2.1: Factors associated with children in custody requesting legal advice.

		Estimate	Standard error	<i>p</i> value	Odds ratio
Gender		.208	.184	.259	1.231
Age		.015	.052	.767	1.015
Ethnicity (White is the reference category)	Black	.744	.295	.012*	2.104
	Asian	.446	.391	.254	1.562
Vulnerability flags	Self-harm	.192	.210	.359	1.212
	Suicide	-.462	.288	.104	.626
	Drugs	.043	.220	.846	1.044
Force used before custody (no force used is the reference category)	Handcuffs front	1.078	.167	<.001***	2.940
	Handcuffs back	1.038	.186	<.001***	2.825
	More serious force	.619	.774	.424	1.856
Offence type (other offences – including Public Order Act offences – is the reference category)	Acquisitive	.154	.210	.463	1.166
	Criminal damage	.414	.353	.241	1.513
	Drugs	1.007	.414	.015*	2.738
	Motoring	-.438	.414	.290	.645
	Violence	.322	.218	.139	1.380
	Sexual	1.273	.443	.004**	3.572

Note: *, ** and *** indicate that *p* is significant at the .05, .01 and .001 levels, respectively.

Table A2.2: Factors associated with amount of time children spent in custody (in minutes).

		Estimate	Standard error	p value
Gender		54.165	29.813	.069
Age		42.745	8.040	<.001***
Ethnicity (White is the reference category)	Black	38.535	34.783	.268
	Asian	70.669	50.828	.165
Vulnerability flags	Self-harm	24.230	30.617	.429
	Suicide	62.307	46.513	.181
	Drugs	17.426	31.464	.580
Force used before custody (no force used is the reference category)	Handcuffs front	84.117	25.493	.001**
	Handcuffs back	150.975	28.493	<.001***
	More serious force	113.368	113.814	.319
Offence type (other offences – including Public Order Act offences – is the reference category)	Acquisitive	46.335	33.628	.168
	Criminal damage	-116.658	52.694	.027*
	Drugs	-51.245	48.789	.294
	Motoring	-142.055	71.757	.048*
	Violence	-36.537	34.596	.291
	Sexual	34.783	59.160	.557
Requested a solicitor (binary)		140.770	30.140	<.001***

Note: *, ** and *** indicate that *p* is significant at the .05, .01 and .001 levels, respectively.

Table A2.3: Factors associated with children in custody being strip searched.

		Estimate	Standard error	<i>p</i> value	Odds ratio
Gender		-.241	.454	.595	.786
Age		.221	.133	.097	1.248
Ethnicity (White is the reference category)	Black	.968	.338	.004**	2.632
	Asian	-.091	.589	.877	.913
Vulnerability flags	Self-harm	-.127	.450	.777	.881
	Suicide	.622	.539	.249	1.862
	Drugs	.273	.367	.457	1.314
Force used before custody (no force used is the reference category)	Handcuffs front	.835	.435	.055	2.306
	Handcuffs back	1.265	.447	.005**	3.543
	More serious force	-16.336	9961.435	.999	.000
Offence type (other offences – including Public Order Act offences – is the reference category)	Acquisitive	.400	.526	.447	1.491
	Criminal damage	-.522	1.115	.640	.593
	Drugs	2.683	.522	<.001***	14.632
	Motoring	-.119	1.120	.915	.887
	Violence	-1.1146	.741	.122	.318
	Sexual	.920	.887	.300	2.510

Note: *, ** and *** indicate that *p* is significant at the .05, .01 and .001 levels, respectively.

Appendix 3: Observing recorded police interviews in Areas A and C.

Having observed the recordings in eight case studies in Area A and 11 in Area C, a summary of some of the key issues arising in each is provided here.

CS1 & CS2: Interviews in Area A

CS1 – 15-year-old arrested for ABH (domestic); no previous contact with the police. Interviewed for 23 minutes – admissions. Several issues arising from this interview are referred to above when examining recorded police interviews. There were no interventions in this case from either the agency AA or the lawyer, who was listening in to the interview over the telephone. Outcome – out-of-court disposal.

CS2 – 16-year-old arrested for s.18 GBH; had been arrested previously on a number of occasions but not charged. Interviewed for 15 minutes – no comment. In the research interview, when asked if the police were content with his replies, *CS2* said, “They wanted more but they didn’t get it.” (*CS2*). He was asked in the police interview about having a small amount of cannabis on him when searched by the police. No interventions from the AA or lawyer during the interview. Outcome – no further action for GBH and charged for possessing a Class B drug.

CS3–CS9: Interviews in Area B

We were unable to access the recorded interviews for case studies 3 to 9.

CS10–CS15: Interviews in Area A

CS10 – 17-year-old child participant was arrested for criminal damage during an argument at home with his mother. Interviewed for 9 minutes – admissions. He did not have a lawyer, and when asked how he caused the damage, he said, “I had come back and mended a light I’d broken but I got into an argument with mum. I got cheeky and said to her, ‘Go on then hit me’, and she slapped me around the face and so I picked up a rake and threw it through the window.” (*CS10*). When asked what the police were like when asking him questions, he replied, “They were fair and polite. They told me basically everything.” (*CS10*). The agency AA did not intervene. The police did tell *CS10* that his mother would not make a formal complaint but, without having legal advice, he did not know that if he had exercised his right to silence, he could have avoided a criminal sanction as the police had no evidence in this case. Outcome – out-of-court disposal.

CS11 – 16-year-old arrested for an affray (domestic), with no previous contact with the police. Interviewed for 7 minutes – no comment. When asked how the police responded to his “no comment” replies, *CS11* remarked, “They were polite. They were fine when I said, ‘no comment’ and they didn’t get angry.” (*CS11*). Neither the AA nor the lawyer intervened during the police interview. Outcome – no further action.

CS12 – 17-year-old female arrested for TWOC and driving with excess alcohol; she had been arrested once before. Interviewed for 8 minutes – prepared statement and no comment. The prepared statement included information that could be raised as a defence if the case was taken to court. This included the following statement from *CS12*: “I had no knowledge the car was stolen. I saw no damage to the car. Any cash I had on me was mine. I have no knowledge of a suitcase. The big bag is mine.” (*CS12:RI*). After the statement was read, *CS12* answered “no comment” in response to police questions. There were no interventions during the interview by the AA or the lawyer. Outcome – no further action.

CS13 – 16-year-old arrested for aggravated TWOC and assault (domestic); he had been arrested on a number of previous occasions. Interviewed for 15 minutes – an admission to one offence and a denial of the second offence. CS13 was experiencing a number of neurodivergent issues (discussed above) and, when interviewed by the police, he responded fully to their questions. A number of issues arising from this interview are referred to in the examination of recorded police interviews in section 10.1 above. Outcome – no further action for both offences.

CS14 – 16-year-old arrested for the first time for criminal damage after breaking a door at a nightclub. Interviewed for 8 minutes – admission. While CS14 answered questions in the interview, he said he could not remember much of what had happened because he was drunk. When the police wanted to show a video of him breaking the door he interjected saying, “No don’t. I feel so embarrassed.” His AA did not intervene, and the only intervention from his lawyer was when the police asked CS14 if he wanted to say anything further about the incident. Without him answering, his lawyer intervened saying, “Only to say he’s sorry and won’t do it again. He’ll keep off the booze in the future.” When asked if the police had put him under any pressure to answer their questions in the interview, CS14 replied, “No, they asked me questions in a way that I was happy with.” The AA did not intervene. Outcome – out-of-court disposal.

CS15 – 17-year-old arrested for witness intimidation and assault (domestic); had been arrested a few times before. Interviewed for 45 minutes – denials. Both CS15 and his stepfather, acting as his AA, said that the police put them under pressure to answer their questions. CS15 said, “They kept asking me the same questions, I think it was because they didn’t like my answers.”; his AA complained, “They were trying to flip his answers. I felt they were trying to put the blame on him, and I didn’t like that. I had to say something a couple of times because I didn’t think the officer’s questions were fair.” (CS15:AA). At 45 minutes, this was a long interview, particularly without a break, and while the officers went into a lot of detail about the two allegations, they were not seen to put CS15 under pressure to respond to their questions. The lawyer intervened on a number of occasions, either to help clarify a response given by CS15 or when picking the police up on comments they made. On one occasion, for instance, after CS15 told the police that the complainant got her injuries from an accident on a bike, the officer repeated this saying, “So the injuries could potentially be because of the bike?”, and the lawyer replied, “No, he’s saying the injuries are because of the bike, not potentially because of the bike.” (CS15:RI). The AA intervened on a number of occasions, which is referred to in the examination of recorded police interviews in section 10.1 above and, on one occasion, the lawyer told him not to interrupt the interview. Outcome – no further action.

CS16–CS26: Interviews in Area C

CS16 – 16-year-old arrested for the first time for burglary (non-dwelling) and theft. Interviewed for 15 minutes – denials. He declined legal advice, and his father acted as his AA. CS16 gave an explanation as to why he had entered a public house in the early hours of the morning. While he was with two friends, he denied taking any bottles of alcohol from the bar. No intervention from his AA during the interview. Outcome – no further action.

CS17 – 14-year-old arrested for the first time for s.18 GBH and possession of an offensive weapon. Interviewed for 34 minutes – no comment. When explaining that CS17 had been arrested for a serious assault, the officer went on to explain where GBH sits within a list of assaults, from murder down to common assault, giving an illustration of the different types of assault that could take place under each offence type. With this level of detail, it was almost 10 minutes before the officer began to ask questions about the offence and, when he did so, CS17 replied, “I’m not guilty. I didn’t do

nothing to the guy. I'm not guilty." There was then a break as the lawyer asked for a private consultation with his client and, when the interview re-started, CS17 mainly gave "no comment" replies. On occasions, CS17 did comment, denying that he had the knife and mentioning a potential alibi. The officer did tell CS17 that he was there to assist the police, but the lawyer challenged the officer on this, with the details being discussed when examining the recorded interviews above. The lawyer intervened on a number of occasions, mainly to remind CS17 about his advice. The AA made no intervention. Outcome – no further action.

CS18 – 17-year-old arrested for the first time for possession with intent to supply a Class B drug. Interviewed for 37 minutes – no comment. The officer asked lots of questions that dealt with where the drugs were found in CS18's home and what had happened when he was arrested. While giving mainly "no comment" replies, CS18 did reply on occasion, telling the police which room was his bedroom, agreeing that the mobile phone was his and giving the police its PIN, and he said in the research interview that he did this because replying "no comment" all the time would make him look guilty. When the officer mentioned that this was his opportunity to tell the police if he was innocent, there was a break as CS18 asked to speak to his lawyer. He continued replying "no comment" when the interview reconvened. The lawyer intervened on a number of occasions, mainly to remind CS18 about his advice. The AA made no intervention. Outcome – charged.

CS19 – 13-year-old arrested for an offence of robbery (involving a knife); he had been arrested once before. Interviewed for 12 minutes – denials. Details of this interview are referred to in the examination of recorded police interviews above. There was one intervention from the lawyer when the officer asked CS19 who he was with, and when CS19 queried whether he could name his friend, the officer said "Yes", and the lawyer told him he was not obliged to say. The AA made no intervention. Outcome – no further action.

CS20 – 15-year-old (co-accused of CS19) arrested for an offence of robbery, having been arrested a few times before. Having been held overnight, and with the police delaying the interview until lunchtime, his father, acting as his AA, did not attend at the station. At 15:44, with the police saying that no action was to be taken because CS20 did not fit the description given by the complainant, it was agreed that the solicitor would read out a prepared statement in which CS20 denied the offence. Outcome – no further action.

CS21 – 17-year-old arrested for two offences of robbery (involving a knife) and an attempted robbery, having been arrested twice before. Interviewed for 35 minutes – no comment. With CS21 giving "no comment" replies, there was no intervention from his lawyer or his AA. Outcome – charged.

CS22 – 16-year-old (co-accused of CS21) arrested for two offences of robbery and an attempted robbery; he had been arrested on many other occasions. Interviewed for 12 minutes – no comment. While mainly giving "no comment" replies, he did respond to some questions. The lawyer intervened on a couple of occasions to remind CS22 of her legal advice, and she also intervened when CS22 said he would not be part of the identification process saying that she would talk to him about that later on. The AA made no intervention. Outcome – charged.

CS23 – 15-year-old arrested for burglary (dwelling) and possession with intent to supply Class B drugs, having been arrested on many other occasions. Interviewed for 12 minutes – no comment. The AA intervened at one point to check that CS23 understood the section 49 notice referred to by the officer, with this notice compelling suspects to give the PIN of their mobile phone to the police,

with it being an offence not to do so. There was no intervention from the lawyer. Outcome – remains outstanding.

CS24 – 16-year-old arrested for s.18 GBH and affray, not having previously been in trouble with the police. Interviewed for 27 minutes – denials. With three groups of young people being involved, CS24 accepted being part of one group, and he helpfully provided the police with details of the other young people he knew to be involved. He reported having been hit with a baseball bat, but did not accept injuring anyone else, with the complainant having been stabbed. His sister, acting as the AA, intervened on a couple of occasions to help clarify CS24's responses to the police, which was not always helpful (discussed above). The lawyer intervened on one occasion to ask to speak to her client in private. Outcome – no further action.

CS25 – 17-year-old arrested for an offence of robbery (with a knife) and driving with excess alcohol, having been arrested a few times before. Interviewed for 1 hour and 15 minutes – no comment. The officer asked CS25 lots of questions about the robbery, which involved taking a milk float from a milkman at knifepoint and then crashing the vehicle into a wall, causing CS25 injuries, and he was then taken to hospital. At the hospital, CS25 was interviewed about assaulting two emergency workers. He replied “no comment” to all questions, apart from saying that the emergency workers were using undue force when trying to keep him on his hospital bed. There were no interventions from the AA or lawyer. Outcome – no further action.

CS26 – 14-year-old arrested for an offence of arson, having been arrested once before. Interviewed for 32 minutes – admissions. A number of issues arising from this interview are referred to in the examination of recorded police interviews above. The interviewing officer later accepted in the research interview that the police should not be the lead agency in this case, and that it would have been preferable for a psychologist to have spoken to CS26; however, without this intervention, she was charged and received a referral order at court. Outcome – charged.

CS27–CS32: Interviews in Area B

We were unable to access the recorded interviews for case studies 27 to 32.

