

INTERVIEWING VULNERABLE SUSPECTS ARRESTED FOR HOMICIDE
OFFENCES: THE WORKING PRACTICES OF DETECTIVES AND THIRD
PARTIES

Jennifer Louise Holmes

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“Before you go out searching, don’t decide what you may find.”

Frank Turner, Be More Kind.

(ii) Abstract

The aim of this research is to critically explore the working practices of detectives and third parties involved in the detention and interviewing of vulnerable suspects, who have been arrested on suspicion of committing homicide (and attempted murder) offences in England and Wales.

Vulnerable suspects (juveniles under 18 years of age and adults with a mental health condition or mental disorder (Code C PACE)) are over-represented within the criminal justice system (Loucks, 2007; Bradley, 2009) and are at a higher risk of making false confessions or being unable to act in their best interests during a suspect interview (Gudjonsson, 2003). Those who are arrested on suspicion of committing homicide offences can be detained in custody for up to 96 hours and may experience lengthy and complex interviews, potentially exacerbating their vulnerability. Therefore, it is important to explore how these interviews take place and whether the safeguards that vulnerable suspects are entitled to enable fair treatment.

This research explores what takes place prior to and during the suspect interview and the working practices of detectives and third parties (e.g., the appropriate adult (AA) and legal advisor). To achieve this aim, a case study design was employed. Fieldwork was undertaken between July 2018 and January 2020. 125 police suspect interviews and 29 custody records were analysed for 27 vulnerable suspects on 26 investigations, across three police forces. This was supplemented with 37 semi-structured interviews with police officers, AAs and legal advisors.

This research identified that detectives and third parties do not always adhere to the rules and guidance which govern the detention and interviewing of vulnerable suspects. Theoretical explanations include police culture and pro-social rule-breaking and these highlight the tensions between the crime control objectives of the police, which prioritise obtaining an evidential account from a suspect, and the due process or welfare objectives of third parties. The research concludes that vulnerable suspects are not always treated fairly, and the implications of these findings for policy and practice are explored.

This thesis proposes that the rules which govern the practices of detectives and third parties need to be defined clearly, and that when breaches occur those responsible are held accountable. Proposals also include specialist training (similar to a 'Tier' system) for AAs to prepare them for participation in major crime interviews.

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(vi) List of Acronyms

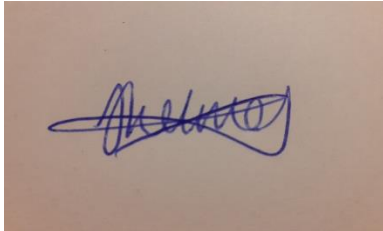
AA	Appropriate Adult
ABE	Achieving Best Evidence
ACPO	Association for Chief Police Officers
APP	Authorised Professional Practice
BSC	British Society of Criminology
CJS	Criminal Justice System
CJPOA	Criminal Justice and Public Order Act 1994
CPS	Crown Prosecution Service
EBP	Evidence-Based Policing
ECHR	European Convention on Human Rights
EDT	Emergency Duty Team
GDPR	General Data Protection Regulations
ISA	Information Sharing Agreement
HCP	Healthcare Professional
MCIM	Major Crime Investigation Manual
MCIT	Major Crime Investigation Team
MIM	Murder Investigation Manual
NAAN	National Appropriate Adults Network
NPCC	National Police Chief's Council
NRPSI	National Register of Public Service Interpreters
PACE	Police and Criminal Evidence Act 1984
PCC	Police and Crime Commissioner

PIP	Professionalising Investigations Programme
PNC	Police National Computer
PSA	Police Station Accreditation
PSRB	Pro-Social Rule Breaking
RCCP	Royal Commission on Criminal Procedure 1981
SIO	Senior Investigating Officer
USA	United States of America
YJCEA	Youth Justice and Criminal Evidence Act 1999
YOT	Youth Offending Team

(vii) Copyright Declaration

I can confirm that the following research conducted and the thesis presented as a part of my submission for a Doctor of Philosophy degree is that of my own work.

Signed: Miss Jennifer Louise Holmes

A photograph of a handwritten signature in blue ink on a light brown, textured background. The signature is cursive and appears to read 'Jennifer Louise Holmes'.

Dated: 04 November 2022.

Chapter One: Introduction

This thesis explores the working practices of detectives and third parties who participate in the detention and interviewing of vulnerable suspects who have been arrested upon suspicion of committing homicide (or attempted murder) offences within England and Wales. The aim of this research is to contribute to the existing knowledge about how the police interview vulnerable suspects, and the role of third parties during this process. Several terms used here will require defining (vulnerability, third parties and homicide offences), but, first, it is important to consider the area within which this exploratory research predominantly sits, the investigative interviewing of suspects.

The police suspect interview is an important stage of any investigation and may influence subsequent enquiries undertaken, and whether a suspect is charged and ultimately convicted (Shawyer et al., 2009). Historically, there have been a number of high-profile miscarriages of justice (e.g., Maxwell Confait and the Cardiff Three), which have resulted from poor interviewing practices, often involving vulnerable suspects (Poyser et al., 2018). This was, in part, due to the symbolic importance placed upon obtaining a confession (Gudjonsson, 2003)¹. The PEACE framework introduced in the early 1990s prioritised a fair and ethical approach to interviewing in England and Wales, where the aim of an interview is to obtain a reliable and accurate account from a suspect (Shawyer et al., 2009). The suspect interview (and detention at the police station more generally) takes place within the context of a power imbalance between the police and the suspect (Thornborrow, 2002; Haworth, 2006). The police may determine when the interview takes place, the layout of the room, the questions asked, and when the interview is terminated². Therefore, any suspect may be disadvantaged during this process, especially if they are vulnerable.

In recent years, awareness of vulnerability has steadily increased as the term has permeated the discourses of politics, academia and the mass media, becoming widely used amongst the general public (Misztal, 2011). Vulnerability is a concept which is used in a variety of different contexts, ranging from climate change and natural hazards (Wolf, 2012) to safety (Zio, 2016), and it has frequently been associated with risk (Brooks, 2003; Wolf, 2012). In the context of the criminal justice

¹ The police also had few resources available in the field of science and technology which could aid the investigation of criminal offences (Pike, 2018).

² There are some constraints placed on the police, such as the custody clock, rules on interrupted rest periods for detainees in custody, and the duration of the interview (PACE and Code C).

system (CJS), the term has predominantly been associated with those at risk of harm or victimisation (Chakraborti and Garland, 2012; College of Policing, 2021a) and, therefore, many victims are recognised as vulnerable (Youth Justice and Criminal Evidence Act 1999; Walklate, 2017).

Additionally, vulnerable suspects and defendants are also overrepresented within the CJS (Gudjonsson et al., 1993; Bradley, 2009). While it has been argued that anyone detained in police custody may be vulnerable (Choongh, 1997; Dehaghani, 2019; Association for the Prevention of Torture (APT), 2021, Principle 3), the current guidance contained within Code C of the Police and Criminal Evidence Act 1984 (PACE), states that all suspects under 18 years of age are vulnerable. Additionally, suspects with a mental health condition/mental disorder (including learning disabilities) may be vulnerable and the current provisions within Code C outline a functional test which focuses on a suspect's understanding and ability to communicate (Dehaghani, 2019).

All those arrested, detained and/or interviewed by the police are entitled to a range of safeguards, many of which are provided for in PACE and Code C. The aim of these safeguards is to protect the suspect (Quinn and Jackson, 2007) and ensure that they are dealt with fairly by the police (Medford et al., 2003). However, while some safeguards, such as the right to legal advice (section 58 PACE), are provided to all suspects, some are intended specifically for those who are vulnerable. One example of this is the appropriate adult (AA), an independent person who should ensure that the rights and entitlements of vulnerable suspects are adhered to and that they are treated fairly (National Appropriate Adult Network (NAAN), no date (b)). The AA should also help vulnerable suspects to understand what is taking place while they are in custody and to assist the suspect with communication (para 1.7A Code C). Where suspect safeguards involve the presence of another person in custody, independent of the police (e.g., the legal advisor or AA), these individuals are known as third parties.

Little is known about what takes place during the interviewing of vulnerable suspects and the working practices of detectives and third parties within England and Wales³. However, Farrugia and Gabbert (2020) found that some inappropriate tactics and

³ It should be noted that there is international research which explores how those who are vulnerable are interviewed by the police. This includes the work of Watkins (2016) on vulnerable adults in Canada, the work of Geijsen et al. (2018b; 2018c) on vulnerable suspects in the Netherlands, and the work of Gulati et al. (2021) on vulnerable adults with a learning disability in Ireland.

questioning were used during interviews with vulnerable suspects. Vulnerable suspects may be at risk of false confessions whilst being interviewed (Gudjonsson, 2003; Kassin, 2008), and other risks may arise during suspect interviews. For instance, a suspect may not understand the process, their rights and police questioning, and therefore cannot effectively participate in the process (Herrington and Roberts, 2012; O'Mahony, 2012). Consequently, it has been suggested that some police tactics (e.g., situational futility⁴ and emphasising the seriousness of the offence) may be problematic for vulnerable suspects (Leahy-Harland and Bull, 2016, p.149) and therefore, it is important that interviews are undertaken fairly by detectives.

That said, it has been identified that many vulnerable suspects are not treated fairly or afforded safeguards to which they are entitled (Her Majesty's Inspectorate of Constabulary, 2015; NAAN, 2015; Dehaghani, 2019). Where safeguards are not implemented, vulnerable suspects may be placed at a disadvantage during their detention and interview. Even when safeguards are adhered to, it is important to consider how they operate to ensure they enable the fair treatment of suspects. Research has identified that legal advisors and/or AAs are often passive during the suspect interview (Pierpoint, 2001; Medford et al., 2003; Farrugia and Gabbert, 2019; Leahy-Harland and Bull, 2021), which raises questions about their effectiveness in protecting suspects' rights. Medford et al. (2003) found that where third parties were present during the interview, less interrogative pressure by police interviewers was observed, suggesting there is some benefit to vulnerable suspects from the presence of third parties during the interview.

Additionally, Leahy-Harland and Bull (2021) identified that where legal advisors contributed more frequently during serious crime interviews, this was associated with an increased use of police interview tactics (e.g., the presentation of evidence, the use of silence and the use of repeated questions). While some interventions by legal advisors were identified as beneficial to the police, interventions were also made regarding procedural matters, disclosure and, less commonly, question types and the interpretation of evidence. This suggested that the interventions of legal advisors were mostly appropriate (Leahy-Harland and Bull (2021).

Central to this thesis is the concept of fairness, as this is a term which is frequently referenced in relation to investigative interviewing and suspect safeguards. While

⁴ Situational futility is a term used to describe the pointlessness and danger of not telling detectives the truth, which may make the suspects' situation worse (Alison et al., 2008, p.1073).

there are multiple definitions of fairness, Rawls (1985) equated fairness with justice and identified two key components: liberty and equality of opportunity. Rawls (1999, p.266) noted that liberty included the freedom of speech, freedom of the person and freedom from arbitrary arrest, and that each person has an equal right to these. He suggested that equality of opportunity should enable opportunities in society to be open to all citizens, regardless of their background (Rawls, 1999). Rawls (1985) also developed the 'difference principle', where he believed the aim of these components was to ensure that inequality was minimised and the most disadvantaged in society were not further harmed. However, it is important to acknowledge that while Rawls equates fairness with justice, there are different types of justice (e.g., procedural justice and distributive justice), and these will be explored in the next chapter.

The police and wider CJS occupy a position of power over suspects and defendants (Haworth, 2006; Skynns, 2011; Dehaghani, 2019), which may place any person at a disadvantage, but especially someone who is vulnerable. Therefore, one may argue that it is important that those suspected of committing criminal offences are treated fairly, in part, to prevent abuses of power from the state (Ashworth and Redmayne, 2005). This principle is somewhat incorporated within the CJS, as a number of due process safeguards are provided to protect suspects, some of which are specially for those who are vulnerable. Many of these derive from Article 6 of the European Convention on Human Rights, and, specifically, the right to a fair trial, which commences from the point of arrest (Murray v UK (1996)).

When vulnerable suspects are detained and interviewed by the police, one may argue that in order to be treated fairly, suspects should have 'equality of arms'. This is a principle whereby suspects and defendants should not be placed at a disadvantage during a criminal investigation and trial (Toney, 2001; Cape et al., 2010), which may occur due to a lack of resources and the power imbalance which many suspects and defendants experience throughout the CJS (Toney, 2001). Therefore, suspect safeguards arguably should place the suspect on a more equal footing with the police during the investigative process and ensure that vulnerable suspects are not further harmed. If one examines the working practices of both detectives and third parties during the suspect interview, and aspects of detention which may impact this, one may be able to explore how these interviews are undertaken and whether vulnerable suspects are treated fairly.

1.1 The Focus on Homicide Investigation

Homicide offences may be considered one of the most serious crimes for which one can be arrested, having resulted from the unlawful killing of another (Brookman, 2022). Homicide encompasses both murder and manslaughter (Crown Prosecution Service (CPS), 2021). A distinction is often made between voluntary and involuntary manslaughter, the latter of which does not require an intent to kill, but results from an unlawful act or negligence (CPS, 2021). For the purposes of this research, investigations concerning murder and manslaughter were eligible for inclusion. However, a small number of cases involving attempted murder were also included. The rationale for their inclusion was that these were also investigated by major crime investigation teams (MCITs) who predominantly investigate homicide.

A homicide investigation may commence upon a determination of death⁵ and the interpretation that the death is suspicious (Brookman et al., 2020). Innes (2002) notes that these investigations are socially constructed and that the material coming into an investigation is subject to interpretation. This may impact how the police investigate, the enquiries undertaken and the path an investigation may take. If the police believe a particular individual to be responsible, he or she will become a suspect and the police will seek to arrest that individual (when there is evidence to justify an arrest) and interview them⁶. In England and Wales, the purpose of the suspect interview is to obtain an accurate and reliable account (Shawyer et al., 2009) concerning the suspect's potential involvement in the death of the victim.

Homicide, and attempted murder investigations may be subject to high levels of internal and external scrutiny⁷ and therefore it is important that they are undertaken diligently and in accordance with legal and procedural requirements. Jewkes (2015) notes that the media in England and Wales disproportionately report on homicide offences when compared to their prevalence, although some homicides attract more media attention than others. Factors which may influence 'newsworthiness' include the characteristics of the victim (especially if perceived to be vulnerable or blameless)

⁵ In the majority of cases there is a dead body, however, in some circumstances, people go missing and after certain enquiries are undertaken, the police may make a determination of death.

⁶ They may have also already been interviewed as a witness earlier in the enquiry.

⁷ For example, scrutiny can be undertaken by the media, by courts during a trial, by review bodies for domestic homicide reviews or serious case reviews, or by complaints bodies such as the Independent Office for Police Complaints.

and/or the offender, and the relationship between the two⁸ (Jewkes, 2015; Wong and Lee, 2021).

Media coverage of homicide offences (or potential homicides) may generate immediate and widespread interest in these investigations, especially where cases are high profile. The disappearance and subsequent murder of Sarah Everard (BBC, 2021) was subject to relentless media scrutiny, especially in the first week, resulting in members of the public hypothesising about the victims' disappearance. This case highlights how media coverage can promote interest in homicide offences. Additionally, media coverage can impact public concern, and the successful investigation of these offences may be seen as an indication of police competence and efficiency (Innes, 2003). This may increase trust and confidence in the police and improves police legitimacy. It also may reduce the public's fear of crime, especially among those living within affected communities.

However, if these investigations do not generate a 'result', and a suspect is not arrested, charged and convicted, then the police may receive criticism (Corsianos, 2003). While this may place pressure on the police to make an arrest and solve the case, it is important that the person(s) charged and convicted were responsible for committing the offence(s) and are dealt with fairly. Ask and Fahsing (2019) note that time and resource pressures may jeopardise objective investigations, as the risk of bias (conscious or unconscious) influencing investigators' decision making is higher. The deprivation of liberty which accompanies a conviction for murder, attempted murder or manslaughter may last decades (CPS, 2021). It is therefore imperative that these investigations are conducted thoroughly and objectively.

1.2 The Justification for the Research

This research is important as it is one of the first studies to explore both the interviewing of vulnerable suspects for serious offences and the interactions involving detectives and third parties during suspect interviews (one notable exception is Farrugia and Gabbert (2019; 2020)). The rationale for focusing on homicide offences is that these are often undertaken to the 'gold standard', where symbolic importance is attached to these offences, and, in England and Wales, the integrity of an investigation is valued almost as much as the 'result' (Brookman and Innes, 2013). If this is indeed the case, one would expect that suspects would be afforded their rights, and all relevant law, policy and guidance adhered to. Furthermore, because of the

⁸ For example, domestic homicides generate less media attention than non-domestic homicides (Wong and Lee, 2021).

potentially serious consequences of an arrest and/or a conviction, and the deprivation of liberty that may ensue, it is important that homicide investigations facilitate justice, and that miscarriages of justice are avoided.

This thesis also provides a methodological contribution to the existing knowledge base as it utilises qualitative methods, which are underused within the police interviewing literature, but provide an insight as to how working practices are undertaken and why. Additionally, visually recorded police suspect interviews have been analysed. There are relatively few studies which have reviewed visually what takes place during the suspect interview (Leo, 1996; Dixon, 2006; King and Snook, 2009; Cleary, 2014; Clugston et al., 2019; Kelly et al., 2021), and even fewer which have taken place within England and Wales (Baldwin, 1993; Mann et al., 2008). Therefore, these findings enable a greater understanding of the working practices of detectives and third parties relating to the detention and interviewing of vulnerable suspects.

Furthermore, this research is timely considering the current political discourse surrounding policing. Police forces have been subject to funding cuts over the last decade in the name of 'austerity' (Millie, 2014; The Guardian, 2020), and, despite a recent recruitment drive within policing, police numbers are still below levels seen in 2010 (Draca and Langella, 2020). It is not known whether fewer police resources may have impacted the way in which investigations are undertaken, but one may anticipate the impact of the Covid pandemic on people's mental and physical health (Chen et al., 2020; Boden et al., 2021), in combination with the increased cost of living, may result in the police encountering an increasing number of vulnerable suspects. In addition, there have also been cuts to the CPS, whose budgets were reduced by £185 million between 2009 and 2015 (Porter, 2019). It was also highlighted that during this time 100,000 fewer cases were brought before the courts (Porter, 2019), although it is possible that a range of factors contributed to fewer cases being prosecuted. Soubise (2017) also identified that lesser qualified and experienced personnel were acting as advocates in the Magistrates Court. That said, the serious nature of the offences being investigated in this thesis (which will be heard in Crown Court) may lessen the impact of staffing concerns.

The findings from this research will aid our understanding in the area of homicide investigation, vulnerability and investigative interviewing. Importantly, this research could have practical benefits for police practices concerning the implementation of safeguards for vulnerable suspects, to ensure that those who may be vulnerable are

treated as such, in accordance with Code C of PACE. Additionally, this research may influence police interviewing practices (e.g., pre-interview planning and any adjustments made to interview vulnerable suspects). Interviewing practices could also be reviewed in light of this research which identifies the use of tactics with vulnerable suspects that may be used to circumvent a 'no comment' interview. There may also be implications for third parties and how they undertake their role at the police station.

1.3 Research Aim and Questions

The overarching aim of the thesis is to critically explore the working practices of detectives and third parties involved in the interviewing of vulnerable suspects, who have been arrested on suspicion of committing homicide (or attempted murder) offences. To achieve this aim, the following research questions will be addressed:

- What is the current legal framework, policy and guidance for the detention and interviewing of vulnerable suspects arrested on suspicion of committing homicide (or attempted murder) offences?
- How do detectives prepare for and conduct vulnerable suspect interviews, and why?
- How do third parties undertake their roles during the detention and interviewing of vulnerable suspects, and why?
- Do working practices reflect legislation, policy and guidance?
- Do the current safeguards for vulnerable suspects ensure fair treatment?

1.4 Structure of the Thesis

This thesis comprises of ten chapters and is set out as follows. Chapter Two, the first of three literature chapters, explores the concepts of fairness, 'equality of arms' and theories which have been used to explain criminal justice processes. Theories which explain how the police undertake their roles and how they treat suspects are then examined, focusing on police culture and the adherence of the police to rules and guidance. This includes the development of working rules and notes the wide discretion the police often have when undertaking their roles. Organisational cultures which relate to third parties are briefly considered before the chapter explores pro social motivations for rule breaking.

Chapter Three explores the concept of vulnerability and the definition of the vulnerable suspect. Attention will then turn to the prevalence of vulnerability among those detained in custody, how this is identified and then acted upon. The chapter

also identifies the safeguards available to vulnerable suspects during their time in custody, predominantly set out in PACE and the Codes of Practice, before focusing on the role of third parties such as the AA and the legal advisor. Chapter Four then explores the investigative interview, with a focus on serious offences and the interviewing of those who are vulnerable. First, a brief overview is provided of the PEACE framework, how this was developed and the relevant research in this area. The training detectives receive will be explored before assessing the research into how vulnerable suspects are interviewed, how third parties participate in suspect interviews and the interventions they make.

The methodology chapter that follows (Chapter Five) sets out the rationale for the case study research design and the methods used, and details the lengthy process of planning and gaining access to three police forces willing to participate in the research. The multiple methods employed which generated predominantly qualitative data are explored in detail, before ethical considerations which took place prior to and during the research are reflected upon.

Chapter Six is the first of three findings chapters and explores the involvement of detectives in deciding whether an AA is required, and how the AA is obtained. Detectives are asked about their perceptions of vulnerability, which may influence their decision making, if and when they are involved in the identification of vulnerability. Chapter Seven examines the working practices of detectives and third parties prior to the suspect interview. This includes the meetings which take place between third parties and vulnerable suspect, and the disclosure briefing legal advisors have with detectives. The adjustments that detectives consider as part of the planning for interviewing vulnerable suspects are explored before attention turns to the visual recording of suspect interviews. Chapter Eight explores what takes place during the suspect interview and the working practices of detectives and third parties. This includes detectives' consideration of the layout of the interview room and the potential impact of this. Detectives working practices are explored against the PEACE framework and the interventions of third parties are examined.

The discussion chapter, Chapter Nine, explores the research findings within the context of existing academic research and theory. The thesis critically examines the working practices of detectives and third parties, and this chapter predominantly explores the theme which is most prevalent in the findings; adherence to rules and guidance. Where rules and guidance which govern the interviewing of vulnerable suspects are not adhered to by the police or third parties, this chapter seeks to explain

why, referring to police culture and pro-social rule breaking. Chapter Ten, the conclusion, summarises the research findings and draws conclusions as to whether vulnerable suspects are treated fairly. It also identifies the limitations of the research and includes implications for practice and proposals for future research.

Chapter Two: Theoretical Frameworks which aid our Understanding of the Working Practices of the Police and Third Parties

This chapter will examine the principles and theoretical frameworks which underpin the criminal justice system (CJS) in England and Wales, before focusing on theories which aid our understanding of how the police and third parties⁹ (the legal advisor and the appropriate adult (AA)) undertake their respective roles. This research explores the working practices of detectives and third parties in the detention and interviewing of vulnerable suspects, and whether third party safeguards enable their fair treatment.

To make such a determination, one needs to first operationalise fairness. Therefore, a broad discussion of fairness is initially undertaken in this chapter before focusing on the concept of 'equality of arms', which will be used throughout the rest of the thesis to make sense of the working practices of detectives and third parties, and draw conclusions as to the fairness of safeguards for vulnerable suspects. As explored in more detail on pages 18 and 30, 'equality of arms' relates to the principle that the defence should be on a level playing field to the prosecution, and defendants should not be disadvantaged during the investigative process and any subsequent trial due to unequal access to resources or a lack of suspect safeguards (Cape et al., 2010).

Attention then turns to the adversarial CJS in England and Wales and theories of criminal process which explain how this operates. This will draw heavily on the work of Packer (1964) and his crime control and due process models. It is important to consider theories of criminal process as these influence the practices and cultures of criminal justice actors, including the police.

The research questions aim to identify the working practices of the police and third parties and whether these reflect current rules and guidance. Relevant legislation which addresses the breaches of rules will briefly be discussed in this chapter. Attention will then turn to theories which explain rule breaking. These will contribute to answering the research questions and help to understand the findings which will be presented later in the thesis. Priority will be given to the working practices of the police because this research focuses on interactions which take place in the police station, where the police hold a position of power over suspects (Skinns, 2011; Dehaghani, 2019). Relevant theory explored in this chapter will include police culture

⁹ See Chapter One for a brief description of third parties, and Chapter Three, which will explore their respective roles in further detail.

(noting working rules, discretion, and compliance drift), which provide explanations for police practices and their adherence to rules and guidance.

Additionally, this chapter will also, briefly, explore organisational culture which relates to third parties and may aid our understanding of their working practices. That said, there is little literature specific to the organisational culture of third parties. However, other theory, namely pro-social rule-breaking, will also be considered as this may be relevant to the practices undertaken by third parties in police custody, especially by AAs.

2.1 The Key Principles of the Criminal Justice System in England and Wales

The CJS is a term which relates to the institutions, laws and criminal processes which govern how the state applies criminal laws to its citizens (Campbell et al., 2019, p.2). It covers a range of processes from the initial investigation, which seeks to establish whether a crime has taken place and includes any subsequent trial and post-conviction processes. A range of institutions may be involved in the CJS, including the police, the Crown Prosecution Service (CPS), the judiciary, probation, legal professionals and prison officers (Campbell et al., 2019, p.2).

There are two broad systems of criminal justice, the adversarial and the inquisitorial systems (Welsh et al., 2021, p.12). In an adversarial system, such as that in England and Wales, criminal investigations are usually initiated by the police¹⁰ and cases are brought before a court (where applicable¹¹) on behalf of the state by a prosecutor (the CPS in England and Wales). The role of the CPS is to make decisions as to which cases should be prosecuted, to determine charges in more serious cases, to prepare and present cases at court, and to support victims and witnesses (CPS, 2023a). The CPS also provide the police with advice and request they undertake enquiries to aid their decision making as to whether a suspect can be charged, in line with the threshold test (CPS, 2023a).

There are casefile quality standards which are based on principles of fairness to both victims, witnesses and suspects (CPS, 2014). The police put together a casefile to support a prosecution and this sets out the key 'used' material used to prove the case. The CPS review this material, decide what will be used evidentially and also disclose

¹⁰ Prosecutions can also be brought by a range of other organisations, including the RSPCA and the Environment Agency.

¹¹ There are some cases which do not proceed to trial for a number of reasons. It may be that a suspect is not charged, is diverted out of the CJS or receives a caution/fixed penalty notice. There will also be no trial where a suspect pleads guilty to charges issued. However, they will still attend court for plea and case management hearings and sentencing.

relevant material (scheduled on MG6 forms by the police) to the defence (CPS, 2014). The Criminal Procedure Investigations Act 1996 sets out a legal obligation for the police to review relevant material and disclose to the CPS any material which assists the defence case or undermines the case for the prosecution. This material should then be passed to the defence.

Where a trial takes place, the prosecution must prove the defendant's guilt against the relevant charges beyond reasonable doubt (Darbyshire, 2001). As guilt needs to be proven by the prosecution, a defendant/suspect is, in theory, innocent until proven guilty. During a trial, both the prosecution and defence put forward their version of events, their narratives, in a process which has been likened to a game (Welsh et al., 2021, p.12). A jury of laypersons determines the defendant's guilt, while the judge acts as an impartial party to advise on points of law and pass sentence (Darbyshire, 2001).

Welsh et al. (2021, p.13) note that, in an adversarial system, there is an imbalance of power between the prosecution (and their vast resources) and the defence. As a result, importance is placed on safeguards to prevent the state from abusing its power and to promote principles of fairness. The European Convention on Human Rights (ECHR), which was transposed into UK law in the Human Rights Act 1998, forms the basis for many of the suspect and defendant safeguards which underpin the adversarial CJS, particularly the right to a fair trial (Campbell et al., 2019). The right to a fair trial, and the importance of 'equality of arms' will be explored in section 2.3.

In contrast to the adversarial system, the inquisitorial system, which is found in parts of Europe such as France (Hodgson, 2004), operates rather differently. In this system, the oversight for the investigation lies with an impartial judge whose role it is to establish the truth; often directing the enquiries the police undertake, which forms a dossier of evidence (Hodgson, 2004). As a result of the state having a less active role in the investigation and prosecution of offenders, and processes being overseen by judicial supervision, it has been suggested that many inquisitorial systems have not historically relied on safeguards for suspects in the same way that the adversarial system does (Hodgson, 2004). However, suspect safeguards have been developed in several countries following the court case of *Salduz v Turkey* [2008] which required that legal advice is made available to suspects during a criminal investigation. This led to the development of suspect safeguards during detention in countries such as Belgium (Mergaerts and Dehaghani, 2020). The next section will explore one cornerstone of the adversarial CJS, fairness.

2.2 Theories of Fairness and Justice

This research explores third party safeguards for vulnerable suspects and whether they enable fair treatment. Therefore, it is important to consider what constitutes fairness. There are many different definitions of fairness, and this section intends to provide a brief overview of this concept before exploring the definitions which may be most relevant to criminal justice. Fairness has been associated with justice (Rawls, 1985) and also with principles of equity. Equity has several different meanings, but in the context of equality and diversity, it acknowledges that society contains structural inequalities, and that people may be individually disadvantaged (McMaster University, 2022). The principles of equity aim to remove some of these barriers which exist, thereby reducing disadvantage.

Rawls (1985) identified two components of justice, liberty, and equality of opportunity. Rawls (1999, p.44) proposes that each person has a right to liberties, including freedom of thought, liberty of conscience, political liberties and the freedom of association. He also includes liberties covered by the rule of law, which include freedom from arbitrary arrest. While Rawls notes a range of liberties, he does not appear to prioritise any one over another. The second component of Rawls' theory involves equality of opportunity and the 'difference principle'. Rawls describes 'fair equality of opportunity' as ensuring that everyone has the same prospect of success and fair chance to attain this, regardless of one's background (1999, p.43-44). The 'difference principle' proposes that where there are disadvantages in society, then one should aim to ensure that inequality is minimised, where possible, to avoid further harm (1999, p.43).

While Rawls' theory of justice provides a valuable starting point for conceptualising fairness, treating fairness and justice synonymously has been criticised. Goldman and Cropanzano (2015, p.313) argue that the two can be distinguished as justice relates to action which is morally required, and fairness is an evaluative judgement. Therefore, justice relates to conduct, and fairness concerns perceptions about that conduct. There are other theories of justice which are consistent with the critique of Goldman and Cropanzano (2015), and these will now briefly be explored.

Moorman (1991) identified three key components of fairness, distributive justice, procedural justice and interactional justice. While distributive justice is concerned with outcomes (such as a charge or conviction), procedural justice concerns the process and the decision-making which may take place that determines the outcome (Moorman, 1991). Moorman (1991) describes interactional justice, as involving the

interactions which take place, where the procedures determining the outcome are implemented. As can be seen, all three types of justice are all closely related.

Procedural justice theory is often applied within the context of the CJS. When suspects perceive they have been dealt with in a fair manner, which can encompass principles of trust, respect, voice and neutrality (Tyler, 2007; Goodman-Delahunty et al., 2013) then a suspect may be more compliant, willing to follow the rule of law and may accept disadvantageous outcomes (such as arrest) (Tyler, 2007; Baker et al., 2014; Bradford, 2014). There is also some suggestion that this may increase the likelihood that a suspect provides an account during interview (Roberts, 2011; Goodman-Delahunty et al., 2013; Oxburgh et al., 2016a; Bull, 2019; Goodman-Delahunty and Martschuk, 2020). However, while a widely recognised and insightful theory, it is not the most appropriate to use in this thesis. As this theory concerns perceptions about one's treatment, it would be somewhat presumptive to use this framework, without knowing the perspectives of vulnerable suspects on their detention in custody and on how they have been treated by the police and third parties.

2.3 Exploring Fairness in the Adversarial Criminal Justice System

It has been suggested that the principle of fairness underpins the adversarial CJS (Campbell et al., 2019, p.27) and that the principles of fairness and justice are inextricably linked, especially within the CJS (Irwin-Rogers and Shuter, 2017). This section will explore key provisions which relate to the treatment of suspects and defendants by the CJS, notably Article 6 ECHR, the right to a fair trial. The principle of 'equality of arms', which is consistent with Rawls' definition of fairness, will also be explored as a means of examining and understanding whether vulnerable suspects are treated fairly.

Article 6 of the ECHR sets out the right to a fair trial, which applies to all suspects in England and Wales (and Europe). However, as these rights are fundamental and not absolute, limitations can be imposed in certain circumstances (Sanders and Young, 2000). The right to a fair trial begins at the point of arrest (Teixeira de Castro v Portugal (1998)), and involves pre-trial procedures, including the detention and interviewing of the suspect at the police station. Article 6 sets out that the presumption of innocence should apply to defendants and provides for the right to legal advice and adequate opportunity to prepare a defence (which requires disclosure is

undertaken¹²). It has been held that what constitutes a fair trial depends on the circumstances of the case (*Ibrahim and others v UK* (2016)), although restrictions on the right to silence and the use of adverse inferences were deemed compatible with Article 6 (*Murray v UK* (1996)).

The principle of 'equality of arms' was held to be a requirement of fairness as part of Article 6, the right to a fair trial (*Rowe and Davies v UK* (2000)). The essence of 'equality of arms' is that "both parties should be treated in a manner ensuring that they have a procedurally equal position to make their case" (Negri, 2005, p.513). This does not mean that both parties are treated in the same way, because suspects and defendants typically experience a significant lack of resources¹³ and are subject to a power imbalance when compared to the police and the state (Toney, 2001). If parties should be on an equal footing, then one may argue that equitable measures, designed to improve the position of the weakest party, should be available. As suspects and defendants may enter the CJS with differing levels of disadvantage, this may require an approach tailored to the needs of the individual to enable 'equality of arms'. There are a number of due process safeguards provided for in Article 6 ECHR and the Police and Criminal Evidence Act 1984 (PACE) (including Code C) to which suspects are entitled (e.g., the right to legal advice, disclosure, right to an AA). However, while these may benefit suspects, whether they truly enable suspects to operate on a level playing field is questionable. That said, suspect safeguards have a vital role as they, in theory, place the suspect on a more equal footing with the police during the investigative process.

While it may not be possible to achieve true parity between parties, Toney (2001) and Cape et al. (2010) both argue that suspects should not be disadvantaged during the criminal justice process. A failure to ensure 'equality of arms' may impact the operation of due process safeguards, such as the right to legal advice or disclosure, where a dereliction in performance may impact the knowledge a suspect has about the case against them (Cape et al., 2010). Ultimately, this may affect a suspect's ability to make informed decisions during an investigation (e.g., whether to provide an account and what information to provide) and may prevent suspects from effectively participating in the suspect interview.

¹² In England and Wales this should be undertaken in accordance with the Criminal Procedure and Investigations Act 1996

¹³ Although it is also worth noting that there have been cuts to the police and prosecution since 2010 (see page 21 for further discussion).

Furthermore, caution needs to be taken when considering suspect safeguards as the presence of a third party alone may not always provide 'equality of arms' if they do not undertake their role effectively. Cape et al. (2010, p.12) acknowledges that suspects may be disadvantaged where legal advisors are passive during the investigative stages (Chapter Four will explore research concerning the interventions of third parties during interview). One may infer that similar principles apply to other safeguards, including the AA. This not only means having safeguards in place to support vulnerable suspects, but also ensuring that these safeguards operate as intended, enabling 'equality of arms' and fair treatment.

One critique of the right to a fair trial (Article 6), is that it doesn't expressly make any provision for those who are vulnerable (Sanders and Young, 2000; Dehaghani, 2022). However, it has been suggested that those detained in police custody may be vulnerable (Choongh, 1997; Dehaghani, 2019; APT, 2021) and the Mendez Principles (APT, 2021; p.28) propose that "virtually all persons being interviewed find themselves in a situation of vulnerability due to the inherently unequal balance of power" (see Chapter Three for further discussion on vulnerability). If everyone going through the criminal justice process could be considered vulnerable, there is not a point of distinction between those who are vulnerable and those who are not, unless one acknowledges specific vulnerabilities. Issues may then arise regarding the identification and conceptualisation of vulnerabilities, which, as discussed in the next chapter in relation to the AA, has been considered problematic. Therefore, even if Article 6 did develop provisions for the vulnerability of suspects, such provisions may have limited effect.

While treating vulnerable suspects with due consideration is of the utmost importance, and is consistent with principles of fairness, an approach based upon 'equality of arms' may be most effective where suspects and defendants are treated according to their needs. If suspects are treated based on their needs, in theory, it should not matter whether they are identified as vulnerable or not. However, the difficulty in practice is ensuring that the measures which would enable 'equality of arms' are available to those who need them.

This section has explored concepts of fairness and 'equality of arms', which seek to level the playing field between suspects and defendants, and agents of the state (the police and prosecution). This thesis will explore how safeguards are implemented in relation to vulnerable suspects. Those who are vulnerable may have a wide range of complex needs and require different types of assistance to facilitate effective

participation during their detention and reduce the impact of the power imbalance which exists between the police and a suspect. Therefore, an individualised approach may be required to ensure suspects are being treated fairly, taking into consideration what may be required to safeguard one's needs but also to enable participation in criminal justice processes.

2.4 Theoretical Frameworks which Explain Criminal Justice Processes

This section seeks to explore some of the theoretical frameworks which attempt to explain the aims and practices of criminal justice processes. It is important to understand the broader CJS and the principles which underpin it as these may influence and drive the behaviours of criminal justice actors, including the police.

One well-established framework for criminal justice processes was developed by Herbert Packer in the 1960s. Packer identified two models, crime control and due process. Crime control is grounded in the repression of criminal conduct, which aims to reduce and prevent crime. Effectiveness and efficiency are prioritised, and Packer uses the analogy of a conveyor belt steadily moving cases through the CJS, where there are few safeguards afforded to suspects or opportunities to challenge evidence and procedure (Packer, 1964). This model seeks the conviction of the guilty (Campbell et al., 2019) and to achieve this, the police are given wide powers. One example of this could be police interviewing tactics, which are adapted to maximise the opportunity to obtain a confession. It is accepted that the crime control model will result in mistakes, where innocent people will be arrested and convicted. However, providing these cases are not plentiful, mistakes will be tolerated (Packer, 1964).

In contrast, due process accepts that human error can occur, and this is considered unacceptable. To guard against this there is 'insistence on formal, adjudicative, adversary fact-finding processes' (Packer, 1964, p.14). To prevent the conviction of the innocent, Packer (1964) describes due process as an obstacle course by which safeguards and opportunities for challenge are available at each stage in the CJS, in part limiting the power of criminal justice institutions, such as the police. While this may increase costs and time, defendants are afforded equality before the law and the right to a fair trial (Davies et al., 2015).

Within an adversarial CJS, it would not be possible for one model to solely exist, and elements of both models work simultaneously. However, some view crime control and due process not as two separate models, but as being intertwined. Campbell et al. (2019, p.40) suggest that "due process cannot be an objective – rather it provides the safeguards in attaining the aim of crime control". McBarnet (1981a) also argued that

due process is for crime control, noting that suspect and defendant safeguards are largely rhetorical because of the power and resources of the state. This renders legal challenge problematic as McBarnet (1981b) argued that checks on the power of the police were ineffective. She also suggested that there was a lack of definition and clarity around suspect safeguards, which allowed for discretion to be exercised (McBarnet, 1981a). The term 'discretion' is used throughout the thesis to highlight where those in a position of power and authority within the CJS (such as the police) decide whether or not to apply the law (or rules and guidance) within a particular situation (Cockcroft, 2020, p.10).

Packer's models have also been criticised for failing to account for the role of the victim in the CJS, overlooking the importance of resource management (especially following a period of austerity) and for assuming that police powers can influence crime rates (Campbell, 2019). Additionally, due process safeguards may not always prioritise the suspect's wellbeing, and, therefore, Pierpoint (2005) suggested that a welfare approach may better treat the suspect according to their needs. This is consistent with the principle of 'equality of arms'. However, this does raise the question as to who decides what the suspect needs?

Whilst Packer's due process and crime control models are widely discussed theoretical frameworks which attempt to explain CJS processes, there are others, which will be briefly noted. Sanders and Young proposed a 'freedom approach', which promotes the freedom of both victims and offenders, which often are to be balanced, depending on the context of the case and the type of crime involved (Sanders and Young, 2003). Whilst it is important that the needs of the victim are considered, one critique of Packer's models, Sanders and Young also noted the importance of procedural justice as their model aimed to promote fair and just procedures. They suggested that if people believe they are treated fairly, they are more likely to cooperate with the CJS and less likely to commit crime (Sanders and Young, 2003, p.62). These principles have been identified as effective in the procedural justice literature (Tyler, 2007; Bradford, 2014) and may also influence the likelihood of suspects to co-operate and provide an account during the suspect interview (Roberts, 2011; Bull, 2019; Goodman-Delahunty and Martshuk, 2020).

However, while the freedom approach raises an alternative perspective to Packer's models and provides a means to assess the needs of different actors in the CJS, it may be problematic when applied to the context within which this thesis takes place. Homicide is one of the most serious offences, involving the unlawful killing of another

(Brookman, 2022). It may be difficult to balance freedoms for a deceased victim who is unable to participate in CJS processes, and while one may argue that the freedoms of the suspect can be justifiably restricted due to the seriousness of the offence, this may place a disproportionate burden on those suspects who have been arrested but are not guilty, especially those who are vulnerable.

Additionally, the criminal profile of some suspects accused of homicide offences may be different to that of 'career criminals', who are frequently involved in crime and may cause harms to a large number of people over their criminal career, because some suspects who are arrested and subsequently convicted for homicide offences have no previous criminal record¹⁴. It has been estimated that around 25 – 40 per cent of homicide offenders have not been previously arrested (Rojek, 1996; DeLisi and Scherer, 2006; Almond et al, 2021), although DeLisi and Scherer (2006) note these figures are lower when considering sexual and predatory homicides. Therefore, this figure may vary, in part, depending on the nature of the homicide which is committed (and the relationship between the offender and victim). These factors make the balancing of freedoms for homicide suspects a difficult task. Therefore, this model may not be the most appropriate to understand the CJS processes explored in this thesis, especially as victims and suspects were not spoken to and it may be presumptive to assess what they perceived to be fair and just, in order to establish whether procedural justice was present.

Ashworth also developed a model to aid our understanding of the CJS, the principled approach. This prioritises the human rights of both victims and suspects, in line with the ECHR (as a starting point). Ashworth and Redmayne (2005) noted that the rights of both parties can be advocated for, as these are not mutually exclusive and often do not impact each other directly. Sanders and Young (2000) identified a limitation with the principled approach as many of the human rights it is based upon are fundamental and not absolute. Additionally, this model does consider how rights should be balanced, which is one critique aimed at other models, and it is suggested that where a balancing act is required between competing human rights, there need to be specific parameters outlined (Ashworth and Redmayne, 2005). The authors provide an example of this in relation to exemptions surrounding the disclosure of sensitive public interest immunity material (Ashworth and Redmayne, 2005, p.47).

¹⁴ However, caution needs to be expressed as not being arrested does not mean that an individual has never committed criminal offences.

An alternative extra-legal framework set out to explain CJS processes was developed by Choongh (1997) who suggested that the police do not always intend to enforce criminal law, but that they perform their role and undertake policing in line with a series of objectives which seek to exert social discipline. Here the police seek to control and dominate those who they perceive to be criminal, or those who challenge their authority in some way (Choongh,1997). In such circumstances, 'suspects' may be arrested and detained in the police station but not actually charged with any offence. While this theory provides an explanation for the dominance that some police officers seek to maintain over members of the public, this is less relevant to the investigation of homicide. The priority with such offences is most likely to be apprehending the offender and enabling a successful prosecution in line with criminal law. Where these cases are open to a higher level of scrutiny (Corsianos, 2003), the police may take care to ensure that suspects are treated fairly and are provided with the procedural rights to which they are entitled, to ensure that any subsequent prosecution is not subject to allegations of malpractice, and evidence is not ruled inadmissible.

This subsection has explored some of the different frameworks which may aid our understanding of how criminal justice processes are undertaken. While no one model will apply to all offenders, victims, and offence types; they may help to evaluate the practices of the police and the safeguards which exist for vulnerable suspects. This may identify the competing priorities (e.g., due process, crime control or social discipline) of different criminal justice actors (such as the legal advisor, AA and the police), and one may then consider how these priorities influence working practices.

2.5 The Police and Criminal Evidence Act 1984: Accountability and Remedies

PACE was introduced, in part, as a response to high-profile miscarriages of justice in the 1970s (Gudjonsson, 2003). This section will briefly explore the accountability measures contained within PACE and the remedies available in the event that these are breached. Specific safeguards and their operation in relation to vulnerable suspects will be further explored in Chapter Three.

First, however, it is briefly worth noting that the police are constrained in their daily tasks by the rule of law, which requires they uphold the existing law as created by the Government and implement "formalised procedures against those who have broken the law" (Joyce and Laverick, 2021, p.15). Furthermore, there is a raft of legislation, rules and guidance which governs how the police should exercise their powers when investigating and detecting crime. One example of such guidance is PACE. PACE governs the way in which the police deal with those suspected of committing criminal

offences. Provisions relate to stop and search, powers of search and seizure, and how the arrest, detention and interviewing of suspects should be undertaken. Additionally, there are several Codes of Practice (Codes A to H) that accompany PACE (see section 66), which provide guidance to the police as to how the legislation should be implemented.

The introduction of PACE was in response to the Royal Commission of Criminal Procedure (1981) which acknowledged a need to strike a balance between the requirement of the police to investigate crime with the requirement to safeguard the rights of suspects. Suspect safeguards, which were intended to be independent to the police were proposed in order to minimise the likelihood of miscarriages of justice and police malpractice (Poyser et al., 2018). While incorporating suspect safeguards into legislation appeared to strengthen the protections provided for suspects and placed some of these safeguards on a statutory footing, this was not unproblematic. Many of the safeguards have exemptions which could be enacted with the authorisation of a senior officer, such as an inspector (e.g., sections 56(2) and 58(6) PACE). It has also been suggested that PACE gave the police powers they did not have previously (Reiner, 1992), furthering crime control objectives to detect crime and prosecute offenders.

While PACE aims to strike a balance between the powers of the police and safeguards for suspects, the accountability measures contained within PACE may provide some indication as to which of the competing ideologies of crime control or due process are most dominant. Section 67(8) PACE states that while officers can be subjected to disciplinary procedures for breaches of PACE, breaches are not criminal matters. This means that police conduct is reliant on internal regulation (Dixon, 1992).

Although PACE was a significant change to policing practices, some aspects of the law, such as the audio recording of suspect interviews, have been widely accepted and implemented (Dixon et al., 1990). However, other aspects of PACE are not always adhered to. Dehaghani (2019) identified that the police do not always obtain an AA for suspects even if they have been identified as vulnerable (contrary to Code C). Additionally, Skinns (2009a) identified that 20 per cent of requests for legal advice in her study went unmet. While there were multiple reasons for this, including suspects changing their minds, it suggests that PACE is not always adhered to.

It is not known the extent to which disciplinary action is taken concerning breaches of PACE, although features of police culture include a lack of supervision and accountability, especially among officers who undertake roles which are of low

visibility (Dehaghani, 2019). This is supported by recent reports concerning police misconduct, where there appears to be a systemic failure within the Metropolitan Police to tackle issues of misconduct and to hold officers accountable (Casey, 2022).

Although PACE provides for internal regulation in the event of breaches, there are measures within PACE which allow for the exclusion of evidence if it was obtained in an oppressive or unfair manner. The provisions concerning the exclusion of evidence are contained within sections 76, 77, and 78 of PACE. Section 76 relates to confession evidence which was obtained by oppression or in a way which rendered a confession unreliable. Section 77 of PACE contains provisions relating to 'mentally handicapped' persons and requires the court provide a warning to the jury to exercise caution in circumstances where the prosecution case relies on confession evidence, where this evidence was obtained in the absence of an independent person (e.g., an AA). Section 78 is wider than the previous two sections, as it applies to evidence obtained during an investigation, and not solely confessions (Ventress et al., 2008). The test in section 78(1) as to whether evidence should be inadmissible is if it '*would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it*' and it is the decision of the judge, based on the evidence and the facts of the case, to decide whether or not to exclude evidence under these sections.

Pierpoint (2005) acknowledges that breaching PACE does not automatically result in the exclusion of evidence and Dehaghani (2019) has identified that the courts have taken a lenient and sometimes inconsistent approach to the exclusion of evidence following breaches to implement relevant suspect safeguards, for example, when an AA is not present during the interview of a vulnerable suspect. In some cases, these decisions may be impacted by the presence of a legal advisor during the suspect interview, whereby their presence appears to negate the requirement for an AA, and evidence obtained in the absence of an AA has been deemed admissible at trial (Dehaghani, 2019). To try and minimise applications concerning the admissibility of confession evidence (which includes partial admissions), "prosecutors should examine carefully the circumstances in which the confession was made to decide on its admissibility" (CPS, 2022). Where it is anticipated that a legal challenge may be raised by the defence to have evidence excluded at trial, the CPS recommend obtaining additional evidence "covering the circumstances in which it was obtained" (CPS, 2022).

Section 67(11) of PACE notes that a court is obliged to consider breaches of PACE when they are considering whether evidence should be excluded at trial. However, in

circumstances where a suspect is released without charge or is cautioned, there appear to be few remedial measures available in relation to breaches of PACE. Bucke and Brown (1997) identified that only 50 per cent of suspects arrested and detained at the police station were charged with a criminal offence in their study, 17 per cent were cautioned and 20 per cent of suspects had no further action taken against them (n=2,135). Therefore, a sizeable number of suspects have little avenue for recompense in the event of breaches of PACE, providing an arrest was lawful.

The impact of these decisions by the judiciary may normalise breaches of PACE and reinforce police behaviour, which conveys the message that breaching PACE and the Codes of Practice may have no detrimental consequence to the police. This may not encourage adherence to the rules and guidance which protect suspects' rights (Pierpoint, 2005), and, as a result, this may impact the fairness with which suspects are treated during their detention in the police station. The next section explores police culture, which aids our understanding of how the police treat suspects.

2.6 Police Culture and Adherence to Rules and Guidance

This thesis explores what takes place within the police station and therefore, it is important to explore which theories influence the behaviour of the police and how they treat suspects. Policing is a rather unique profession because of the authority and power that the police have over members of the public. Police culture is a concept which arose to explain "the common values, attitudes and behaviours that are believed to exist among police officers" (Cockcroft, 2020, p.6). Reiner (2010) identified some of these attitudes included a sense of mission, conservatism, suspicion, isolation, solidarity, machismo and pragmatism. However, police culture is not monolithic and can vary throughout differing ranks of management, and within different policing roles, including specialist teams (e.g., Major Crime Investigation Teams) (Chan, 1996; Reiner, 2010). It is also possible that culture may differ by location to reflect the power structures within society (Reiner, 2010, p.137).

Police culture is intertwined with issues concerning adherence to legal rules and accountability (Chan, 1996) and police culture may influence how the police perceive rules and whether they adhere to them (Dehaghani, 2019). While some may argue policing is a rule-bound occupation, Rowe (2018) notes that not only do individual officers have some discretion (where an officer may choose to uphold breaches of the law), but that police forces under the direction of the Chief Constable or Police and Crime Commissioner may also prioritise tackling certain criminal activities (often at the expense of some others). McBarnet (1981a) identified the difference between

the law as written and the law in action, noting that the law was often unclear and allowed for discretion to be exercised. Irving and McKenzie (1989) and Drakeford (1994) also noted that how legislation is worded may influence the behaviour of the police, and where the law is clear it is more likely to be followed. This discretion originates in the wording of the law itself and a lack of clear definitions (e.g., regarding vulnerability), but there are also provisions that exist within PACE which allow the police to circumvent safeguards set out for suspects in certain circumstances (see Chapter Three).

While much exploration of rule breaking considers the law as written or the law in action, there has also been discussion of the 'spirit of the law'. This is a term which has been used to describe how the law was framed (McBarnet and Whelan, 1991). To do this, one may look at the intention behind the rules (Meers et al., 2023) and the purpose for which they were enacted. McBarnet and Whelan (1991) acknowledge that there may be loopholes or omissions which impact the effectiveness of the law, and therefore, in such circumstances, one should look at the spirit of the law. In the context of police interviewing, this may relate to the principles of fairness and ethical interviewing which underpin the PEACE model (see the seven principles which are discussed in Chapter Four).

To undertake their roles and make sense of day-to-day challenges, police officers may develop their own working rules, which are created to structure decision-making, especially in the absence of clearly defined law and guidance (McConville et al., 1991; Sanders and Young, 2003). Smith and Flanagan (2000) identified that many working rules are learned through officers' daily experiences and McConville et al. (1991) identified that some of these rules focus on workload and exercising control over those who are policed. Indeed, Choongh (1997) identified that the police sometimes exercise this control through the arbitrary arrest and detention of those whom the police felt deserved to be subjected to 'social discipline'. However, it has been noted that detectives more generally are results orientated and prioritise the arrest of suspected criminals (Maguire, 1994). Within the context of the police station, McConville et al. (1991) noted that working rules can take the form of deciding how and when to interview a suspect, and whether the police enact ploys to dissuade suspects from exercising their due process rights, such as requesting legal advice (see section 3.9 for further discussion).

Such ploys to persuade suspects from up-taking or enforcing their rights have been observed internationally, highlighting that questions concerning adherence to rules

and guidance is not a phenomenon unique to policing in England and Wales. One example of this is how detectives in the USA 'encourage' suspects to waive their Miranda Rights (see Leo (1996; 2008)). These are rights that apply to suspects who are arrested and interviewed by the police, which derive from case law and seek to prevent coercive practices by the police (Brookman et al., 2019). Brookman et al. (2019, pp.732-733) noted that officers failed to adhere to or bent the rules due to compliance drift or to maximise efficiency and effectiveness, and that errors can occur across a continuum of practices ranging from mistakes to corruption. Additionally, police officers may make stereotypical assumptions about suspects experiencing mental disorder (Oxburgh et al., 2016a) or based on the suspect's ethnicity (Minhas et al., 2017; Minhas and Walsh, 2018; Minhas and Walsh, 2021), both of which can influence how suspects are treated and how officers use their discretion. Similarly, Oxburgh et al. (2016a) also identified that some detectives held negative views towards third parties, which may influence how rules and guidance concerning suspect safeguards are implemented.

The working practices of the police may be influenced by other aspects of police culture such as a sense of mission, where the police seek to apprehend those responsible for serious crimes such as homicide, which may involve 'real detective work', especially if the case is a 'whodunnit'. Innes (2003, p.259-263) notes that over a period of time, detectives may deviate from standard practices by a process he terms 'compliance drift'. Innes suggests that this may occur to maintain the effectiveness of an investigation and that these practices may account for investigative errors. Many of these may be more routine and do not involve serious misconduct and so are overlooked as they may not impact the overall outcome of an investigation (Innes, 2003). One example of compliance drift has been proposed by Brookman et al. (2019), where the police in the USA encourage suspects to waive their Miranda Rights.

There may be a lot of pressure during homicide investigations (Corsianos, 2003; Innes, 2003) and compliance drift may be perceived as one way to reduce this. Where successful, this can lead to shortcuts or best practice not being followed to reduce the pressure on the investigation (Innes, 2003). Compliance drift could manifest in several different ways. For instance, not affording a suspect an AA could be one way in which the pressure could be taken off an interviewing detective who is subject to less scrutiny from a third party. They also would not have to wait for the AA to attend and would not be subject to interventions by the AA during the suspect interview. Compliance drift may also arise where interviewing best practice is not followed, for

example, where the PEACE framework is not adhered to during the suspect interview as a detective wishes to hurriedly obtain an account, in order to obtain a charging decision and relieve pressure on the investigative team. Where compliance drift takes place, over a period of time, this can legitimise these practices, which then become the norm (Innes, 2003).

The rules which impact policing practices can be differentiated. Welsh et al. (2021, p.59) note that where these influence police behaviours they can be inhibitory or enabling, or where they do not influence the police, they can be presentational or legitimising. Whether rules influence the police and shape their practices depend, in part, on their language and the consequences for breaching these rules (Welsh et al., 2021). It may be argued that the requirement to obtain an AA for vulnerable adults is, at times, largely presentational, as it has little effect on the practices of the police who are able to circumnavigate provisions for adults without little consequence (Dehaghani, 2019). Such practices risk failing to provide suspects with their due process rights and treating them unfairly.

Sanders and Young (2003) note that where the law is ill-defined this allows for discretion to be exercised and the potential for bias arises. Where detectives' decision-making is influenced by 'tunnel vision' and cognitive bias, this may impact how they investigate, make sense of information, and potentially the outcomes of criminal investigations (Fahsing and Ask, 2013; Fahsing and Ask, 2018; Ask and Fahsing, 2019). Fahsing et al. (2021) note that these traits may be associated somewhat with police culture (especially suspicion) and the drive for expediency in investigations. Where bias does arise, this can impact the way suspect interviews are undertaken, resulting in tunnel vision and guilt-presumptive questioning (Ask and Fahsing, 2019; Minhas and Walsh, 2021), both of which increase the likelihood of an interview being unfair and obtaining an inaccurate account. Research has identified that where discretion has been exercised, this can result in inconsistent and discriminatory practices, especially in the policing of ethnically diverse communities (Rowe, 2004; Quinton, 2011).

Decision-making which involves the exercising of discretion is most likely to be found in the lower ranks, where there is little supervision and visibility of day-to-day policing activities (Wilson, 1968; Quinton et al., 2000). Where officers are responsible for the sole investigation of a case there may be little supervision of their practices. Furthermore, practices within police custody have previously been subject to little visibility, especially where safeguards such as the legal advisor and AA were not

present. However, visibility in police custody has improved in recent years (Skinns, 2022), although this may still be less visible than other policing activities, such as stop and search, which now may be subject to members of the public filming stops and posting these online (Søgaard et al., 2022).

The investigation of homicide is somewhat different, as there is likely to be increased visibility and supervision of these investigations because they are more likely to result in a charge, and a trial (Corsianos, 2003). The structure of homicide investigations, which involve a number of individuals who will have some oversight of the detention and interviewing of suspects (such as a co-interviewer, interview advisor, disclosure officer and senior investigating officer (SIO)) also means that any untoward practices are more likely to be identified. That said, the police force is characterised by solidarity, which means that colleagues may stick together and cover for one another where rules are not adhered to (Westmarland, 2016).

Exercising discretion has been associated with the professionalisation agenda (Cockroft, 2020). The Code of Ethics (College of Policing, 2014) which aims to promote an ethical approach to policing, and the PEACE framework, which promotes ethical interviewing practices (Home Office, 1992) are two potential influences on police officers undertaking their roles, which may impact the way in which officers exercise their discretion in line with an ethical framework. However, Cockroft (2020) notes that the professionalisation agenda may seek to reduce officers' use of discretion, which may contradict the perception that if following an ethical framework, officers should be able to use greater levels of discretion. Furthermore, Foster (2003) notes that police culture can be resistant to changes in working practices, which may limit the impact of measures intended to improve decision-making and the use of discretion. Therefore, careful consideration needs to be given to the implementation of legislative and policy changes to ensure that police officers adopt any changes to practices.

This section has predominantly focused on police culture and the development of working rules. However, there are other potential explanations provided for a failure to adhere to rules and guidance. One of these is noble cause corruption. This occurs when the police breach rules and guidance for the benefit of society or in order to achieve crime control goals (Van Halderen and Kolthoff, 2017). This may take place when the police are seeking to 'achieve justice' for victims or to ensure that a suspect gets charged and convicted so that they are not a danger to society. Hawk and Dabney (2014) identified that detectives working on homicide investigations are

influenced by the perceived 'deservedness' of victims, where on some cases they would go the extra mile to try and solve the case (2014, p.1136).

It is possible that some working on homicide investigations, where offences may be perceived as morally reprehensible, or the offenders as inherently dangerous, may encourage officers to cut corners and breach rules having adopted a mindset that the 'ends justify the means' (Van Halderen and Kolthoff, 2017). Wood (1997) noted some of the behaviours which may be regarded as noble cause corruption included planting evidence and forcing a confession through assault or coercion. These are examples of serious malpractice, and one would hope that such examples seldom occur in England and Wales. However, it is possible that rule breaking does take place to facilitate crime control objectives or noble causes on a less serious scale.

This section has explored aspects of police culture which may aid our understanding of how the police treat suspects detained in custody. The next section will briefly consider the culture of third parties (such as the AA and legal advisor).

2.7 The Organisational Culture of Third Parties

While there is a large body of literature which explores the culture of the police, there is significantly less which explores the organisational cultures of other criminal justice actors, such as legal advisors. Although the cultures of third parties are not widely discussed in the literature, like any organisations, cultures will be present and evolve over time (Pettigrew, 1979). Similar to police culture (and organisational culture more widely), there is no one single culture (Chan, 1996). For example, it is possible that there are regional differences or differences in the values held by AA schemes or legal firms. Additionally, it has also been identified that different cultures can exist within an organisation, especially between operational workers and senior management (Cockcroft, 2010).

Ashworth and Redmayne (2005, p.69) note that criminal justice actors, such as legal advisors, may be influenced by working practices which cut corners and, consequently, they may fail to undertake their responsibilities to act in the suspect's best interests¹⁵. They refer to the research of McConville et al. (1994) who proposed

¹⁵ 'Best interests' is a term used in the literature, often relating to the detention of suspects in police custody (Dixon, 2010; Dehaghani, 2017c; APT, 2021; Mergaerts, 2021). While commonly used, this term is often not explicitly defined. However, examples of what this could entail are explored by Dehaghani (2017c, p.249) who suggests that "acting in one's best interests may not mean not providing false, unreliable or misleading information, it could also mean not saying anything at all...vulnerability means not being able to act in one's own best interests, whatever this means". It is important to note that this term has also been used in the context of detectives acting in the 'best interests' of an investigation (Dehaghani, 2017c,

several explanations for the failure of legal advisors to intervene to protect suspects from improper police questioning and to follow the suspect's instructions. One of these explanations was that the behaviour of legal advisors was influenced by the remuneration received for legal aid work. In recent years, remuneration for legal aid has been a matter of concern for many in the legal profession, and there are record numbers of practitioners leaving the legal aid market due to the financial constraints of the system (Robins, 2021). This has recently culminated in strike action by criminal barristers who are fighting for an increase in legal aid fees from the government (BBC, 2022). It is also possible that 'interview room lore' (Pierpoint, 2005) may provide some explanation as to why third parties have been identified as passive during the suspect interview. Where third parties are required to have a close working relationship with the police, they may try to ensure that this relationship is harmonious, maintaining positive working relationships. As a result, third parties may refrain from intervening during an interview, or making representations concerning the suspect's treatment, to avoid damaging one's relations with the police.

It has also been suggested that some legal advisors are reluctant to engage with the suspect, especially where they have emotional needs (Pivaty, 2019). Pivaty (2019) suggests that these practices may result from 'emotional distancing' which can commonly be identified in other professional workers, such as medical professionals. In such circumstances, it may be difficult to build rapport and trust with a suspect, and this may impact the communication between the suspect and legal advisor. Such cultural practices risk impacting the nature and quality of legal advice and support that suspects are provided with, which may affect 'equality of arms' and ultimately the fairness with which suspects are treated.

While the author is not aware of any literature which directly explores the organisational cultures of AAs who are members of dedicated AA schemes, this has been touched upon by Quinn and Jackson (2007) in relation to social workers who acted as AAs. The authors note that the culture of social work may conflict with the roles of the AA and legal advisors and their respective objectives, in part because of the priority social workers may give to the suspect providing an account in order to tackle their offending (Quinn and Jackson, 2007, p.251).

p.248) and that, obviously, the best interests of different individuals and/or organisations may conflict with one another.

2.8 Pro-Social Rule Breaking

Police culture offers one explanation for the common values which influence the behaviour of the police and how they treat victims, witnesses and suspects. It is established that one feature of police culture is the failure to adhere to the law, the exercising of discretion and the development of working rules. The motivations for this have been explored and include a sense of mission, noble cause corruption and compliance drift. However, there are other possible motivations for failing to follow rules and guidance which are seldom explored in the police culture literature, and may also be applicable to how third parties undertake their role at the police station. This section will explore one possible motivation, pro-social rule-breaking (PSRB). It is worth noting that the literature in this area predominantly focuses on the hospitality industry, however, the motivation to act in the best interests of another is not uncommon and therefore has applicability to a range of other contexts and situations.

Where rules are broken for the benefit of another this could be regarded as PRSB, which differs from 'typical' rule-breaking that may be motivated by deviant or dishonest intentions (Morrison, 2006). The main focus of PSRB is on the intentions behind the rule-breaking (Spreitzer and Sonenshein, 2004), which are not self-serving but are undertaken for the benefit of the organisation, or its stakeholders (Dahling et al., 2012, p.21). Examples of this from the literature include rules broken for the benefit of the customer (often to secure repeat business), to improve work efficiency or to assist a colleague (Morrison, 2006), and PSRB has been found to be effective in that it may increase the satisfaction of stakeholders (Ghosh and Schum, 2019). However, a more complex picture arises where the perception of colleagues and supervisors of PSRB are taken into consideration, with some viewing PSRB unfavourably (Dahling et al., 2012).

There are some similarities between PSRB and rule-breaking for personal gain as both forms of rule-breaking may occur when individuals exercise their discretion in an environment of low supervision or visibility. PSRB usually involves a conscious decision whether to adhere to rules and guidance (Spreitzer and Sonenshein, 2004) and involves an ethical balancing act (Vardaman et al., 2014). That said, the likelihood of rules being broken is positively associated with job autonomy, co-worker behaviour whereby they also break the rules, and a propensity for risk-taking (Morrison, 2006). Additionally, the perceived consequences of rule-breaking may also influence decision-making, especially where the individual may be reprimanded (Morrison, 2006; Ghosh and Schum, 2019). Ghosh and Schum (2019) identified that while

consequences may vary, PSRB for the benefit of a co-worker may be treated more seriously than PSRB for job efficiency by those within the organisation with management responsibilities. However, it is likely that the consequences will be driven by the priorities of the organisation that make the rules. Where this is a profit-making organisation, PSRB for the overall goal of efficiency or customer satisfaction may be beneficial to profitability in the long-term, and therefore breaches in this area may be treated more favourably (unless they expose an organisation to legal action) (Ghosh and Schum, 2019).

When applying the concept of PSRB to the treatment of vulnerable suspects in the police station, this concept could apply to breaches of rules both by the police and third parties as both are in a position to undertake breaches for the benefit of the suspect themselves, a colleague or another actor present in the police station undertaking a different role. One may also argue that in some circumstances police officers breach rules for the benefit of the organisation, to facilitate the crime control objectives which may influence the behaviours of those working within the police. Therefore, a distinction may need to be further made between breaching the rules for the benefit of others, and for the benefit of an organisation.

2.9 Summary

This chapter has examined key principles which underpin the CJS, and the theoretical frameworks which aid our understanding of how the criminal justice processes operate. The importance of these models is that they influence the practices of criminal justice organisations and actors. At times, these models may result in conflicting goals, especially where due process and crime control objectives compete with one another. Throughout the rest of this thesis, where elements of these models appear, reference will be made to them to try and understand the working practices of the police and third parties.

This chapter has also explored the role of police culture in explaining how the police investigate crime and deal with those suspected of committing criminal offences. Where law and guidance is ill-defined, it provides an opportunity for the police to develop their own working rules to make sense of these provisions (McConville et al., 1991). Furthermore, these working rules may enable the police to achieve crime control aims which are more favourable to policing objectives, such as obtaining an account from a suspect and ultimately, a conviction.

Additionally, this chapter explored the concept of fairness and proposes that suspects may be treated fairly where 'equality of arms' is facilitated. Whether this is truly achievable considering the vast power and resource of the state is another question entirely. However, the treatment of vulnerable suspects will be explored, paying attention to whether they are treated according to their needs, in order to enable effective participation during their suspect interview(s) and wider detention. Chapter Three will now examine the concept of vulnerability before exploring the safeguards available for vulnerable suspects.

Chapter Three: Safeguards for Vulnerable Suspects and The Role of Third Parties

This chapter explores the definition of the vulnerable suspect and outlines the safeguards to which vulnerable suspects are entitled, focusing on third parties (e.g., the appropriate adult (AA) and the legal advisor). It contributes to the research questions as it examines the law and guidance governing safeguards for vulnerable suspects and explores how these are implemented with reference to academic literature. Who acts as the AA and legal advisor, and how they undertake their respective roles is also considered. If one understands the rights that a vulnerable suspect has while detained in police custody, and how suspect safeguards should operate, one can make comparisons with data collected on the detention and interviewing of vulnerable suspects to establish whether working practices adhere to the law and guidance.

Initially, this chapter explores the concept of vulnerability and critically assesses how it is identified in suspects arrested and detained in the police station. The following section briefly highlights the safeguards to which all suspects are entitled when arrested and detained in police custody, and those provided for vulnerable suspects. Attention then turns to third parties, and one of these safeguards, the AA. The AA attends the police station to ensure that the rights and entitlements of vulnerable suspects are adhered to, and that they are treated fairly (National Appropriate Adult Network (NAAN), no date (b)). The provision of AA services, the AAs role and who can undertake this is briefly explored, alongside research which examines the implementation of the safeguard. Similarly, the provision of legal advice and how the role is undertaken is then discussed, specifically noting legal privilege. The chapter concludes by briefly noting other parties who may attend the police station, the interpreter and the intermediary.

3.1 The Concept of Vulnerability

As noted in the introduction, the term vulnerability is multi-faceted and has been used across a range of different contexts, some of which are synonymous with risk (Brooks, 2003; Wolf, 2012). It has been argued that vulnerability is a universal and inherent condition, common to all (Fineman, 2008), although it is subjective and can be experienced differently. Keay and Kirby (2018) note the importance of considering individual, but also social and environmental factors when identifying vulnerability, acknowledging that many of these can intersect, and can increase/decrease at any point in time. As vulnerability is not a fixed condition, it can be accentuated or reduced

through our interactions with society, institutions and structures (Fineman, 2008, p.10), and Asquith and Bartkowiack-Theron (2021) suggest that vulnerability may be exacerbated through contact with the police and wider criminal justice system (CJS).

While vulnerability has been described as part of 'the human condition' (Fineman, 2008), there has been some debate as to who is vulnerable or what may render someone so (Dehaghani and Newman, 2017; Asquith and Bartkowiack-Theron, 2021; Dehaghani, 2021). A broad approach towards vulnerability has been taken by the Mendez Principles (APT, 2021), a document developed by the United Nations which sets out principles of effective interviewing for investigations. These principles have been produced for the benefit of the international community and have the potential to influence the practices of law enforcement and security worldwide. The Mendez Principles advocate for a non-coercive approach to interviewing and are underpinned by human rights and ethical considerations (APT, 2021). They aim to reduce the use of methods which constitute torture and coercion, both of which are associated with false confessions and miscarriages of justice (APT, 2021). In doing so, this should also promote the trust of citizens in criminal justice agencies and the wider state. The Mendez Principles are consistent with the principles of investigative interviewing and the PEACE framework, which is already embedded within policing in England and Wales (see Chapter Four). As such, these principles may have the most impact on countries which have not already adopted methods of investigative interviewing such as PEACE (see also KREATIV in Norway and PRICE in Scotland).

The Mendez Principles also consider vulnerability and take a wide interpretation as to what this entails, noting that vulnerability may be heightened where an interview intersects with risk factors (APT, 2021, p.28). Some of these risk factors are well documented and refer to characteristics such as age, gender, sexuality and physical/psychological ability (World Health Organisation, 2001; Bartkowiack-Theron and Asquith, 2012; APT, 2021). However, the Mendez Principles also note that vulnerability is often associated with disadvantage or those at risk of discrimination and ill-treatment, acknowledging that ethnicity, religious background, immigration status, pregnancy and membership of a marginalised socio-economic group may also be risk factors (APT, 2021, p.29). The homeless, sex workers and those from ethnically diverse communities (e.g., those from aboriginal backgrounds (Watkins, 2016)) have also been considered to be vulnerable (see appendix J).

As noted in section 2.3, the Mendez Principles suggest that suspects (as well as victims and witnesses) may be vulnerable as the interview takes place with a power

imbalance between the interviewee and interviewer, who holds a position of authority. This power imbalance is greater when a suspect is detained (e.g., in police custody) and this may impact their physical, cognitive and emotional responses during an interview (APT, 2021, p.28). Additionally, it is also recognised that the nature of the offence one is being interviewed about may render somebody vulnerable (APT, 2021, p.29). As homicide offences are serious and may involve complexities such as bereavement and trauma, these interviews may heighten the risk factors for suspects, and consequently, one could argue that all suspects are vulnerable in this context.

The Mendez Principles also considers that the actions of the interviewing body may influence the vulnerability of the interviewee, stating that “Individuals may also be in situations of heightened vulnerability because of institutional prejudice, discrimination, or a lack of awareness, training or appropriate infrastructure” (APT, 2021, para 141). This is an important and welcome development not often discussed in previous literature, which often associates vulnerability with the personal and situational characteristics of the interviewee. This highlights the importance of ensuring that law enforcement bodies treat people fairly, and detain and interview suspects in accordance with the law and relevant guidance. To not do so could render an interviewee vulnerable. That said, while these principles are a welcome development and further our understanding of vulnerability, especially within the context of police interviewing, these principles are not enshrined in existing guidance provided to police officers in England and Wales.

Within the policing environment, vulnerability has often been associated with those at risk of harm (College of Policing, 2021a) and is defined by the College of Policing (2020, p.9) in the THRIVE framework¹⁶ as:

“A person is vulnerable if, as a result of their situation or circumstances, they are unable to take care of or protect themselves or others from harm or exploitation.”

This definition has been developed within the context of ‘protecting vulnerable people’ (College of Policing, 2020, p.1), and therefore the term has often been used in relation to victims of crime (especially domestic and sexual abuse) and those who require safeguarding, such as missing persons or those experiencing mental ill-health (College of Policing, 2020). However, this document and several similar (e.g., College

¹⁶ THRIVE+ is an acronym for threat, harm, risk, investigation, vulnerability, engagement, prevention, and intervention (College of Policing, 2020, p.6) and was developed as a risk assessment for public need and vulnerability (College of Policing, 2021a).

of Policing, 2021a) make no reference to vulnerability in the suspect population. Although this definition appears not to have been developed with suspects in mind, it could be somewhat applied to the context of those detained in police custody as suspects may, arguably, be unable to protect themselves from harm. For instance, detention in custody may impact a suspect's emotional, psychological or physical wellbeing.

Additionally, one may argue that harm could result from the failure to protect oneself from self-incrimination or to act in a manner which is harmful or detrimental to one's own interests. When detained in the police station, suspects face a power imbalance compared to the police who are in control of their environment (Skinns, 2011; Dehaghani, 2019, APT, 2021). There is also an imbalance regarding the knowledge suspects are given about the case against them. This creates an inequality of arms, which unless addressed, often by suspect safeguards such as the legal advisor, means that suspects may not be treated fairly.

As noted in Chapter Two, the police are duty-bound to uphold the law (Joyce and Laverick, 2021) and there is a wealth of law and guidance which governs how they should undertake their roles (e.g., PACE and the Codes of Practice and Authorised Professional Practice (APP) guidance issued by the College of Policing). Additionally, Code C of PACE also defines a vulnerable suspect, a definition which is narrower than that discussed in this section, and it is this definition to which we now turn.

3.1.1 How is a Vulnerable Suspect Defined?

As noted in Chapter Two, PACE covers a wide range of police powers and safeguards, including those which relate to the detention and questioning of suspects. The purpose of this section is to explore the provisions which define a vulnerable suspect.

Within the context of arrest and detention, a suspect may be regarded as vulnerable for two reasons. The first is that they are regarded as a juvenile and are under 18 years of age (section 42 Criminal Justice and Courts Act 2015, amended PACE to increase this age from 17 to 18 years). The situation for vulnerable adults is more complex and one issue concerns understanding and interpreting the language within Code C regarding vulnerability. The current test for vulnerability is contained within Code C, para 1.13(d) which (edited) states that:

“vulnerable’ applies to any person who, because of a mental health condition or mental disorder:

(i) may have difficulty understanding or communicating effectively about the full implications for them of any procedures and processes...

(ii) does not appear to understand the significance of what they are told, of questions they are asked or of their replies:

(iii) appears to be particularly prone to:

- becoming confused and unclear about their position;*
- providing unreliable, misleading or incriminating information without knowing or wishing to do so;*
- accepting or acting on suggestions from others without consciously knowing or wishing to do so; or*
- readily agreeing to suggestions or proposals without any protest or question.”*

This creates a functional test (Dehaghani, 2019), where one may interpret these provisions as stating that an AA is not required for those with a mental health condition or mental disorder unless there are implications with understanding, or a risk of providing unreliable information. Code C goes on to consider the term vulnerability at Notes for Guidance 1G, which specifies that:

“A person may be vulnerable as a result of a having a mental health condition or mental disorder. Similarly, simply because an individual does not have, or is not known to have, any such condition or disorder, does not mean that they are not vulnerable for the purposes of this Code.”

Mental disorder is defined within the Mental Health Act 1983, section 1(2) as '*any disorder or disability of mind*'. The ICD-10 is the recognised diagnostic manual in the UK which categorises a range of disorders including schizophrenia, depression, anxiety, phobias and long-term substance addiction (National Health Service (NHS), 2021). These changes to Code C, which took place July 2018, may allow for officers to take a wider approach to vulnerability, as a suspect does not need to be mentally disordered or have a mental health condition to be vulnerable, and the provisions place greater emphasis on the suspect's understanding and ability to communicate.

Previously, the Codes appeared to equate the presence of a mental disorder or being mentally vulnerable with vulnerability. Those provisions are relevant to this research

as the interviews observed were conducted prior to the 2018 amendments. The term 'mentally vulnerable' was defined in the Notes for Guidance 1G:

“Mentally vulnerable applies to any detainee who, because of their mental state or capacity, may not understand the significance of what is said, of questions or of their replies.”

Mentally vulnerable is hard to define but would appear to include those with learning disabilities and a low IQ (Gudjonsson, 2003). Arguably, these definitions were not clear (Pearse and Gudjonsson, 1996a) and McBrien (2003, p.95) noted that mental disorder is “culturally relative and subject to changes in conceptualisation and practice”. Pearse (1995) suggested that these difficulties made it hard for the police to identify mental vulnerability, which appeared wider than mental disorder.

The current provisions within Code C take a more situational approach to vulnerability. While these are broader than pre-2018 guidance, they are still not as wide as those proposed by the College of Policing (2020), discussed in the previous section. The definition relating to suspects appears to be centred around one's understanding and communication, rather than the potential for harm. However, Choongh (1997) and the Mendez Principles (APT, 2021) argue that detention in custody may render a suspect vulnerable. The experience of being detained in the police station, potentially up to 96 hours, may be daunting for many suspects, especially those arrested for serious offences. If one takes the position that vulnerability may arise from a suspect's situation and if they are unable to protect themselves from harm (emotional or psychological distress, or harm to one's own interests) during their detention, it could be argued that all suspects detained in the police station are vulnerable. While similar arguments have been made in recent years (Dehaghani, 2019; APT, 2021; Tudor-Owen and van Golde, 2022a), to widely adopt such a position would require a fundamental shift in the way that vulnerability is currently operationalised within policing.

Guidance concerning who may be vulnerable and how they should be dealt with in custody (as set out in Code C of PACE and College of Policing (2022)) should influence how the police undertake their duties. This guidance needs to be clearly written so that officers understand when they should implement the law and how they should do so. However, the rules in this area have been criticised for being unclear and inconsistently applied (Dehaghani, 2019). As noted in Chapter Two, where the law is clearly written and officers are held to account for their actions, it tends to be followed and is implemented consistently (McBarnet, 1981b; Irving and McKenzie,

1989; Dehaghani, 2019). Yet, where the law is clearly defined, it may not provide the flexibility to account for a range of different situations (Cockcroft, 2020, p,10). That said, Cockcroft (2020) argues that where discretion is exercised, this may impact fairness as the law may not be equally applied. While this argument holds some merit if one prioritises equal treatment, alternatively, it could be argued that an equitable approach, where one tries to level the playing field and minimise disadvantage, is fairer (see section 2.2 for further discussion of equity).

As will be discussed later in the chapter, how custody officers interpret the vulnerability provisions in Code C of PACE appears to influence whether or not they obtain an AA (Dehaghani, 2019). Where discretion can be exercised, there is a risk that one's decision making will be influenced by unconscious or conscious biases (Fahsing, 2016). If one took a stringent approach to the guidance in Code C, then the majority of suspects could be considered vulnerable, and an AA should be obtained. While this would potentially cause an increased (and likely unsustainable) demand for AA services, if discretion is exercised when deciding whether to obtain an AA, it is possible that such an approach may enable suspects' rights to be circumnavigated and for crime control objectives to be prioritised (as noted by McBarnet, 1981b). That said, there may be areas of policing practice which do benefit from a flexible approach, for instance, where the police tailor their questioning methods to the needs of the suspect (see section 4.3.3 concerning best practice regarding open questions and when this should be departed from). The next section will consider how vulnerability is conceptualised for victims and witnesses to act as a comparison to that of vulnerable suspects.

3.1.2 The Definition of Vulnerability for Victims and Witnesses

To highlight the complexities surrounding the concept of vulnerability within the CJS in England and Wales, discrepancies between the treatment of suspects and witnesses/victims will briefly be explored. Vulnerability is often associated with the risk of victimisation and equated with weakness (Chakraborti and Garland, 2012). This emphasis though can be, at times, difficult to reconcile with suspects in criminal investigations, who may be responsible for the victimisation of another. This indicates the difficulty with preconceptions around vulnerability and applying these in different contexts.

Keay and Kirby (2018) observed a lack of consistent definitions across policing concerning vulnerability. The Youth Justice and Criminal Evidence Act 1999 (YJCEA), section 16, defines vulnerable witnesses on the basis of their age or

incapacity. Section 16(2) states that those suffering from mental disorder (as defined by the Mental Health Act 1983), those with a physical disability/physical disorder, or those with a significant impairment of intelligence and social functioning fall into this category. While there are similarities to the definition within Code C, the YJCEA refers to those suffering a 'significant impairment of intelligence and social functioning', terminology not mirrored in Code C. Without clear and consistent definitions in place across the CJS, it may not be possible to achieve uniformity in the recognition of vulnerability, as the term will be open to interpretation (Palmer, 1996).

3.2 The Prevalence of Vulnerable Suspects Detained in Police Custody

Article 37(b) of the United Nations Convention on the Rights of the Child suggests that the arrest and detention of a child should be used as a last resort and for as little time as possible. In the year 2020/2021, 49,422 juveniles were arrested (Home Office, 2022a), seven per cent of all suspects arrested. It is possible that not all juveniles were detained in custody as policy states that, where possible, juveniles should be diverted away from the CJS to avoid criminalisation (Parliament, 2020).

Conservative estimates suggest that within the UK, 17 per cent of the adult population experience a mental disorder (NHS, 2016) and two per cent of the adult population have a learning disability (Mencap, no date). Those with mental health problems and learning disabilities are disproportionately over-represented at all stages of the CJS compared to the general population (Rekrut-Lapa and Lapa, 2014). For example, Loucks (2007) collated relevant research in the area and found that 20 to 30 per cent of offenders had a learning difficulty or disability.

Studies have attempted to identify the number of suspects within police custody who experience mental health problems, learning disabilities and physical health problems, and findings consistently suggest that these rates are higher than those found within the general population. Gudjonsson et al. (1993) found that 35 per cent of suspects (n=171) were mentally vulnerable and eight per cent experienced a learning disability. Research conducted since has suggested that 39 per cent of suspects experienced a mental disorder (McKinnon and Grubin, 2013), a figure almost identical to recently conducted research by Samele et al. (2021). Young et al. (2013) also found similar rates to Gudjonsson et al. (1993), seven per cent, for those with learning disabilities in custody. However, some studies reported rates for suspects with mental disorder which are much higher. For example, Rapley and Sandberg (2011) found 68 per cent of suspects experienced mental disorder, and Payne-James et al. (2010) identified 56 per cent of suspects had active medical

conditions. This is a figure which has broadly been replicated in research from the Netherlands, where Geijsen et al. (2018a) identified around 60 per cent of suspects were positive against a mental health screening. The same authors (Geijsen et al., 2018b) also identified that rates for suspects (n=178) with learning disabilities were much higher than had been identified previously, with nearly 30 per cent having an IQ below 70 and 50 per cent having mild learning disabilities.

Additionally, those who are neurodiverse also appear to be over-represented in the criminal justice system when compared with the general population. Samele et al. (2021) found that within their sample of detainees in a London police station, eleven per cent were identified to have attention deficit hyperactivity disorder (ADHD). While this study is a relatively small sample, drawn from one urban location, other research by Baggio et al. (2018) and Young et al. (2015) identified that around 25 per cent of those in detention settings have ADHD, and that many detained also experience other morbidities including mental health disorders and autism. A study in the Netherlands identified even higher rates of ADHD in suspects, at around 38 per cent (Geijsen et al., 2018a), providing support for the fact that many suspects detained in police custody are vulnerable.

It is important to recognise the different methodologies employed, which may impact the findings obtained. For instance, studies which assessed suspects using mental health screening tools were more likely to identify vulnerability than studies where custody records were reviewed. This is not surprising as custody officers are not experts in mental health, so may be less likely to identify a vulnerability. Additionally, many of these studies are reliant on the relevant information being recorded in the custody record. Some of these studies explored the prevalence of different conditions (mental disorder/mental vulnerability) and some included learning disabilities and conditions such as autism. Therefore, caution needs to be taken when interpreting and comparing these findings. This is especially the case as conditions such as autism can impact individuals very differently, and some may be able to function and mask their condition more effectively than others (Crane et al., 2016).

It has also been recognised that prevalence rates for those experiencing physical health conditions¹⁷ in police custody is higher than that found within the general population (McKinnon and Grubin, 2010; Rekrut-Lapa and Lapa, 2014). Furthermore, it is relatively common for those who experience some form of morbidity to experience

¹⁷ Examples of which can include brain injury, diabetes, epilepsy. There is also a higher risk of dementia in older suspects.

multiple morbidities (Payne-James et al., 2010; Young et al., 2015; Samele et al., 2021; Foundation for People with Learning Disabilities, no date), some of which are further complicated by substance misuse (alcohol and/or drugs). Indeed, Samele et al., (2021) found that a quarter of the sample in their research (n=134) were affected by alcohol or cannabis misuse, similar to the rates (21 per cent) of substance misuse identified by Geijsen et al. (2018a). Other studies have suggested that around 40 per cent of suspects have consumed substances in the 24 hours prior to arrest (Forrester et al., 2017), although it is important to acknowledge that certain demographics (e.g., those who are homeless and military veterans) may present in custody with higher rates of substance misuse and/or mental disorder (including post-traumatic stress disorder) (Samele et al., 2021).

The rates of morbidity estimated for those coming into police custody are of relevance, as this provides an indication as to the number of adult suspects who may require additional safeguards, e.g., an AA. However, this section only discusses the research concerning suspects with specific types of vulnerabilities and does not consider those who may be vulnerable but do not have a mental disorder, learning disability/difficulty or physical health condition. The next section will briefly set out how vulnerability is identified in suspects who have been detained in police custody.

3.3 The Identification of Vulnerability in Police Custody

The previous section highlighted higher rates of morbidity, which may be indicative of vulnerability, amongst adults detained in police custody than is found in the general population (McKinnon and Grubin, 2010; Rekrut-Lapa and Lapa, 2014). The police may identify vulnerability in several different ways. With regard to juveniles, their age can be ascertained during the booking in procedure if they provide a date of birth. Where a suspect refuses to specify their age or specifies an age which does not appear to be correct, one may be able to confirm this through enquiries with family members/carers (Dehaghani, 2019) or prior arrest records. The identification of vulnerability in the context of vulnerable adults is more complex and the rest of the section will focus on this issue.

Vulnerability may be identified by an arresting officer through their interactions with the suspect during their arrest and transportation to custody (Robertson et al., 1995). Once at custody all suspects will be presented before the custody officer who ascertains the grounds and necessity for the arrest (Code G PACE), and then will make a determination about authorising the suspect's detention (College of Policing, 2021). However, it has been suggested that custody officers rubber-stamp the

decision to authorise detention and are not really independent of an investigation (McConville et al., 1991; Dehaghani, 2017b). If detention is authorised the suspect will then be booked into custody and should be informed of their rights and entitlements before they undergo a risk assessment (Code C, para 3.6 to 3.10) which forms part of the custody record. Suspects should also be asked about existing health issues and any medication they are taking (College of Policing, 2021).

Concerns have been raised concerning the risk assessment and the screening for vulnerability that takes place during the booking in procedure (McKinnon and Grubin, 2013; Noga et al., 2014). While there is national guidance contained within the APP for detention and custody (College of Policing, 2021), Stoneman et al., (2019) identified that risk assessments undertaken in forces across England and Wales vary from the national guidance and are not undertaken consistently. McKinnon and Grubin (2013; 2014) developed screening tools to improve this process, although NAAN (2015) suggest that nationally integrated screening questions are still required. As a result, a suspect's vulnerability may not be identified, which can have serious implications for their wellbeing and their due process rights. Additionally, Notes for Guidance 1G states that the custody officer should take into account how the nature of the investigation may affect the suspect. In a homicide investigation, it is possible that the serious nature of the allegations may impact a suspect's wellbeing and may exacerbate vulnerability.

While it is accepted that the police are able to identify the most serious cases of vulnerability among suspects (Gudjonsson et al., 1993; Peay, 2007), the identification of those suffering mild disorders may prove more difficult. Risk assessments undertaken during the booking in procedures have several limitations. Firstly, they are reliant on self-disclosure from a suspect, and some individuals may not wish to disclose such information (Bradley, 2009; McKinnon and Grubin, 2014). Some suspects may also be adept at concealing or hiding their vulnerability, especially if related to a mental health condition (Sanders and Young, 2000, p.195), and if a suspect is under the influence of alcohol and/or drugs at the time they are booked in, this may mask other vulnerabilities (Bradley, 2009). Custody officers are not trained medical professionals and as such are not equipped to identify a range of mental, physical and intellectual conditions present in suspects. Gendle and Woodhams (2005) identified that some officers did not distinguish between learning difficulties and learning disabilities and had difficulty distinguishing between these and mental health issues. Additionally, Gulati et al. (2021) identified that law enforcement officers lacked an understanding of suspects' needs and vulnerabilities. This may impact the

consistency with which safeguards for vulnerable suspects are implemented, which will be explored later in the chapter.

It is also important to acknowledge that vulnerability may not be identified until later during a suspect's detention. A Dutch study by Geijssen et al. (2018a) surveyed 103 detectives and found that 29 per cent of detectives identified vulnerability in suspects (in part or solely) as a result of observing abnormal behaviours during the suspect interview. Therefore, this study highlights that detectives do identify vulnerability as a result of their interactions with suspects. The next section will provide a brief overview of suspect safeguards which should be implemented once vulnerability is identified.

3.4 An Overview of Safeguards for Suspects Detained in Police Custody

To regulate the conduct of the police, judges issued guidance in 1912 as to how investigations should be conducted, which became known as the Judges' Rules (Johnston, 1966). While not legally binding, breaching these rules could lead to evidence being ruled inadmissible at trial at the court's discretion. The Judges' Rules focused on the treatment of a suspect by the police and established that confessions could only be used at trial if voluntary (Johnston, 1966). Guidance was also issued in relation to the provision of legal advice, and the questioning of children and 'mentally handicapped' suspects, where it was suggested that an adult should be present during interview (Practice Note (Judges' Rules) [1964]). McBarnet (1981b) was critical of the Judges' Rules and suggested that concepts used such as 'oppression' and 'voluntary' were too broad and ill-defined to be effective in regulating the behaviour of the police.

During the late 1970s, the case of Maxwell Confait was identified as a miscarriage of justice, where three defendants (two mentally vulnerable, one juvenile) were wrongly convicted of his murder, based on false confession evidence (Fisher, 1977). The case received widespread media attention and as a result of a lack of trust and confidence in the police, the Royal Commission for Criminal Procedure (1981) was established. The Commission noted that regulation of the police was not adequate and sought to ensure a balance between the duty of the police to investigate crime and the rights of the suspect. This led to the development of PACE and the Codes of Practice in 1984, which contain many of the safeguards discussed in this chapter to which suspects arrested and detained in the police station are entitled. While some safeguards apply to all suspects, some are specifically for those who are vulnerable, such as juveniles or vulnerable adults. Table 3.1 below sets out these safeguards, noting to whom they apply.

Table 3.1: A Summary of Suspect Safeguards for those Detained in Police Custody

Suspect Safeguard	Power
Safeguards for All Suspects	
Review of police detention - periodically reviewed within 6 hours of detention, then every 9 hours	Section 40 PACE
Time limits on detention without charge - Suspects can not be held for more than 24 hours without further authorisation. 96 hours maximum detention (excluding those arrested under terrorism legislation)	Sections 41 - 44 PACE, section 15 Code C
Right to notification - someone is to be notified that the suspect has been arrested. With limited exceptions, suspects are allowed to telephone one person. Where the suspect is a foreign national, their national embassy is to be notified	Section 56 PACE, section 5 Code C, section 7 Code C
Right to legal advice - right to free, independent and private legal advice	Section 58 PACE
Mandatory audio recording of suspect interviews	Section 60 PACE, Code E
Access to medical treatment	Section 9 Code C
Entitled to a copy of the Codes of Practice - however, this does not include the Notes for Guidance	Para 1.2 Code C
Provision of a written notice – this contains the suspect’s rights. There is a simplified version if required	Para 3.2 Code C
Regular checks should be undertaken on suspects which should, in part, be determined by the suspect’s level of risk ¹⁸ . Notes for Guidance 9B suggests juveniles and vulnerable adults are visited more regularly	APP for Custody and Detention
Right to a copy of the custody record Legal advisors and AAs also have a right to see the suspect’s custody record	Para 2.4A Code C Para 2.5 Code C
Right to an interpreter for those who are hearing impaired or do not speak English. *referred to in Code C as ‘special groups’	Para 3.12 Code C, section 13 Code C

¹⁸ These can range from ‘Level 4’ constant observations where an officer sits outside an opened cell, to ‘Level 1’ checks every hour (College of Policing, 2020).

One person per cell	Para 8.1 Code C
Cells should be adequately heated, ventilated and lit	Para 8.2 Code C
Adequate bedding should be provided	Para 8.3 Code C
Access to toilet and washing facilities	Para 8.4 Code C
Right to adequate food and drink - one main and two light meals every 24 hours. Religious or dietary requirements should be accommodated where possible	Para 8.6 Code C
Access to exercise facilities	Para 8.7 Code C
Right to a rest period - entitled to a continuous period of 8 hours rest, which should normally be at night	Para 12.2 Code C
Right to silence – The caution should be delivered reminding suspect of their right to silence on arrest and at the start of interview	Section 10 Code C
Additional Safeguards for Vulnerable Adults and Juveniles	
Right to an AA - for those under the age of 18 and vulnerable adults. The suspect's rights and entitlements should be delivered/repeated in the AAs presence (para 3.17, Code C)	Para 1.4 – 1.7A Code C
The AA should be present during interview	Para 11.15 Code C
The AA should be present during the provision of samples, and for identification procedures	Para 2.15 Code D
The AA should be present for charging decisions	Para 16.1 Code C
Visually recorded suspect interviews may be beneficial for those who are vulnerable	Para 2.2 Code F
Additional Safeguards for Juveniles	
To ascertain the person responsible for the welfare of the child and notify them of arrest, the reason why and where they are being detained	Section 57 PACE, para 3.13 Code C
Young people should have an AA present for a strip or intimate search	Annex A Code C
Female juveniles should be placed under the care of a female officer	Para 3.20A Code C
Juveniles should not be placed in a cell unless no secure accommodation is available. Juveniles should not be placed in a cell with an adult	Para 8.8 Code C
Juveniles should be placed in specialist cells/areas in the custody suite	APP for Detention and Custody

Many of these safeguards can be waived or delayed in certain circumstances with the authorisation of a senior officer of inspector rank or higher (for example, sections 56(2) and 58(6) PACE). While this *should* be an infrequent occurrence, it indicates the police have a wide discretion within which to operate and where legislation arguably extended the powers of the police (Choongh, 1997; Sanders and Young, 2000). However, there are a number of checks and balances built into the detention and treatment of people in police custody. Independent custody visitors attend the police station unannounced to ensure that the welfare of those detained in custody is looked after (Kendall, 2022). There are also periodic checks on custody facilities to ensure that the United Nations Convention on Torture is being adhered to (Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services, 2022). However, disparity exists between some of the rights afforded to suspects, and their enforceability. Rights set out in PACE have legislative weight and a higher status than those contained within the Codes, and the Notes for Guidance have even less weight (Medford et al., 2000), which may impact how breaches are responded to by the police and the courts (Dehaghani, 2019).

While not forming a part of PACE or the Codes of Practice, the matter of safeguards for suspects has also been explored by the Mendez Principles (APT, 2021) which notes the importance of adherence to legal and procedural safeguards. Para 62 (APT, 2021) sets out a list of safeguards which require 'effective implementation'. These include the right to a legal advisor, for a record to be made during detention, for suspects to be told of their rights, to have someone notified of their detention, for interviews to be recorded, to access an interpreter or doctor when required, to be informed of the grounds and reasons for arrest, and to have a record made of their detention. The Mendez Principles also state the importance of suspects being informed of their right to silence, which is generally covered during the police caution, although as noted in Chapter Four, this can prove difficult for suspects to understand, especially if they are vulnerable (Fenner et al., 2002).

While the safeguards noted in the Mendez Principles are largely provided for in PACE and the Codes of Practice, the document explicitly states the importance of adherence to safeguards, which may serve as a useful reminder to law enforcement as to their importance. Para 102 (APT, 2021, p.23) notes that adherence to safeguards "demonstrates the interviewer's respect for the human rights and dignity of the interviewee and improves the prospects for obtaining reliable information", and

that this aids with building and maintaining rapport (see Chapter Four for the importance of rapport to investigative interviewing). However, the Principles also highlight that the presence of a legal advisor during interview safeguards against attempts to conduct these unfairly and will “enhance the evidentiary value of the information gathered” (APT, 2021, p.24). A potential danger though is that the presence of a legal advisor who does not undertake their duty competently (see section 3.9) may legitimise poor practices by the police or other third parties if these are not identified and challenged.

There are two other points worth noting in relation to the Mendez Principles and safeguards. The first is that the Principles propose that interviews are audio-visually recorded (APT, 2021, p.29), which goes beyond the guidance provided in Code F of PACE. This helps to protect against the ill-treatment of the suspect, but also acts as an accurate record of the interview (APT, 2021). Secondly, and rather interestingly, while there is reference to the presence of a legal advisor, an interpreter and an intermediary (where required), the term intermediary is only used in the context of children, and there is no explicit reference to an AA, whose attendance at the police station is to aid communication or provide support to vulnerable adults.

The rest of this chapter will focus on third party safeguards provided for by PACE and Code C, chiefly, the AA and the legal advisor. Initially, the provision of AA services and the role of the AA will be explored, before attention turns to research which examines how this safeguard has been used by the police. Research in this area is varied and has explored AAs used for juveniles and/or vulnerable adults, including the role of the AA, how the AA has been implemented, perceptions of suspects on the AA, interventions during the interview, and AA schemes and how they work. It is also important to be cognisant of the different methodologies used in these studies and to take caution when comparing findings.

3.5 The Provision of Appropriate Adult Services: The Picture Across England and Wales

The provision of AA services can be split into two categories, AAs for juvenile suspects and AAs for vulnerable adults. As noted previously, vulnerability in juveniles is predominantly easier to identify, being determined by a suspect’s age (or presumed age – Code C, para 1.5). Those under the age of 18 years are entitled to an AA (Code C, para 1.4 and 1.7A) and section 38(4) of the Crime and Disorder Act 1998 created a statutory obligation on local authorities (often Youth Offending Teams (YOTs)) to provide AAs for juvenile suspects when required. This does not mean the YOT will

always provide an AA for juveniles, as a family member (otherwise known as a familial AA) may also act in the role. There is no equivalent obligation on local authorities for the provision of AAs for vulnerable adults, although it has been recommended that this is placed on a statutory footing, similar to that for juveniles (Bath and Dehaghani, 2020).

While AA schemes are in operation throughout most force areas across England and Wales (NAAN, no date (a)), these may operate in different ways, resulting in variable provision. For example, AAs may be provided by a scheme set up and run by the Police and Crime Commissioners (PCCs) office, by charities which rely on volunteers, or by dedicated AA schemes whereby AAs are employees and are paid to attend the police station (NAAN, no date (a)). Perks (2010) observed that only half of the police forces in England and Wales used a dedicated AA service for vulnerable adults, but AA provision has increased over the last decade. The provision of AA services was mapped in 'There to Help' (NAAN, 2015) and of the 38 providers who responded to calls for information, 20 were charities, ten were YOTs, and the remaining eight included a PCC organised scheme, emergency duty team (EDT), and counselling companies (NAAN, 2015). As will be explored in section 3.6, the nature of some of these schemes may give rise to conflicts of interest, which has implications for the independence of the AA.

Although the percentage of suspects afforded an AA has risen in recent years (Bath and Dehaghani, 2020) (which will be explored further in section 3.7), it is important to acknowledge the impact on AA schemes. An increase in demand for AAs may have financial implications, especially in areas where AAs are paid for their services. This may also place a strain on schemes with a smaller number of AAs, especially volunteers. Therefore, it is important that adequate AA scheme infrastructure is in place to cope with an increase in demand for AAs, if this trend continues in forthcoming years.

3.5.1 The Role of the Appropriate Adult

The purpose of this section is to briefly outline the role of the AA. While the AA can undertake a range of duties whilst at the police station, the focus of this thesis is on the suspect interview and working practices which may directly impact this. This section will briefly explore the way in which the role has been conceptualised and defined. Aspects of the AA role concerning the interview itself will be discussed in the next chapter.

The AA is described by NAAN (no date (b)) as an independent person, who attends the police station to ensure that the rights and entitlements of the suspect are adhered to and that they are treated fairly. Code C, para 1.7A further notes that the AA should provide support, advice and assistance (but not legal advice), ensure the police act properly and fairly, facilitate communication, and help the suspect understand their rights. As highlighted in Table 3.1, the AA should be present when rights and entitlements are delivered to the suspect, for charge and bail decisions, during searches, identification procedures and when certain samples are provided, and during the suspect interview. However, while a brief explanation of the role is provided in Code C, little guidance has been offered as to how the duties of the AA should best be undertaken. Therefore, how one may provide support, or challenge the police to ensure they act fairly is not clearly explained. While some guidance has been provided by NAAN (2018), the Home Office (2003), College of Policing (2021) and the Youth Justice Board (2019), not all AAs will have access to this documentation, especially those who are not trained, such as familial AAs. Additionally, AAs may be provided with variable guidance about their role by the police while they are in custody (Evans, 1993). Consequently, AAs may perform the role differently, depending on their training, knowledge and experience.

The AA role incorporates different conceptual perspectives, and this may also influence how the role is perceived and consequently undertaken. Pierpoint (2004) identified that the AA role may be viewed from a due process, crime control or welfare perspective and, for example, those interested in getting the suspect to talk during the interview (such as social workers) may be adopting a crime control perspective. However, providing an account during an interview may not be in the suspect's best interests, and may also be contrary to legal advice. Pierpoint (2006) also found in her research, that some AAs were keen for the suspect to be released from custody as quickly as possible, and that this increased concern with suspect welfare could result in the suspect being rushed through the detention process. Robertson et al. (1996, p.306) also explored the benefit of a welfare approach, suggesting that the AA should act as a friend to the suspect. Yet, while providing support is important, this arguably overlooks important aspects of the AA role, such as facilitating communication and ensuring the police act fairly. Furthermore, where safeguards are not implemented in their entirety, the suspect may not fully benefit from their due process rights (Pierpoint, 2011, p.152).

While there are some ethical and practical challenges when conducting research with vulnerable suspects, little consideration has been given to how suspects perceive the

role of the AA. Research has identified that some suspects with learning disabilities find custody difficult and Hyun et al. (2014) identified three themes which were experienced by suspects with learning disabilities; a lack of understanding around what was happening, feeling alone and not knowing who to turn to for help, and uncertainty over what to say/do. Vulnerable adults felt that an AA who could explain processes and facilitate communication was important, but so was emotional support (Jessiman and Cameron, 2017). This highlights the multifaceted nature of the AA role, and that suspects may want or need assistance in different ways. To be able to best safeguard vulnerable suspects and enable 'equality of arms', AAs should be able to perform all aspects of the role, but also be able to adapt to the needs of each suspect. Therefore, an AA with specialist knowledge of common conditions experienced by suspects (e.g., neurodiverse conditions such as autism and ADHD) may be beneficial to aid communication and rapport.

Pierpoint (2011) highlighted that the role of the AA has been extended beyond that stated in Code C, identifying activities undertaken by AAs including transporting the suspect upon release from custody, referring them to other services and accompanying them whilst they partake in a witness statement. Pierpoint (2011) suggested that informally increasing the scope of the AA role is akin to 'role creep', where practices become legitimised through their usage over time, before they may be incorporated into legislation or guidance. The danger of 'role creep' is that a role can evolve into something which does not resemble what was originally intended (Caless and Tong, 2013). This may change the emphasis with which the role is undertaken, and there is a risk that less focus is paid to key parts of the role which safeguard the suspect and enable 'equality of arms'. How the AA performs the role during the suspect interview will be explored in the next chapter.

3.5.2 The Training and Support of Appropriate Adults

Issues have previously been raised regarding the training that AAs receive to undertake the role (Hodgson, 1997). NAAN is a charity that aims to improve policy and practice (NAAN, no date (b)) and they have developed national standards which cover how AA schemes operate, the training of AAs, how AAs are managed and effective practice (NAAN, 2018). NAAN lists its members online¹⁹, and while not all AA schemes are members, there is no obligation for providers to apply for membership (NAAN, no date (c)).

¹⁹ NAAN members were also geographically mapped in There to Help (NAAN, 2015), but this data is more dated.

Pierpoint (2011) suggested that AAs would benefit from accredited training and further clarification of the AA role. Training provided to AAs may vary in duration and intensity, even if based on the NAAN national standards. Some training programmes also have input from the police force (Nemitz and Bean, 1998; Pierpoint, 2004), which can be beneficial to acquaint AAs with the law and custody practices. However, Pierpoint (2004, p.40) notes that it is important that the police do not become involved in the monitoring of AAs. If this occurs there is a risk that the independence of schemes may become compromised, and AAs may feel pressured to undertake the role in a manner which appeases the police.

One consideration, especially in relation to suspects who have been arrested for serious offences, is the suitability of the AA to act in that investigation. Hodgson (1997) suggested AAs with different expertise act for vulnerable suspects according to an attempted match of needs, expertise and availability, and she recommended a broad but thorough training programme that all AAs complete, so they all have experience of a range of vulnerabilities. Alternatively, one may consider whether an AA 'specialises' in a couple of different areas. It is important that training is continuous and support for the AAs is also provided, especially for those participating in cases involving serious and sensitive offences, as some of these cases can be traumatic and leave a lasting impact on an AA (*Leech v Chief Constable of Gloucestershire Constabulary* [1999]). NAAN national standards do refer to attendance in relation to serious offences, suggesting that backup is provided (NAAN, 2018, p.65) and that counselling services are made available (NAAN, 2018, p.51). The next sections will explore who is able to undertake the role of the AA.

3.6 Who can act as an Appropriate Adult

Code C para 1.7 specifies who can act as an AA. For juvenile suspects, an AA can be a parent/guardian or person responsible for their care, a social worker, or any other responsible adult over the age of 18 who is not a police officer (Code C para 1.7(a)). For a vulnerable adult, an AA can be a relative/guardian or person responsible for their care, someone with experience in dealing with mentally vulnerable people or a responsible adult over the age of 18 who is not a police officer (Code C para 1.7(b)). However, there is some ambiguity as to what a 'responsible adult' is, nor how much experience of dealing with mentally vulnerable people is required.

The Notes for Guidance suggest that not all who fall into the above categories are suitable to act as AAs. A solicitor cannot act in both roles simultaneously (Note 1F), nor should someone with suspected involvement in the offence, either as a suspect,

victim or witness (Note 1B) as this would arguably impact their impartiality. The court has also held that an interpreter cannot act as an AA for the same suspect (R v West London Youth Court Ex Parte J [2000]). Furthermore, should an adult be unable to provide support and advice, the courts have ruled that they are not appropriate (DPP v Blake [1988]; R v Morse [1991]). However, this has been interpreted narrowly and a juvenile's psychotic mother was deemed to be appropriate in R v W [1994] and the court concluded the interview was conducted fairly. The appointment of inappropriate AAs has also been noted in previous research. Gudjonsson and MacKeith (1994) identified an AA who was of borderline intelligence, and arguably unfit to act in the role. During the appointment of this AA, the police made no enquiries as to the suitability of the individual and did not identify that she was illiterate.

Additionally, the suspect's wishes as to who acts as their AA should be considered. Notes for Guidance 1D states "*...if the detainee prefers a relative to a better qualified stranger or objects to a particular person their wishes should, if practicable, be respected*". It is not known how often representations are made by vulnerable suspects about who acts as their AA, but where AAs are too familiar with the police, their independence may be affected (Medford et al., 2000; Pierpoint, 2008), which is a key aspect of the AA role. The next section will now explore types of AA, with reference to three broad categories: family members²⁰, paid professionals, and volunteers.

3.6.1 Familial Appropriate Adults

As noted in the previous section, parents, guardians, and wider family members (collectively known as familial AAs) can act as an AA for vulnerable suspects. However, familial AAs may be unfamiliar with the police station and criminal law (Bucke and Brown, 1997). This means that they may be unaware of the powers the police have, but also the constraints within which the police should act, and the powers of the AA (Pierpoint, 2000). Family members may also have no prior knowledge of the role and are therefore reliant on an explanation of this by police officers (Dixon et al., 1990; NAAN, 2015). Research has found that the instruction given to AAs was limited (Bucke and Brown, 1997), and was often received prior to an interview, not upon arrival in custody (Pearse and Gudjonsson, 1996a). Furthermore, being able to truly understand what the role entails and having the confidence to ask or clarify something with the police is another matter entirely (Dixon et al., 1990; Pierpoint, 2000; Williams, 2000). Arguably, this leaves many family

²⁰ Friends may also be included within this category

members (and other untrained AAs) ill-equipped to perform the role of the AA (Nemitz and Bean, 2001), and risks that the suspect's rights will not be upheld during their detention. Additionally, an AA may not know when to intervene during the suspect interview or may do so inappropriately, for example, by contradicting the legal advisor (Medford et al., 2003).

There may be some benefits to the attendance of familial AAs at the police station, including knowledge of the suspect (and their vulnerability), and how best to facilitate communication or provide support during their detention (Jessiman and Cameron, 2017). Additionally, Bevan (2019) identified that many young people were comforted and reassured by the use of a familial AA. However, the role may be better suited to a trained professional or volunteer where offences are sensitive, and the presence of a familial AA may prove embarrassing for a suspect who wants confidentiality (Jessiman and Cameron, 2017). In such circumstances, a suspect may not engage in the interview or may become distressed by the presence of a family member. Additionally, familial AAs may become emotional and/or hostile towards the suspect or the police during interview (Bucke and Brown, 1997; Medford et al., 2003). If an AA sides with the police, they may effectively become an agent for the police (Southcott, 1999), exacerbating the disadvantage and power imbalance experienced by the suspect. This could create a potential conflict of interest as the familial AA may not be able to act independently and impartially (Pierpoint, 2000). Therefore, another individual may be better placed to act as the AA and safeguard the suspects' rights. Consideration will now turn to an alternative, paid professionals.

3.6.2 Paid Professionals

Another category of AA is that of professionals, which includes those in professional roles who may act as AAs, and paid professional AAs. The former includes social workers and members of YOTs, whereas the latter are employed as AAs by charitable organisations (Perks, 2010) or private providers such as The Appropriate Adult Service (TAAS), who are the largest AA provider in the UK (TAAS, no date). Professionals may be requested to attend the police station as some suspects may be estranged from their families (NAAN, 2015), or family members cannot be contacted (Kay and Quao, 1987), have conflicting childcare responsibilities or refuse to attend. Additionally, some AA schemes do not operate overnight, so if there is a requirement for an AA during this time, the police may need to call an AA from the EDT (Perks, 2010, p.8).

It has been suggested that some social workers may not have a good understanding of mental health disorders or the role of the AA (Evans and Rawstorne, 1997; Pierpoint, 2000). Additionally, a potential conflict of interest has also been identified, which may arise when a social worker is torn between their primary role and that of the AA (Hodgson, 1997; Nemitz and Bean, 2001). For instance, social workers may encourage the suspect to take responsibility for their actions and make admissions, yet this may not be in the best interests of the suspect, who may be best advised to remain silent in the circumstances (Pierpoint, 2000). Where the professional holds a position of some authority and power over the suspect (Hodgson, 1997) this raises concerns regarding confidentiality in light of admissions made by suspects and how these are treated at a later date (Fennell, 1993; Littlechild, 1995; Pierpoint, 2000). Furthermore, social workers are often required to have good working relationships with the police and may not want to jeopardise these (Kay and Quao, 1987). Pierpoint (2005) relates this situation to 'interview room lore', where to maintain harmonious working relationships, conflict is subsequently avoided. To avoid such conflict, a professional may fail to make representations or intervene during interview when necessary, weakening the effectiveness of the AA safeguard. Evans (1993) identified that social workers made fewer interventions during interviews than familial AAs, which may provide support for the argument of 'interview room lore'. However, this may be damaging to the relationship between the AA and the suspect, as if the AA is perceived to be on the same 'side' as the police, the suspect may not feel able to trust the AA or feel comfortable in their presence. This could impact the ability of the AA to perform their role, and result in the suspect being disadvantaged during their detention.

Professional AAs may also be employed to specifically perform the role through dedicated AA schemes (TAAS, no date). There have been calls to professionalise the AA role (Pierpoint, 2011) and one benefit of these schemes is that AAs are specifically trained and may be more independent than social workers and family members. Where AAs are trained, they may better safeguard the suspect's rights, and many professional AAs now request legal advice as a matter of course upon their attendance at the police station (Brookman and Pierpoint, 2003; Medford et al., 2003). This highlights the importance of the AA, if their attendance is associated with an increased use of other suspect safeguards. AA schemes employing professional AAs may have some similarities with AA schemes which rely on volunteers, to which attention will now turn.

3.6.3 Volunteers

In response to some of the issues identified with social workers and family members acting as AAs, accompanied by a lack of overall AA provision, recommendations were made for dedicated volunteer AA schemes (Hodgson, 1997; Pierpoint, 2000; 2008). While family members do volunteer to attend the police station, the term is used in this section to describe those who have received specific training to undertake the AA role. The schemes which provide volunteer AAs may differ in their nature and could, for instance, be run by the PCCs office or charitable organisations (NAAN, no date (a)).

While volunteers may often be perceived as efficient and cost effective (Audit Commission, 1996), the nature of voluntary work can be problematic. Nemitz and Bean (1998) observed that the highest demand for voluntary AA services was during working hours, yet the typical volunteer is employed and may not be available when demand is highest. In contrast, Pierpoint (2008) identified that many voluntary AAs in her research were in higher education, which may be the case if AA schemes recruit from local universities. If volunteers are predominantly white, middle class and female²¹, one may question whether AAs are representative of the suspect demographic and able to build rapport with a vulnerable suspect, an issue identified by young suspects in Bevan's (2019) research. Jessiman and Cameron (2017) identified that some vulnerable adults perceived their relationship with the AA as important and Leggett et al. (2007) found that suspects preferred to have an AA they knew and trusted. That said, some suspects raised concerns over confidentiality and privacy, both in relation to familial and professional AAs (Jessiman and Cameron, 2017).

There is also some evidence that voluntary AA schemes have improved the use of AAs by the police (Nemitz and Bean, 1998; Medford et al., 2003). NAAN (2015) identified that where AAs are provided by a dedicated scheme (and a NAAN member) identification of vulnerable adults is 4.9 per cent, higher than the average of 3.1 per cent. It is possible that when the police have positive experiences with AAs from dedicated schemes, their use may rise as confidence in AAs increases (Nemitz and Bean, 1998). However, not all officers viewed voluntary AAs positively, with some perceiving them to be obstructive (Nemitz and Bean, 1998). This perception may be due to voluntary AAs intervening more than familial AAs and social workers during the suspect interview (Pierpoint, 2001), which will be considered further in the next

²¹ Nemitz and Bean (1998) identified that there were more female than male volunteers.

chapter. Attention will now turn to research which explores whether and how the AA is obtained.

3.7 Obtaining an Appropriate Adult for Vulnerable Suspects

As noted earlier in the chapter, those who are under the age of 18, or appear to be, are entitled to an AA. The guidance regarding vulnerable adults is a little more complex. Section 3.3 highlighted that the identification of vulnerability in suspects detained in custody can be problematic, but that the police are often able to identify more serious cases of vulnerability (Gudjonsson, 2003). If the custody officer suspects that a person may be a vulnerable adult then Code C, para 1.4 applies:

“If at any time an officer has any reason to suspect that a person of any age may be vulnerable (see paragraph 1.13(d)), in the absence of clear evidence to dispel that suspicion, that person shall be treated as such for the purposes of this Code.”

However, prior to July 2018, para 1.4 stated that:

“If an officer has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or otherwise mentally vulnerable...”

The current provisions state that an officer should have ‘any reason to suspect’, as opposed to ‘any suspicion or is told in good faith’. As the fieldwork took place under the old provisions, it is this guidance which will be predominantly explored in the findings chapters.

Research has confirmed juvenile suspects are predominantly afforded an AA (Medford et al., 2003). However, the picture is rather different for vulnerable adults. Gudjonsson et al. (1993) psychologically assessed adult suspects (n=171) to identify vulnerability in custody. Gudjonsson et al. (1993) suggested that 15 to 20 per cent of these suspects required an AA, however, only four per cent were provided with an AA. Similar findings have been identified by Medford et al. (2003) where 1.7 per cent of suspects in their research were afforded an AA, which was 40 per cent of the total number of suspects identified as vulnerable. Similarly, Bath and Dehaghani (2020) identified that six per cent of suspects were afforded an AA, much lower than the levels of vulnerability identified within the suspect population of 39 per cent (McKinnon and Grubin, 2013). Studies have also explored allocation of AAs for those with learning difficulties and/or disabilities and Talbot (2008) identified that over two thirds of suspects were not afforded an AA. These findings indicate there is a consistent

underuse of the AA safeguard, which raises the question as to why AAs are not being obtained when required.

There does also appear to be some correlation between the type of AA scheme in operation and the use of AAs by the police. Where AA schemes were NAAN members, the police used AA services more than in areas where schemes were not NAAN members, and both had higher rates of usage than in areas where there was no scheme in place at all (NAAN, 2015). Additionally, when an AA is called, the way in which they are used may vary. Around a fifth of custody officers do not routinely call an AA for identification and charging procedures (Perks, 2010; NAAN, 2015), which puts vulnerable suspects at risk, and leaves the police potentially open to legal challenge. This may contribute to inconsistencies in when an AA is called, and what they are used for. The next section will briefly explore some of the potential reasons for the failure to obtain an AA when required.

3.8 Failing to Obtain an Appropriate Adult for Vulnerable Adults

There are several potential reasons for the disparity between the numbers of vulnerable adults in custody and those afforded an AA. Firstly, as touched upon in section 3.4, the police may not be able to identify a suspect's vulnerability. Identification is not an easy task for custody officers who receive limited training on mental health matters (Williams, 2000; NAAN, 2015). Additionally, the identification of vulnerability may be impacted by the working environment of the custody officer who, in busy periods may be under pressure to process suspects quickly and, as a result, may fail to identify vulnerability (Coppin, 2008). This is an example where crime control priorities of efficiency and standardised procedures may impact the implementation of a due process safeguard.

It is also possible that an AA may not be obtained if the custody officer adheres to the suspect's request (Dehaghani, 2019), although this is not applicable for juvenile suspects who must have an AA by default of their age. One may argue that suspects should be able to make their own decisions about whether they receive safeguards. However, Sanders and Young (2000, p.242) note that suspects are subjected to a range of procedures during their detention, so, arguably, should be subjected to a safeguard which is for their benefit. The weight given to a suspect's right to autonomy involves a balancing act with their ability to undertake this, which arguably is beyond the remit of the custody officer and needs to be addressed by legislators and policymakers.

The other explanation for a failure to obtain an AA is that vulnerability is identified, but a conscious decision is made not to call an AA by the custody officer. This is influenced, in part, by how custody officers interpret and socially construct vulnerability (Dehaghani, 2019). Dehaghani (2019) identified that many custody officers equated vulnerable adults with those who lacked an understanding of what was going on around them. While this is not consistent with the pre-2018 provisions contained within Code C, it may not have been possible to afford all vulnerable suspects an AA based on the resources available at the time. Dehaghani (2019) identified dissuasive and persuasive factors which may influence the decision-making of the custody officer. Dissuasive factors included the presence of the legal advisor (where this was seen as a substitute for the AA), following the advice of the healthcare professional (HCP), and resources (time/money). In contrast, persuasive factors included the seriousness of the offence, that the suspect received an AA previously, one was requested by a solicitor, or it would be for the benefit of the suspect (Dehaghani, 2019).

The role of the HCP is worth noting, as the custody officer may pass their responsibility for deciding whether an AA is required to them (Medford et al., 2000; Dehaghani, 2019). The HCP does have a duty (Code C para 12.3 and Annex G) to consider the issue of fitness for interview, and para 12.3 states that risks to the physical and mental state of the suspect should be considered to determine what safeguards (e.g., the AA) are required should an interview take place. However, many HCPs are not experts in mental health and therefore may fail to identify vulnerability, especially where training is outdated (Palmer, 1996; Hodgson, 1997; NAAN, 2015). Farrugia (2021) highlighted that suspects arrested for serious or violent offences may be more likely to be referred to the HCP for a mental health assessment. Yet this does not mean an AA is subsequently called (Bucke and Browne, 1997; Medford et al., 2000; Criminal Justice Joint Inspection, 2014). Bucke and Browne (1997) observed that where an HCP was called to examine the detainee, in 37 per cent of cases they suggested an AA was required and in 30 per cent of cases one was judged to be not required. Similarly, the Criminal Justice Joint Inspection (2014, p.19) identified that vulnerabilities may be identified by the HCP, yet no AA is recommended. Therefore, it appears that HCPs are not always recommending AAs when required. If the HCP does not recommend an AA, this is often seen as confirmation that one is not required, regardless of the custody officer's initial concerns (Medford et al., 2000; Dehaghani, 2019).

As noted earlier in the chapter, Code C does not have the force of statutory legislation and there is little personal consequence for failing to adhere to the guidance (section 67 PACE). Furthermore, the vulnerability provisions within Code C are poorly defined (Gudjonsson, 2003). This enables custody officers to exercise discretion whether to obtain an AA or not. If an AA is not obtained when required and this is identified and raised at trial, there is a possibility that interview evidence may be ruled inadmissible. Dehaghani (2019) notes that the courts have taken an inconsistent and somewhat lenient approach to this issue, which further legitimates and reinforces police behaviour. Until breaches of rules are dealt with consistently and seriously, it is unlikely that police behaviour will change, as at present there are few consequences for non-compliance. The next section explores an important safeguard for any suspect, but especially for those who are vulnerable, the right to legal advice.

3.9 The Provision of Legal Advice

A well-established safeguard afforded to all suspects is the right to legal advice, which was incorporated within the Judges' Rules (Johnston, 1966) before it was given statutory footing in section 58 of PACE. The right to legal advice is also provided for in Article 6 of the European Convention on Human Rights, the right to a fair trial. PACE states that legal advice shall be free, independent and this right can be exercised at any time during the detention process.

Legal advice may be provided to suspects at the police station in one of two ways. Firstly, a suspect can contact a legal advisor of their choice who may attend the police station to represent the client in exchange for payment. Alternatively, a duty solicitor may be sought to attend the police station at no cost to the suspect. This is a legal advisor who has undertaken police station accreditation (PSA) within England and Wales and the Legal Aid Agency provides a fixed remuneration for their services (Solicitors Regulation Authority, no date). Each police force will have access to duty solicitors in their area who are on call to attend the police station as and when required. Suspects may receive this advice in person, but also over the telephone (Skinns, 2009b).

Research suggests that, on average, requests for legal advice have increased over the last 30 years. Phillips and Brown (1998) identified that 33 per cent of suspects requested legal advice, a figure which rose to 60 per cent in Skinn's (2009a) research, although Kemp et al. (2011) identified this to be in between the two, at 45 per cent. The uptake of legal advice in custody may depend on a number of factors, including the suspect's age (Kemp et al., 2011), geographic location (Kemp et al., 2011), the

seriousness of the offence (Skinns, 2009b), time and day of arrest (Skinns, 2009b) and their ethnicity (Phillips and Brown, 1998). Research has also identified that the uptake of legal advice may be influenced by the use of ‘ploys’ by the police, which may include not stating that legal advice is free and private, or implying legal advice will delay the suspect’s detention (Sanders and Young, 2003, p.239; Kemp, 2013)²². Additionally, Talbot (2008, p.v) identified that some suspects with learning difficulties/disabilities “felt manipulated into agreeing to a police interview without support”, often through ploys such as suggesting that the process would take longer to conclude. However, Kemp (2013) also noted that suspects may on occasion be encouraged to seek legal advice if they initially refused this.

Furthermore, some suspects (suggested to be 20 per cent by Skinns, 2009a) may request legal advice but do not receive this (Skinns, 2009a; Kemp et al., 2011), which appears to contravene their due process rights. Few studies have explored the uptake of legal advice for serious offences, although Leahy-Harland and Bull (2021) identified that legal advisors attended 98 per cent of serious crime interviews reviewed in their research (murder offences represented 82 per cent of the offences sampled). It is anticipated that similar findings will be replicated across this research. However, Kemp (2013) identified that ‘around one quarter’ of suspects²³ arrested for homicide or rape did not receive legal advice, indicating a sizable minority of suspects did not benefit from this safeguard.

It was identified in section 3.6.2 that the AA can request legal advice on the suspect’s behalf (para 3.19 Code C), something that some AAs do upon their attendance at the police station (Brookman and Pierpoint, 2003, p.459). While Cummins (2011) suggests that the AA could undermine the autonomy of the suspect and make decisions against their will, one alternative perspective is that a vulnerable suspect may be able to think less clearly whilst being detained in the police station, and therefore they may benefit from an AA ensuring their rights are safeguarded (Sanders and Young, 2000; Dehaghani, 2021). The importance of legal advice is that this is associated with the outcome of an interview (Moston and Stephenson, 1993), which will be further explored in the next chapter. The next section will explore the role of the legal advisor, before examining legal privilege.

²² It has also been identified in the USA that the police often use similar ‘ploys’ to encourage suspects to waive their Miranda Rights, which entitles suspects to the right to silence and access to a legal advisor (Leo, 2008; Brookman et al., 2019).

²³ This research reviewed over 30,000 custody records (Kemp, 2013).

3.9.1 The Role of the Legal Advisor

The role of the legal advisor is defined within Code C, Notes for Guidance 6D, where it is suggested that their *“only role in the police station is to protect and advance the legal rights of the client”*. Notes for Guidance 6D further suggests that the legal advisor gives advice and may seek clarification from the police. Similar to the critique about a lack of clarity of the AA role, the Codes also lack guidance about the nature of the legal advisor’s role. Shepherd (2004) provides further guidance, proposing seven key aims of the legal advisor, which include assessing the suspect’s vulnerability and ability to communicate, investigating the allegation and evidence, and identifying a potential defence. Another key aspect of the legal advisor’s role relates to disclosure, but this will be noted in the next chapter. Recent literature has described the role of the legal advisor as one which acts in the ‘best interests’ of the suspect (Mergaerts, 2021²⁴), however, what this truly entails is not further explored in this paper. That said, Mergaerts (2021) suggests that in order to act in the suspect’s ‘best interests’, the legal advisor should be aware of any respective vulnerabilities. As such, the identification of vulnerability by the legal advisor has been described by Mergaerts (2021) as an additional safeguard should vulnerability be missed by the police.

The suspect consultation is an important process which not only enables legal advisors to provide advice to suspects, but also may lead to the identification of vulnerability (Mergaerts, 2021). However, this may not be possible if a consultation is provided over the phone, as there are no visual clues available to aid in establishing understanding, leading the Scottish Equalities and Human Rights Commission (2017) to conclude that telephone consultations are not appropriate for vulnerable suspects. Cape and Hodgson (2014, p.477) identified that the legal consultation may take longer where a suspect is vulnerable. However, the extent to which legal advisors are trained to assess vulnerability, and how successfully they are able to do this in England and Wales, is another matter entirely. Mergaerts (2021) found that legal advisors’ perceptions of vulnerability were broad and included both individual and situational factors, although caution needs to be taken with these findings as they derive from a small sample of legal advisors (n=16) operating within Belgium.

While legal advisors undertake specialist training in the form of PSA (Solicitors

²⁴ It is important to acknowledge that the research of Mergaerts concerns the role of the legal advisor in Belgium, within which the guidance governing the police concerning vulnerable suspects is different. That said, Mergaerts (2021) suggests that her work has applicability to adversarial CJSs due to the blended CJS which exists within Belgium.

Regulation Authority, no date), previously, deficiencies were identified with the quality of advice provided by legal advisors and the safeguard was not well regulated (McConville and Hodgson, 1993). However, professionalisation of the role has resulted in improvements (Bridges and Choong, 1998). Suspects are often positive about the advice they have received, although it may be questionable whether they are aware of the requirements of the legal advisor's role, to make an informed decision about the quality of the advice they have received (Skinns, 2009a). In contrast, Bevan (2019) identified that young suspects often found it difficult to engage with the legal advisor, in part due to the time constraints of the legal advisor, and the nature of the information being discussed. One factor which may influence the working practices of the legal advisor is the remuneration received, which can be a fixed fee (Smith and Cape, 2017). Where this is the case, some legal advisors may be incentivised to spend as little time as possible on each case, impacting the quality of advice provided (Smith and Cape, 2017, p.76), but also the time spent with the suspect in which vulnerability may be identified.

Other debates involving the legal advisor and the AA, concern the degree of similarity between the two roles, and whether the legal advisor could or should undertake the role of the AA. There are some similarities between the roles, both of which were conceived to protect a suspect, such as ensuring that the interview is undertaken properly and fairly. This resulted in the suggestion that a legal advisor with some training in mental disorders may be able to undertake the AA role (Fennell, 1994). Additionally, the courts have ruled on the admissibility of evidence based upon the presence of one party, not solely the AA, implying the two roles can be interchangeable (Dehaghani, 2019). However, some have advocated for the roles to remain separate due to conflicts of interests that may arise. Pierpoint (2004) notes that facilitating communication may conflict with the right to silence) and different conceptual underpinnings of the roles (e.g., welfare perspectives). Additionally, the AA should, in theory, be independent and impartial (Dehaghani and Newman, 2019).

As noted in the previous paragraph, one role of the legal advisor is to ensure that the suspect interview is undertaken fairly. However, seldom are legal advisors' perceptions of the suspect interview explored. Minhas and Walsh (2021) interviewed 15 legal advisors about their experiences of representing ethnically diverse suspects during police interviews. Minhas and Walsh (2021) found that legal advisors believed that officers displayed biased attitudes towards ethnically diverse suspects and those from deprived areas. It was suggested that this resulted in guilt presumptive questioning, and specific tactics such as the use of repetitive questions, exaggerating

the strength of the evidence and ignoring evidence in the suspect's favour (Minhas and Walsh, 2021, p.279). Consequently, interviewers of ethnically diverse suspects may develop tunnel vision and their behaviours may result in an interview which is not conducted fairly and potentially an inaccurate account is obtained. While this study is reliant on self-reports of legal advisors and involves a small sample, it does highlight the dangers of prejudicial stereotypes and negative attitudes towards ethnically diverse suspects. This raises the question as to whether similar views and attitudes may be held by some officers against suspects who are vulnerable for a range of other reasons including age, learning disability or mental disorder.

3.9.2 Legal Privilege

One unique aspect of the legal advisor's role is that they are subject to legal privilege. This relates to confidentiality between the suspect and legal advisor, where there is no requirement for the legal advisor to disclose information received from the suspect (Law Society, 2021). However, the AA is not entitled to legal privilege during their interactions with the suspect (Code C, Notes for Guidance 1E). While case law (*A Local Authority vs B* [2008]) ruled that the presence of the AA in the legal consultation does not destroy this, the AA themselves is not subject to legal privilege. Therefore, the AA may choose to divulge the contents of any conversation with the suspect to the police. While this may aid an investigation and any subsequent prosecution, it may also damage the relationship between the AA and the suspect. Parry (2006, p.387) noted that AAs are "encouraged to respect confidentiality", yet highlights the guidance set out in Note 1K of Code C of PACE which states that "all citizens have a duty to help police officers to prevent crime and discover offenders. This is a civic rather than a legal duty". Ultimately, this is a moral decision for the AA and may depend on the nature of the allegations and the disclosures made by the suspect. The approach the AA may adopt may also be influenced by any other roles they undertake. For instance, White (2002) noted that social workers acting as the AA, may feel obligated to disclose details of criminal activity.

The matter of confidentiality should not be problematic unless the AA is in the company of the suspect who discloses matters relating to a criminal offence. This may occur during a suspect consultation with the AA, if one is undertaken, but there is a higher likelihood of this arising if the AA attends the legal consultation between the suspect and legal advisor. There is little research in this area, so it is not widely known how often AAs do attend the legal consultation. However, Pierpoint (2005, p.174) identified in her research that where a legal consultation took place, three per

cent of AAs were present for the legal consultation (n=146) and in some cases the reason provided for the AAs attendance was because the juvenile was distressed. Therefore, it appears that some AAs, may attend the legal consultation for the benefit of the suspect's welfare. It is recommended that if an AA does attend the legal consultation, the suspect is made aware of the risks involved and the AA excuses themselves from the 'relevant' parts of the consultation (NAAN, 2018, para 6.8), which presumably includes discussion around the suspect's involvement in the offence.

Cummins (2011) argues that allowing the AA legal privilege would render them part of the defence. However, academics and practitioners have called for the AA to be afforded this privilege as the current situation could result in the AA being called as a prosecution witness, which hampers the AAs ability to perform the role effectively (Nemitz and Bean, 2001; Dehaghani and Newman, 2019; Dent and O'Beirne, 2021). Furthermore, Dent and O'Beirne (2021) observed that it may also improve trust and rapport between the suspect and the AA if they know that their conversations will be held in confidence. The presence of the AA may also assist in providing suspects with support, helping them to understand their legal advice and facilitating communication, where necessary. This is similar to the role of the AA while the suspect is detained in custody, as set out in Code C, para 1.7A. Dent and O'Bierne (2021, p.37) argued that the AAs presence in the legal consultation is consistent with the role as conceived by the Royal Commission on Criminal Procedure, who suggested the AA should advise and assist the suspect to make decisions.

Further guidance concerning the AAs attendance during the suspect interview is provided at para 11.7 of Code C, and revolves around facilitating communication, providing advice, and observing whether the interview is conducted properly and fairly. Again, one may draw parallels with the similar tasks the AA may perform during the suspect interview with those they may undertake if they attended the legal consultation. Therefore, were the AA able to have the protection of legal privilege, this may better enable the AA to safeguard the rights of vulnerable suspects. The next section briefly explores the role of the interpreter and the intermediary.

3.10 The Role of the Interpreter and the Intermediary

Other third parties who may participate during the suspect interview are the interpreter and intermediary. Although not the focus of this research, the interpreter plays an important role during the interview ensuring that communication can take place between those present by "transferring a spoken utterance from one language to another" (Fowler et al., 2016, p.316). To participate in an interview, an interpreter

must be qualified and recognised by the Home Office, named on the National Register of Public Service Interpreters (NRPSI) and adhere to their Code of professional conduct (NRPSI, 2016).

The interpreter may impact the dynamic within the interview and research has highlighted there can be difficulties in how interpreters accurately translate context and meaning across different dialects and cultures (Lai and Mulayim, 2014; Howes, 2019) and how they understand legal terms (Nakane, 2007). Other challenges associated with the role of the interpreter may include building rapport with the interviewee (Goodman-Delahunty and Howes, 2019), which is part of the PEACE framework for investigative interviewing. Furthermore, there also appears to be a lack of clarity as to the role of the interpreter (Walsh et al., 2020). As explored when discussing the role of the AA, where the role is unclear this leaves scope for the role to be performed inconsistently.

The intermediary was introduced as a measure for vulnerable witnesses and victims giving evidence at court in section 29 YJCEA 1999. Their main role is to assist in the facilitation of communication between criminal justice actors and the witness/victim (O'Mahony, 2010). Intermediaries are most commonly used for those with speech, language and communication needs, often those with learning difficulties, and they have predominantly been used for victims/witnesses as opposed to suspects who are detained in the police station (O'Mahony, 2010).

The right for a defendant to have an intermediary was drafted in the Coroners and Justice Act 2009, although this has not come into force. Instead, defence teams may make applications to the court on a case-by-case basis for an intermediary to assist a vulnerable defendant (O'Mahony, 2010). While intermediaries acting for victims and witnesses need to be registered with the Ministry of Justice (2019), there are no similar requirements for intermediaries who act for suspects (Taggart, 2022). This arguably creates a disparity in the provision and the quality of intermediaries for victims and witnesses when compared to suspects and defendants.

There are some similarities between the AA and intermediary, who should both be independent and impartial (Notes for Guidance 1F; Ministry of Justice, 2020), although one may question whether the AA can achieve this, especially if they are a family member. Whereas the duty of the intermediary is to the court (Taggart, 2022), there is no similar stipulation on the AA, who may act as an agent of the police or side with the suspect. While the role of the AA includes facilitating communication, intermediaries are trained communicators who should 'improve the quality of

evidence and aid understanding' (Criminal Practice Directions, 2015, 3F: 1). Therefore, one may argue that intermediaries may be more suitable to act as an AA during an interview, especially as some AAs are not trained to perform the role. There would be practicalities to overcome though for the interviewing of suspects, such as obtaining an intermediary out of hours and the financial implications. It may be the case though, on serious investigations, that an intermediary may better facilitate the participation of a vulnerable suspect during an interview.

3.11 Summary

This chapter primarily explores the definition of and the identification of vulnerability and the implementation of third party safeguards. The review of the literature indicates that vulnerable suspects are over-represented within police custody (Loucks, 2007; Bradley, 2009), and many vulnerable adults are not afforded an AA (Bath and Dehaghani, 2020). The reasons for this are multi-faceted and are complicated by difficulties with the identification of vulnerability in adults (Sanders and Young, 2000; Bradley, 2009). However, it is apparent that a number of suspects have a vulnerability identified, but the police choose not to obtain an AA (Dehaghani, 2019).

The importance of identifying vulnerability and obtaining an AA where required, should not be underestimated as this may reduce the likelihood of false confessions (Gudjonsson, 2003; APT, 2021), and can help to provide 'equality of arms' for suspects. This may impact how vulnerable suspects are able to understand and make decisions in their best interests while detained in custody. Reasons for the failure to obtain an AA include the discretion which custody officers are able to exercise based on their interpretation of the provisions within Code C (Dehaghani, 2019). Where law and/or guidance are ill-defined it provides the opportunity for the police to develop their own working rules to make sense of these provisions (McBarnet, 1981b). Furthermore, these working rules may enable the police to achieve crime control aims which are more favourable to policing objectives, such as obtaining an account from a suspect and ultimately, a conviction.

This chapter also briefly noted the safeguards to which vulnerable suspects are entitled, before focusing on the AA and the legal advisor. AA provision is varied and the role may be undertaken by individuals with different levels of training and knowledge. Furthermore, the role can be conceptualised in different ways, for example, with a welfare, due process or crime control perspective, which may influence how it is performed. This may have consequences as to how the AA conducts themselves whilst in the police station, and the chapter notes the importance

of 'interview room lore' and the perceived independence of the AA. The provision of legal advice was also explored, noting that this has increased in recent years (Kemp, 2013) but that the majority of suspects for serious offences receive legal advice (Leahy-Harland and Bull, 2021). Additionally, it was identified that the concept of legal privilege may be problematic as the AA is not subject to this (Code C, Notes for Guidance 1E). The next chapter will explore how vulnerable suspects are interviewed by the police, focusing on the investigation of serious offences, and the roles and interventions of third parties during the interview.

Chapter Four: Investigative Interviewing of Vulnerable Suspects

The aim of this chapter is to explore the existing law, guidance and research into the investigative interviewing of suspects who have been arrested and detained at the police station²⁵. Attention will briefly focus on the history of investigative interviewing, before turning to the PEACE framework which underpins it (with reference to the contemporary practice of interviewing vulnerable suspects, where possible). The chapter will then explore specific training and guidance, before considering the role of third parties (e.g., the appropriate adult (AA) and legal advisor) during the suspect interview.

While there has been an increase in research into police interviewing over the last 20 years, much of this relies upon mock experiments (e.g., Mac Griolla and Granhag, 2015; Dawson et al., 2017; Kelly et al., 2019) or self-report surveys (e.g., Walsh et al., 2015; Snook et al., 2015; Wachi et al., 2016). There is relatively little research which explores real-life police interviews in England and Wales²⁶ and focuses on the interviewing of suspects for serious offences, including homicide (notable exceptions include Pearse and Gudjonsson 1999; Griffiths and Milne, 2006; Soukara et al., 2009; Leahy-Harland, 2012; Farrugia and Gabbert, 2019; 2020).

This section will seek to critically examine the empirical research on how interviews with vulnerable suspects are undertaken. Little research has explored what actually takes place in the interview room, despite research by Sigelman et al. (1981) over 40 years ago, which identified that suspects with learning disabilities experience difficulties in police interviews. The treatment of vulnerable suspects has been recognised as an important consideration whilst undertaking an investigative interview (Association for the Prevention of Torture (APT), 2021). Those who are vulnerable are at a higher risk of producing false confessions or not understanding the importance or consequences of statements made during interview (Gudjonsson, 2003). It is important that a suspect understands the detention and interview processes and the decision to provide information must be an informed choice, made without undue pressure. If information is not provided voluntarily, it may not be accurate or reliable. The presence of suspect safeguards such as the legal advisor

²⁵ Suspects can be interviewed voluntarily, either at the police station or elsewhere (Code of Practice C, para 3.21-3.22b; Pierpoint, 2020). For offences of a serious nature, voluntary interviews may be less likely to take place as the Code G test for necessity of arrest is likely to be met, and there may be an increased risk of harm to others, to oneself, or of flight, because of the serious nature of the allegations. There is also an increased risk of interference with witnesses and the damaging/tampering of evidence.

²⁶ Relevant international research includes that of Leo (2008); Cleary (2014); Verhoeven (2018) and Winerdal et al. (2019).

and/or the AA may alter the dynamic within the interview room and relatively little is known about the impact of third parties on this process.

4.1 The History of Investigative Interviewing

Police suspect interviewing can broadly be categorised by one of two different approaches: information gathering, and accusatory (Moston and Engleberg, 1993). The investigative interview is an information gathering approach, and an interrogation, the aim of which is a confession, is consistent with an accusatory approach (Meissner et al., 2015). Investigative interviewing was developed within England and Wales during the early 1990s as a response to several high-profile miscarriages of justice (e.g., The Cardiff Three), which stemmed from false confessions made by suspects (Gudjonsson, 2003). Historically, obtaining a confession during a suspect interview was viewed with great importance (Clarke and Milne, 2001; Gudjonsson, 2003; Leahy-Harland and Bull, 2016; Shepherd and Griffiths, 2021). Not only does a confession have evidential value, but it has been viewed symbolically as a key to solving the case and proof of the suspect's guilt (McConville et al., 1991, Moston et al., 1992).

While PACE and the accompanying Codes of Practice govern the rights that suspects have while being detained and interviewed by the police (see Chapter Three), there was a lack of guidance provided to interviewers on how to interview suspects, how an interview should be structured and what questions suspects should be asked. John Walkley's (1987) handbook was influential during this time and promoted accusatorial methods of interviewing based on the Reid Technique. The Reid Technique was developed in the United States of America (USA) and is still the dominant interviewing approach used in that part of the world (Kozinski, 2018). While one organisation has in recent years declared that it is no longer going to train detectives in the Reid Technique (Innocence Project, 2017), it is not clear which interview techniques will be used in its place (Hager, 2017). Furthermore, the firm's vice president suggested that the implementation of non-coercive interview techniques will be slow as the Reid Technique has been used for many years (Chen, 2021, p.24). The Reid Technique is an accusatorial process, which promotes obtaining a confession. However, it has been criticised for encouraging coercive methods (including deceit) in order to obtain confessions from suspects (Leo, 2008). This is a concern for vulnerable suspects who may be more prone to making false confessions (Gudjonsson, 2003).

Interview tactics are methods which may be used by interviewers to elicit a confession from a suspect, or to get a suspect talking (Pearse et al., 1998; Kassin et al., 2007).

These include emphasising the strength of evidence, suggesting the suspect will feel better if they 'get it off their chest', offering inducements, making threats, and minimising the responsibility of the suspect (Pearse et al., 1998). Some of these methods have been considered, on occasion, coercive, unreliable and unethical (Gudjonsson, 2003; King and Snook, 2009). However, some tactics arguably should be used by the police in certain circumstances, such as reminding the suspect of the seriousness of the offence and the presentation of evidence (Leahy-Harland and Bull, 2016). After all, one should know what the case against them is, and what evidence the police hold. Walsh and Bull (2010) suggested that it is not necessarily the frequency of interview tactics which impact whether a suspect confesses, but the way in which they are used.

Academic research into police interviewing in England and Wales prior to the introduction of the Police and Criminal Evidence Act 1984 (PACE) highlighted that manipulative tactics (such as maximisation and minimisation²⁷) were used during suspect interviews (Irving, 1980). Following the introduction of PACE in 1984, research suggested the prevalence of these tactics had reduced (Irving and McKenzie, 1989). However, McConville et al. (1991) found that the police continued to rely on persuasive interview tactics during interviews. It was identified that interview tactics were more likely to be used where the offence was serious and there was a legal advisor present (Irving and McKenzie, 1989; Moston et al., 1992; Evans, 1993). However, despite the use of tactics, suspects rarely deviated from their original responses during interviews (Irving and McKenzie, 1989; Moston et al., 1990; Baldwin, 1993; Evans, 1993), leading Moston and Stephenson (1993, p.111) to conclude that persuasive tactics are not effective in eliciting confessions. It is worth acknowledging that although there are a range of studies which examine the use of police tactics during suspect interviews, many of these coded for a different number of tactics. While there may be similarities in the coding frameworks used, this may result in some differences in data collection and analysis which could impact the comparison of findings. For example, Leo (2008) coded for 25 tactics in his study of suspect interviews, whereas Soukara et al. (2009) coded for 17 tactics.

Despite the introduction of PACE, research found that many interviewers still approached the interview with a presumption that the suspect was guilty (Moston et al., 1992; Baldwin, 1993). Furthermore, Baldwin (1993) observed that many

²⁷ Maximisation tactics involve exaggerating the seriousness of an action to facilitate an admission. Minimisation tactics intend to minimise the seriousness of the crime or the culpability of the suspect (Soukara et al., 2009)

interviews were undertaken to a poor standard, and the question types asked were often inappropriate (leading, statement, multiple), with a high reliance on closed questions. Interviewers were also found to fail to challenge suspects in response to the accounts they provided (Baldwin, 1993). Such deficiencies influenced the development of the seven principles of investigative interviewing and the PEACE framework.

4.2 The Seven Principles of Investigative Interviewing

To address some of the concerns with suspect interviewing and the use of coercive interview tactics, police officers and psychologists developed the PEACE model of investigative interviewing (Milne and Bull, 1999, p.88). The aim of an investigative interview is to gain a truthful account from the interviewee, using fair and ethical interviewing methods (College of Policing, 2022). Investigative interviewing is underpinned by seven principles, as set out in circular 22/1992, which aimed to promote an ethical model of interviewing (Home Office, 1992). First, the aim of the interview is to obtain an accurate and reliable account (Home Office, 1992), which is a departure from interviewing practices which were reliant on confession evidence (Clarke et al., 2011). Additionally, interviewers must act fairly and can ask a wide range of questions, even if suspects exercise their right to silence (Home Office, 1992). Additionally, interviewers are not obliged to accept the first answer they are given (Home Office, 1992).

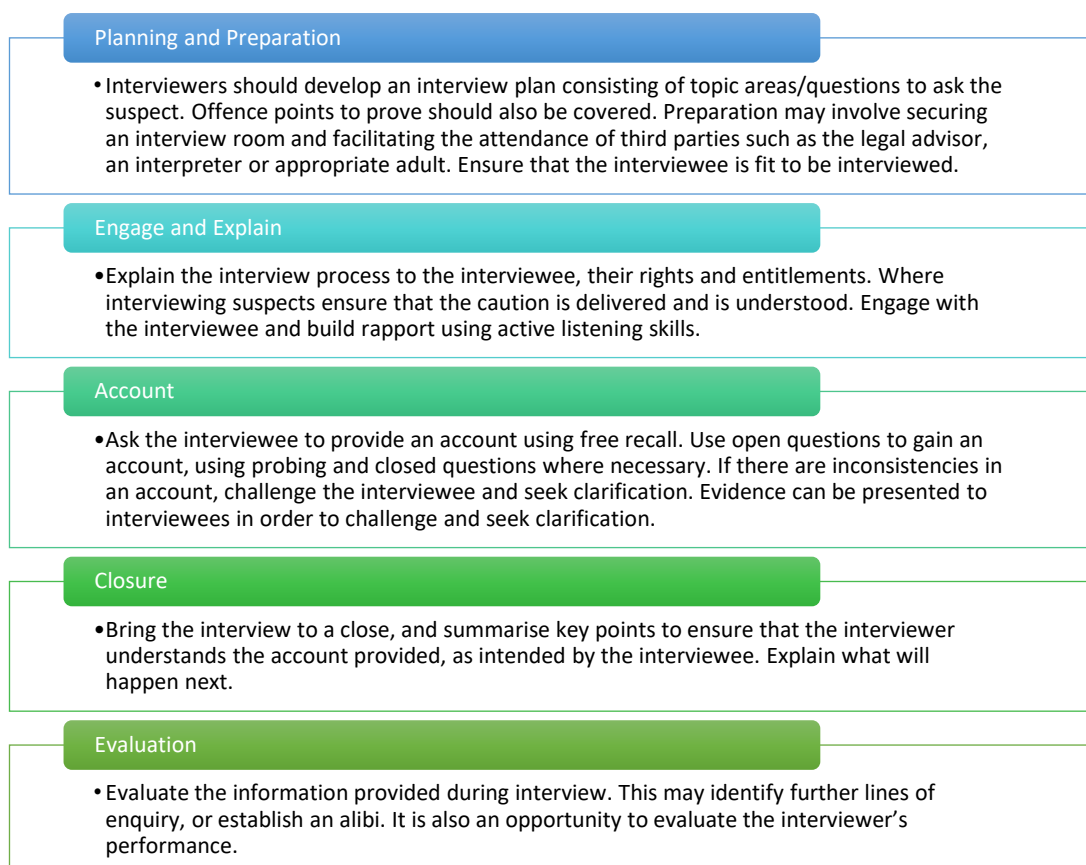
The seven principles also suggest that those who are vulnerable are treated with consideration (Home Office, 1992). However, no guidance is provided as to what this means, or how it can be achieved in relation to vulnerable suspects, although the Authorised Professional Practice (APP) for Investigation (College of Policing, 2022) notes that additional safeguards (which are not specified) should be put in place. There does appear to be some contradiction between the seven principles, as although vulnerable suspects should be treated with consideration, an interviewer is not bound to accept the first answer they are given, noting that 'questioning is not unfair merely because it is persistent' (Home Office, 1992). Repeated questioning has the potential to become oppressive, and although there is no guidance as to the point at which this may occur, this may not be the same for each interviewee and may be influenced by multiple factors, including the vulnerability of the interviewee. As vulnerability may increase the risk of false confessions (Moston and Stephenson, 1993; Gudjonsson, 2003) it may be prudent to use such persistent questioning sparingly.

The bedrock of the seven principles of investigative interviewing is fairness, and in conjunction with PACE, they aim to promote an ethical and accountable way of interviewing suspects (Shawyer et al., 2009). These principles underpin the PEACE framework, which was introduced in 1992 (Shawyer et al., 2009) and this framework influences the way in which all police officers across England and Wales are trained.

4.3 The PEACE Framework

The PEACE framework was intended to be an ethical approach to investigative interviewing and can be used to interview both victims/witnesses and suspects. The interviewing of victims and witnesses is beyond the remit of this research, although it is important to acknowledge that one's status during an investigation may change and suspects may later be identified as witnesses (and even victims), and vice versa. PEACE is an acronym and consists of five stages: planning and preparation, engage and explain, account, closure, and evaluation, see Figure 4.1 below.

Figure 4.1: The Five Stages of the PEACE Framework²⁸



²⁸ This figure has been made by summarising the stages of the PEACE framework as identified in College of Policing (2022) and Griffiths and Milne (2006)

The PEACE framework is influenced by two methods of obtaining information: the cognitive interview and conversation management. The cognitive interview, as developed by Fisher and Geiselman (1992), is used to obtain information from willing interviewees. Stages involved in cognitive interviewing, include to report everything, mentally reinstate the context, recall events in different orders and to change the perspective (Shepherd and Griffiths, 2021, pp. 34-35). The enhanced cognitive interview incorporates additional techniques such as the transfer of control and witness-compatible questioning (Ministry of Justice, 2011, p.168). The enhanced cognitive interview has been effective in generating a higher volume of accurate information from interviewees (Holliday et al., 2009; Memon et al., 2010), including those who are vulnerable (e.g., children and those with learning difficulties (Milne and Bull, 2002)). However, concerns have been raised regarding the 'change perspective' stage, which may encourage interviewees to guess the view from another perspective (Shepherd and Griffiths, 2021, p.35). Speculation on the part of an interviewee may result in an account being obtained which is not accurate and reliable.

For several reasons²⁹, some interviewees may be reluctant to speak to investigators. Conversation management was developed by Eric Shepherd and is best suited to non-compliant interviewees. Therefore, it is generally most applicable to the interviewing of suspects. Conversation management involves asking for an interviewee's account using open questions, but then narrowing the focus using probing and then closed questions (Shepherd and Griffiths, 2021). Conversation management contains several stages and uses the acronym GEMAC (greeting, explanation, mutual activity, and closing) to try and elicit an account from an interviewee (Shepherd and Griffiths, 2021). The benefit of conversation management is that it ensures all relevant questions are put to an interviewee, regardless of their response. While suspects have a right to silence in an interview, this approach has benefits (from a prosecution perspective) if suspects fail to respond, as adverse inferences (sections 34-38 Criminal Justice and Public Order Act 1994 (CJPOA)) can be drawn at trial if relevant questions have been put to an interviewee which they may be expected to account for (e.g., presence at a scene or forensic material recovered from an exhibit).

Interviewing is a complex process which can place a high cognitive load on interviewers (building rapport, active listening, disclosure of evidence and asking

²⁹ Including fear, lack of confidence in the police, concern of self-incriminating oneself or others.

follow-up questions), but also interviewees (who may try to regulate their emotions and recall detail) (Shepherd and Griffiths, 2021). The cognitive load on individuals may be greater for serious offences, where multiple interviews may take place, which can be longer in duration. Therefore, the training officers receive is crucial to ensure that interviews are managed for interviewees to be able to process and recall information, whilst minimising potential trauma (Risan et al., 2020). Additionally, the emotions experienced by detectives may also influence how they interview suspects, as those who are angry may be more prone to tunnel vision and less likely to change their hypotheses where required (Ask and Fahsing, 2019). Interviewers need to be self-aware and try to ensure their emotions do not impact how they undertake the suspect interview and how they assess any account they may have obtained.

Those who are vulnerable may have an impaired memory and experience difficulties in concentration (Kingdon and Turkington, 2005; Ochoa and Rome, 2009; APT, 2021), factors which may impact an investigative interview (Herrington and Roberts, 2012). Furthermore, the Mendez Principles (APT, 2021, paras 24 and 133) note that coercive interview methods may induce stress in suspects, which may detrimentally impact their ability to accurately recall information. The use of inappropriate question types (see section 4.3.3 for further explanation) may also contaminate the memory of the interviewee (APT, 2021, paras 25, 97 and 117). This highlights the importance of non-coercive interviewing, which is consistent with the PEACE framework and Mendez Principles. Additionally, those who are vulnerable may not always respond to social cues as one may expect (eye contact, engaging in conversation, lack of concentration). There is a possibility that interviewers may interpret this behaviour negatively, as an indication of guilt, which may then influence how they respond during an interview (Meissner and Kassin, 2002; Hill et al., 2008) and may result in tactics being used which increase the likelihood of an inaccurate account (Kassin et al., 2014). Therefore, it is important that interviewers have an awareness of how vulnerabilities may impact their interactions with suspects.

The next sections will explore the five stages of the PEACE framework in more detail with reference to relevant research, starting with planning and preparation. Where possible, reference will be made to research involving vulnerable suspects. It is important to consider how interviews are undertaken and whether they adhere to the PEACE framework as this may be an indication as to whether an interview is conducted fairly. Additionally, research suggests that adopting PEACE increases the likelihood that an account is elicited from a suspect (Walsh and Bull, 2010; Oxburgh et al., 2010; Kelly et al., 2015; Izotovas et al., 2021; Chin et al., 2022).

4.3.1 Planning and Preparation

The planning and preparation stage involves developing an interview plan with defined topics, considering the characteristics of the interviewee, and ensuring their needs are met (College of Policing, 2022). Planning and preparation may also include whether suspects have an AA, legal advisor and/or an interpreter present (Oxburgh et al., 2016b), or whether any adjustments are made to account for a suspect's vulnerability. As discussed in Chapter Three, research suggests that vulnerability is not always identified in suspects and sometimes those who should have an AA present during interview do not (NAAN, 2015). Therefore, if planning is undertaken thoroughly, it is possible that this may identify vulnerability if previously missed. Few studies have explored the interviewing of those who are vulnerable directly with police officers, but Geijsen et al. (2018a) found in their survey of 103 Dutch detectives that 55 per cent of detectives did not take any precautions when dealing with a vulnerable suspect (although it is also important to note that legislation concerning vulnerable suspects, and obtaining an AA for instance, is different in the Netherlands to that in England and Wales). Examples of precautions, taken by 42 per cent of detectives, included liaising with a medical professional prior to interview, requesting a specialist detective undertake the interview, adjusting interview techniques, and audio recording the interview (which is not a mandatory requirement, unlike in England and Wales) (Geijsen et al., 2018a). While it is positive that some detectives took precautions for the interviewing of vulnerable suspects, that the majority did not, risks obtaining an inaccurate account from a suspect.

There is a lack of literature which explores the planning and preparation of interviews, especially within England and Wales, often because it is hard to ascertain using methods commonly employed to assess suspect interviews, such as reviewing audio recordings or transcripts of suspect interviews (Clarke et al., 2011; Scott et al., 2015). Clarke et al. (2011, p.155) considered whether investigators had knowledge of the incident they were interviewing about and the points to prove for that offence, concluding that officers appeared to show evidence of reasonable planning for interviews. However, this contrasts with the findings of Walsh and Milne (2008) who found that this stage was not adequately undertaken and there was little evidence of planning. That said, this latter study concerned the interviewing practices of benefit fraud investigators and while both were trained in the PEACE method of investigative interviewing, it is not known whether core training methods and interview practices varied to those of the police.

Australian studies by Scott et al. (2015) and Tudor-Owen et al. (2016) identified that new recruits included little information in their interview plans, and that these focused on the account aspect of PEACE, overlooking the engage and explain and closure phases. Positively, the training provided appeared to influence the quality of recruits' plans and interviews (Tudor-Owen et al., 2016). It is worth acknowledging though that studies of newly recruited officers may not be directly comparable with those involving more experienced interviewers.

Two studies have recently explored interviewers' perceptions of planning and preparation undertaken ahead of interviews in Southeast Asia. Kim et al. (2018) surveyed 95 South Korean financial investigators, and Chin et al. (2022) surveyed 596 investigators in Singapore³⁰. Both studies identified that investigators placed value on planning ahead of interviews, and Kim et al. (2018) considered that factors which influence whether investigators plan or not include the occupational culture and interviewer's self-perception of their planning skills, rather than a lack of time to undertake planning. This is an important finding as it proposes a link between police culture and how interviewers undertake their roles. Therefore, the culture detectives are exposed to may shape whether, and to what extent they adhere to the PEACE framework. Additionally, Chin et al. (2022) identified that interviewers reported frequently planning for their interviews, and that this may influence an investigative mindset and result in positive interview outcomes, highlighting the importance of planning and preparation in line with the PEACE framework. Whilst these two studies are important additions to the knowledge base in this area, it is important to note the limitation with self-report studies, including inaccurate memory recall and social desirability bias (Chin et al., 2022). Further research is therefore required to establish whether what investigators claim to do reflects their actual practice.

4.3.2 Engage and Explain

The engage and explain stage is frequently undertaken at the start of an interview. Interviewers should explain to a suspect the purpose of the interview, the nature of the offence that the suspect was arrested for, the objectives of the interview, and any expectations (College of Policing, 2022). Suspects should be reminded of their rights, including their right to a copy of the interview recording and to legal advice. The caution should also be given (Bryant and Bryant, 2021), although this can be difficult to understand, even for those who are not vulnerable (Clare et al., 1998; Fenner et

³⁰ In Singapore, interviewers are trained in methods of non-coercive interviewing adapted from the PEACE framework, known as FAIR (Chin et al., 2022).

al., 2002). Interviewers should break the caution into three parts whereby suspects are asked to explain each part to ensure that they understand their rights (Walsh and Bull, 2012). However, research suggests that this is not always done in practice (Walsh and Bull, 2010). Consequently, suspects (especially those who are vulnerable) may not truly understand their right to silence and any adverse inferences that can be drawn. If suspects believe they must answer the questions put to them, there is a possibility of self-incrimination, false confessions and miscarriages of justice occurring.

Once PEACE training has been provided, interviewers generally adhere to procedural and legal requirements (Walsh and Milne, 2008), although Clarke and Milne (2001) found they did not always explain the purpose of the interview. Research into interviews for serious offences found that procedural and legal elements (e.g., delivering the caution) were usually undertaken to a good standard (Griffiths and Milne, 2006; Leahy-Harland, 2012; Minhas et al., 2017).

One aspect of the engage stage of PEACE concerns rapport. Existing literature lacks a consistent definition of rapport (Alison et al., 2013; Brimbal et al., 2021; Gabbert et al., 2021), although Vallano et al. (2015, p.369) provided a simple explanation of rapport as “a positive relationship involving trust and communication”. However, one may argue that this may not fully be achievable in the confines of the police station where the police hold a position of power and control over a suspect (Haworth, 2006). Research indicates that rapport is important to the interviewing process because if present, it increases cooperation and an account from an interviewee is more likely to be obtained (Walsh and Bull, 2010; Collins and Carthy, 2019; Brimbal et al., 2021; Gabbert et al., 2021). Yet, Walsh and Bull (2012) identified that rapport needs not only to be built, but also, importantly, maintained throughout the interview, as rapport built during the engage and explain stage of the interview had no significant effect on the outcome of the interview in terms of the quality of the interview and/or preferred outcome (Walsh and Bull, 2012, p.79-80). That said, while building and maintaining rapport is important, detectives have reported that they find it harder to build rapport with (Oxburgh et al., 2016a, p.141), identifying some of the additional challenges that interviewers face when interviewing vulnerable suspects.

It may also be hard to build rapport during the suspect interview if the suspect perceives that they are being discriminated against. Minhas et al. (2017) found that around two thirds (n=22) of Asian suspects reported being stereotyped against during their suspect interview and half said interviewers exhibited discriminatory behaviour.

Interestingly, around one third of the respondents in this study also reported that officers were hostile and some exerted pressure on them to make admissions, which one would argue is not within the spirit of the PEACE framework and is not consistent with the seven principles of investigative interviewing. This may act as a barrier to building rapport, which may be counter-productive to investigators who are less likely to obtain an account from suspects in these circumstances. Additionally, it also places those who are vulnerable and prone to suggestibility or compliance at risk of making inaccurate and unreliable accounts. While this study is reliant on the self-reporting of suspects (which may be influenced by their own biases), it highlights the challenges that some suspects from minority ethnic backgrounds may face while being interviewed. Ethnically diverse suspects (who may be vulnerable (APT, 2021, p.29)) are more likely to be negatively stereotyped and subject to repeat and guilt presumptive questioning. This raises the question as to whether other vulnerable suspects perceive they are treated in a similar manner by police interviewers.

The manner in which interviewees are interviewed is also important. Holmberg and Christianson (2002) surveyed offenders and identified that those interviewed in a 'humane' manner (characterised by respect and acknowledgement) were more likely to make admissions than when interviewed in a manner they perceived to be 'dominant'. While the presence of empathy in homicide and sexual offences interviews did not increase the yield of information, it did increase the likelihood of appropriate questions being asked, which elicited more information (Oxburgh et al., 2014). However, research by Baker-Eck and Bull (2022) which explored empathy displayed by investigators during sexual offence interviews identified a positive relationship between the use of empathy and information provided by suspects.

Additionally, in line with theories of procedural justice, Goodman-Delahunty et al. (2013) identified that suspects were more cooperative when they felt they were treated with respect and listened to. Furthermore, Buehler et al. (2019) proposed that rapport, empathy and perceived fairness not only increases information yield from suspects during interview but is also beneficial to suspects' mental health. Therefore, the approach taken during the engage and explain stage may impact the questions asked and ultimately, whether an account is obtained, in addition to improving the suspects' mental health and potentially reducing their vulnerability.

While interviewers place importance on building rapport with suspects, they sometimes failed to take opportunities to build rapport, and when rapport was built, it was not always maintained throughout the interview (Clarke and Milne, 2001; Walsh

and Bull, 2012). Research into serious offences by Leahy-Harland and Bull (2016) also found that evidence of rapport was rare and was not maintained throughout interviews. However, it may be difficult to maintain rapport when dealing with offenders who have committed serious and unpleasant offences (Holmberg and Christianson, 2002; Oxburgh et al., 2015). Furthermore, the suspect's response during the interview may also influence the behaviour of detectives. Izotovas et al. (2021) analysed interviews for sexual offences and identified that when suspects became resistant, officers' use of rapport decreased, and they became more confrontational.

Although not expressly covered in the PEACE framework, the layout of the interview room may be associated with rapport. A traditional interview room is relatively small, square, and sparsely furnished with a desk and chairs which may be fixed into position and fluorescent lighting (Kelly et al., 2019). Interview rooms which feel more spacious and open can aid in generating rapport (Hoogesteyn et al., 2019) and obtaining relevant information (Okken et al., 2013; Dawson et al., 2017). However, Kelly et al. (2019) identified that changes to the layout in a mock interview scenario did not have the intended effect, with rapport perceived to be better in the control setting (a traditional interview room). It is possible that manipulating the layout of the interview room may make suspects feel more comfortable and that this provides a less confrontational atmosphere during the interview.

4.3.3 Account, Clarification and Challenge

The account stage of PEACE involves trying to obtain an accurate and reliable account from an interviewee and the College of Policing (2022) notes the importance of the questions asked during this process. Herrington and Roberts (2012) suggested that to interview vulnerable suspects one needs to be aware of the language used and the questions asked. Yet, Baldwin (1992; 1993) identified that many interviewers (for all suspects) used inappropriate questions, with closed question types often dominating suspect interviews. Poor question types, especially multiple, statement and leading questions, place those who are suggestible and compliant (often those who are vulnerable) at risk of making false statements (Oxburgh et al., 2010). There are few legal defences to murder (Crown Prosecution Service, 2021), so detectives may seek to close off these defences as early as possible by covering the points to prove for the offence (such as intent to kill/cause grievous bodily harm). Vulnerable suspects may have difficulty understanding concepts such as intent, so it is important that both the language used and questioning by interviewers are clear, to minimise

the risk of involuntary self-incriminating responses.

Bull and Milne (2022) note the importance of interviewers identifying an appropriate approach for vulnerable suspects and adapting their interviewing style accordingly. However, Geijssen et al. (2018c) found that interviews undertaken were inappropriate in 86 per cent of cases. That said, the authors found that the rates of inappropriate interviewing were relatively consistent regardless of whether the suspect was vulnerable or not. While the interviewing methods in the Netherlands are not directly comparable with those in England and Wales, which are based on the PEACE framework, the research of Geijssen et al. (2018c) used the Griffiths Question Map to assess suspect interviews. As such, the appropriateness of interviews in this study was largely influenced by the questions asked during the interview, and whether these were in line with best practice (e.g., open, probing or appropriate closed). While it is useful to ascertain the questions asked, there are other aspects of an interview, such as the building and maintaining of rapport, the tone in which questions are asked or the interventions of third parties, which may contribute to whether an interview could be regarded as appropriate or inappropriate.

Farrugia and Gabbert (2020) explored how the police interview vulnerable suspects arrested on suspicion of serious offences and found that officers tailored their communication to the needs of the suspect, contrasting with the research of Brennan and Brennan (1994) who found that police (in Australia) did not alter their approach when interviewing suspects with learning disabilities, and to the research of Cleary and Warner (2016) who found that police (in the USA) interviewed juveniles in the same way as adults. Whether the location of these interviews was a determining factor in the contradictory nature of this research ought to be considered, as the USA in particular, adopts a more accusatorial method of interviewing suspects.

Other studies have highlighted problematic practice during the interviewing of vulnerable suspects. Winerdal et al. (2019) observed Swedish homicide interviews with children between 15 to 17 years of age and identified that juvenile suspects were asked option-posing and suggestive questions. They also found that these suspects were placed under social pressure during the interview which was used to challenge (by means of provocation, using irony or noting the gravity of the situation), to confront or to appeal for a confession; practices which risk obtaining an inaccurate or false account (Winerdal et al., 2019). While this study is useful as it highlights best practice is not being adhered to, it does not further our knowledge as to *why* detectives are interviewing in this manner. However, psychologists have proposed potential

explanations as to the influence of bias on suspect interviewing (and decision making more broadly).

Fahsing and Ask (2013), Ask and Fahsing (2019), and Fahsing et al. (2021) have developed a body of work which explores the role of cognitive bias on investigators hypothesising and decision-making skills. They identified that some investigators seek to confirm their case hypothesis, which may result in 'tunnel vision' and "influence the conduct and outcome of an investigation" (Ask and Fahsing, 2019, p.88). One aspect which may be affected includes the suspect interview, where guilt presumptive questioning may arise (Ask and Fahsing, 2019). As noted in section 3.9, this may be associated with repeated questioning or overlooking evidence of the suspect's innocence (Minhas and Walsh, 2021) and could lead to unfair interviews and miscarriages of justice. This highlights the importance of keeping an open mind, and ensuring best practice is adhered to, such as the use of open questions.

Following the introduction of PEACE, the use of open questions increased (Clarke and Milne, 2001; Walsh and Milne, 2008; Soukara et al., 2009), although Soukara et al. (2009) found that leading and closed questions were still being asked. However, research suggests that interviewers did not always fully explore a suspect's account (Walsh and Milne, 2008). While research has identified that a range of question types are used during interviews and that open questions may result in an increase in information provided by interviewees (Walsh and Milne, 2008; Oxburgh et al., 2014), not all are suitable for vulnerable suspects (Powell, 2002; O'Mahony et al., 2012; Oxburgh et al., 2016b; Farrugia and Gabbert, 2020). An emerging body of literature suggests that vulnerable suspects may provide a greater volume of, and more accurate information, when interviewed with a modified interview, as opposed to 'best practice' of using open questions (Farrugia and Gabbert, 2020; 2022). A modified interview utilises closed questions which provide scaffolding for a vulnerable suspect so there is less reliance on the free recall stage which can be problematic for suspects (Farrugia and Gabbert, 2022). Whilst this research focused on participants with mental health conditions, other research has also indicated that people with Autism can find free recall problematic (Bowler et al., 2011). Therefore, it may be that an alternative questioning approach is required for the interviewing of suspects who are vulnerable, to ensure they are able to understand and participate in the interview.

It is possible that during an interview, inconsistencies arise between the suspect's account and evidence the police have in their possession. Inconsistencies should be clarified and minimised where possible, but it is recommended this be done carefully

to maintain rapport (College of Policing, 2022). That said, Oxburgh et al. (2016a) found that detectives interviewing mentally disordered suspects found the clarification and challenge stage of an interview the most difficult, which raises questions as to how successfully detectives are able to do this when interviewing vulnerable suspects. Clarification is not limited to interviews with suspects, as on occasion, witnesses also need to have their accounts checked and tested. Additionally, interviewers may seek to challenge an account, and tactics may be employed, such as the disclosure of evidence. While the use of interview tactics is not the primary focus of this research, these will be briefly explored as they may detrimentally impact vulnerable suspects.

The importance of interviewing tactics is that they may influence a suspect's decision to provide an account or confess (Soukara et al., 2009; Bull and Soukara, 2010; APT, 2021). The Mendez Principles (APT, 2021) propose that the use of coercive interviewing methods are counter-productive and can produce inaccurate and unreliable information. Examples of tactics which are recommended for use in investigative interviewing include the use of appropriate question types, the building of rapport and the strategic presentation of evidence (Bull and Soukara, 2010; APT, 2021).

Tactics can be used in combination, and it is important to acknowledge other factors may influence the interview, such as the personality of the interviewer and the suspect, and a suspect's vulnerability. Evans (1993) and Pearse and Gudjonsson (1999) identified a relationship between the use of interview tactics and the seriousness of the offence, where the more serious the offence, the more likely tactics were used. Soukara et al. (2009) analysed audio-taped interviews with suspects arrested for serious crimes (including homicide) and found that coercive tactics were used infrequently, although challenging the suspect was used in around half of interviews and was one of the most common tactics that the police used. However, the implementation of challenges by police officers has been questioned as Clarke and Milne (2001) identified that while suspects were challenged in 66 per cent of cases (n=116) only 19 per cent (n=33) of these were undertaken professionally.

Accounts are often challenged using the presentation of evidence and when used, this is associated with obtaining an account (and sometimes a shift from denial to a confession) (Soukara et al., 2009; Walsh and Bull, 2015). Walsh et al. (2015) identified that interviewers preferred a gradual method of disclosure of evidence (e.g., the strategic or tactical use of evidence) during the interview, as opposed to early or

late disclosure, although this varied depending on the context of the interview. Where evidence is tactically presented, this may highlight inconsistencies in a suspect's account and increase the accurate detection of deceit (Sandham et al., 2021). However, O'Mahony et al. (2012) noted that questioning and challenging a vulnerable suspect may be difficult and can result in acquiescence, cognitive overload and confusion. This heightens the risk of a suspect producing an inaccurate and unreliable account. Consequently, O'Mahony et al. (2012) question whether a vulnerable suspect should be challenged at all. There are graduations of vulnerability and an individualised approach, consistent with a welfare perspective and 'equality of arms' (see Chapter Two) arguably should be taken.

Leahy-Harland and Bull (2016) also found that during interviews for serious crime offences, officers challenged suspects more frequently than identified previously. However, none of the 56 suspects changed their account from a denial to admissions during interviews. This is consistent with research which indicates that few relatively suspects change their account during the interview (Baldwin, 1993; Pearse and Gudjonsson, 1996b; Soukara et al., 2009). Therefore, while the prevalence of tactics used in serious offence interviews may be higher than has been identified in other interviewing research, they may have a limited influence on obtaining an account.

That said, the research of Soukara, as discussed in Bull and Soukara (2010), noted that of a sample of 200 interviews, 40 (20 per cent) involved a confession which was not provided at the start of the interview. Bull and Soukara (2010) identified that certain tactics were used prior to confessions, most commonly, the presentation of evidence, use of open questions and repetitive questioning, and they tentatively suggested that these may influence suspects' decision making during the interview as to whether they confess or not. Bull and Soukara (2010) noted that the use of repetitive and leading questions (which were both identified in their research) during suspect interviews is not in line with the PEACE framework for interviewing, highlighting that best practice is not always adhered to during suspect interviews. While this research presented some interesting findings concerning the use of tactics and their relationship to confessions, homicide interviews (which were part of the overall case sample) did not appear to be represented in the 20 per cent of cases where a shift was made to confess (see Bull and Soukara, 2010, p.90), which raises the question as to whether these findings translate to serious crime interviews. Additionally, the tactics identified in this research are also commonly used during suspect interviews where no confession is obtained (Leahy-Harland and Bull (2016), and Bull and Soukara (2010, p.93) themselves acknowledge that their use in this

research may be coincidental to the shifts in response observed.

A study which did explore the use of tactics and the shift that suspects made in their account was undertaken in the Netherlands by Verhoeven (2018), who analysed 168 interviews in 94 homicide cases. Verhoeven (2018) found that manipulative tactics were used in attempts to persuade silent suspects to provide an account (one third of suspects were silent at the start of their interview), and that where suspects provided an account, challenging tactics was more common. This is unsurprising, as when an account is provided, this may highlight inconsistencies to the evidence held by investigators, which may form the basis for any challenges made. In total, 47 per cent of the sample shifted in their response during questioning, although this included circumstances where a suspect moved from silence to denials, or vice versa, and, therefore, this does not mean that an admission resulted from every shift in response. Significantly, manipulative and challenging tactics appeared to influence a shift in the suspect's response when a legal advisor was not present (see section 4.8 for further discussion).

Leahy-Harland and Bull (2016) suggested that the strategies most used by interviewers on serious crime interviews are on the whole appropriate (e.g., presentation of evidence, challenge and rapport). However, other tactics, such as situational futility and emphasising the seriousness of the offence, may "be perceived as problematic with certain (more vulnerable) individuals" (Leahy-Harland and Bull, 2016, p.149), and may heighten the risk of the suspect providing an inaccurate account or becoming distressed. Farrugia and Gabbert (2020) also identified that minimisation tactics and inappropriate questioning methods were used more frequently with vulnerable suspects, which may increase the likelihood of false confessions. These findings indicate the presence of tactics which appear contrary to the principles of fairness and ethical interviewing which underpin the PEACE framework. Therefore, the presence of third parties during the suspect interview may be imperative in ensuring fair treatment and 'equality of arms'. However, Leahy-Harland (2012) identified that interviews with vulnerable suspects involved an increased level of rapport and empathy, suggesting that interviewers may treat vulnerable suspects more sensitively than non-vulnerable suspects. Caution needs to be taken with this finding as Leahy-Harland identified vulnerable suspects based on the attendance of an AA during the interview. Therefore, this research may not have identified vulnerable suspects who were not afforded an AA, which may have impacted the findings.

4.3.4 Closure

Closure involves summarising the interview, ensuring neither side has questions left unanswered, and then the interviewee is informed what should take place next (College of Policing, 2022). However, research identified that closure can be poor, and interviewers often failed to summarise towards the end of the interview (Walsh and Milne, 2008). Clarke et al. (2011) identified that in just over half of their sample, summaries were not undertaken at all, and in only 16 per cent of cases (n=29) was clear closure provided. Additionally, Medford et al. (2003) identified that interviews with vulnerable adult suspects, where an AA was present, scored highly in all stages, except for closure. The reasons for this were not ascertained, but it does appear that this is an area which requires some improvement.

4.3.5 Evaluation

The evaluation stage involves the interviewer evaluating their own performance or evaluating the information obtained against the wider investigation (College of Policing, 2022). It can also include supervisory oversight of the interviewer's performance. Clarke and Milne (2001) identified an inconsistent approach to the evaluation stage, with this being rarely done in some forces. When undertaken, evaluations lacked structure (Walsh and Bull, 2011) and were seldom undertaken by supervisors (Walsh and Milne, 2007). Evaluation can also be conducted by the interviewer themselves, although research suggests these are conducted infrequently (Walsh and Milne, 2007) and when interviewers do evaluate their own performance, they tend to overestimate their competence and skill (Walsh et al., 2017). The next section will briefly explore how the PEACE framework is adhered to.

4.4 Interviewer's Adherence to the PEACE Framework

A small number of studies have explored how effective PEACE training has been once police officers have been trained to use these methods. McGurk et al. (1993) found that the skill displayed by interviewers improved after receiving PEACE pilot training, and benefits could be identified up to six months afterwards. However, limitations have been identified with this study as it involved volunteers and selected trainers (Bull and Griffiths, 2019) so self-selection bias and volunteers with above average interview skills may have impacted the findings (Clarke and Milne, 2001). This study was also conducted using simulated interviews, so it could not be seen how the skills transferred to real-life police interviews of witnesses and victims (Clarke and Milne, 2001).

A subsequent study by Clarke and Milne (2001) identified that the benefits of PEACE training were more limited and, concerningly, one in ten interviews potentially breached sections 76 or 78 of PACE. While breaches were broadly categorised as being oppressive, concerning mental health, legal requirements or other, this covers a wide spectrum of behaviours which may vary in their severity and their impact on suspects, and was not explored in the report to its full potential. Additionally, while potential breaches were identified in ten per cent of the sample, this ranged amongst forces (between three and seventeen per cent). To have nearly 20 per cent of cases within one force potentially breaching PACE may be indicative of wider issues, such as a lack of adequate training or a problematic police culture, but explanations for these potential breaches were not explored in this research.

Despite identifying these breaches of PACE, Clarke and Milne (2001, p.100) suggested that interviewing had improved post-PEACE and was now more ethical. That said, officers displayed varying levels of skill in relation to the different stages of the PEACE framework (as noted in the previous sections) and adherence decreased over time. It is important to recognise that these studies focused on interviews for volume crimes and the findings may have limited applicability to the serious crime interviews which will be reviewed in this research. Few studies have explored how interviewers implement training on serious crime interviews (Leahy-Harland and Bull, 2016). One notable exception, Griffiths and Milne (2006) examined rapport, legal compliance and the types of questions asked of suspects using the Griffiths Question Map. Although advanced interview training improved the skill of interviewers, inappropriate question types were still asked, and performance fell in the months after training (Griffiths and Milne, 2006).

Powell (2008) does note that a limitation of some early PEACE evaluations are their focus on inappropriate question types, a theme which arises in the research discussed in section 4.3.3. Powell (2008) hoped that as interviewers incorporated more open questions into their interviews, that research would identify their issues, especially where appropriate scaffolding was not provided. While the use of appropriate question types by interviewers can still be improved upon, research in this area has begun to focus more on open questions, for example, the research of Farrugia and Gabbert (2020; 2022), which identified that these can be problematic for vulnerable suspects.

Research indicates that the benefits of PEACE training appear to wear off over time. Sear and Stephenson (1997) suggested that a barrier to the adoption of PEACE could

be police culture, which is plausible when one considers the value that investigators have placed on the obtaining of confessions (Moston et al., 1992). Many experienced investigators believe they learn their craft on the job (Innes, 2003; Tong and Bowling, 2006), so it may be challenging to address bad habits picked up and reinforced through years of experience. Adams-Quackenbush et al. (2019, p.375) identified that some officers held strong counterfactual beliefs based on their experience and held outdated perceptions about 'what works', (e.g., the Reid Technique), which acted as a barrier to undertaking best practice. Additionally, research indicates that the effectiveness of police training may depend on the personality of the interviewer, with those scoring higher on 'openness' showing the biggest improvements in training (Akca et al., 2022). The next section will explore the interview training that detectives receive for investigating serious offences.

4.5 Police Training in Investigative Interviewing

In England and Wales, all police officers undertake training on the PEACE framework of investigative interviewing. Clarke and Milne (2001) suggested that interviewing officers should be given the opportunity for professional development, which influenced the introduction of the 'Tier' system. Detectives working in criminal investigations were trained to Tier two, Tier three training was provided for advanced suspect interviewers, and Tier five training for interview advisors (Griffiths and Milne, 2006). Inputs on advanced courses should include staged disclosure³¹, as well as building rapport (Griffiths and Milne, 2006), to account for investigations which may be more complex. In 2003 the Professionalising Investigations Programme (PIP)³² was introduced (College of Policing 2018). PIP level one training concerns the investigation of priority and volume crime, level two is for serious and complex investigations, level three deals with major crime investigations (focusing on training for senior investigation officers (SIOs)) and level four concerns the strategic management of highly complex investigations (College of Policing, 2018). While the PIP programme provides inputs into investigative interviewing, the programme is not interview specific and it provides broader investigative and management training (College of Policing, 2022).

Detectives working on serious crime investigations (e.g., homicide and attempted

³¹ Staged disclosure refers to the disclosure of evidence in stages, where the police may reveal more evidence linking a suspect to an offence as interviews progress (Davies et al., 2020). It tends to be used for interviews of serious offences where multiple interviews take place

³² This also extends to the training that new recruits are given as part of the degree apprenticeship route.

murder), should have completed PIP level two training, which includes an input on interviewing (NPIA, 2009, p.8). Specialist interview training programmes can also be undertaken including Specialist Interviewer Suspect Training, Interview Advisor Training and Specialist Interviewer Victims and Witnesses Training (College of Policing, 2022a). There are also training courses which may equip officers to investigate offences involving vulnerable victims, some of which focus on offences against children, and sexual offences (College of Policing, 2021c). While these predominantly deal with vulnerable victims, the skills officers learn are somewhat transferable to vulnerable suspects, as both involve communicating with a vulnerable person and obtaining an account. Detectives in major crime should have received specialist interview training, yet for some, this may have been undertaken some time ago. Griffiths and Milne (2006, p.187) note the importance of regular refresher training to ensure skills are kept up to date and do not decline over time, however, it is not widely known the extent to which refresher training is offered, nor the uptake of this training by detectives. There is also specialist guidance as to how major crime investigations should be undertaken. It is this to which the next section will turn.

4.6 Interview Guidance for Major Crime Investigation

The interviewing of suspects for serious crime offences is regarded as a key part of the investigative process and the Murder Investigation Manual (MIM) suggests that “a suspect interview strategy should be developed in an early stage of the investigation” (Association Chief Police Officers (ACPO), 2006, p.266). The Major Crime Investigation Manual (MCIM) recommends the SIO appoint an interview advisor to assist with this strategy (National Police Chiefs Council (NPCC), 2021 p.137), although interview advisors may also undertake homicide interviews themselves. The interview advisor is a detective who should formulate an ethical interview strategy, monitor the welfare of the suspect, and identify PACE issues likely to have an impact on the interview (ACPO, 2006, p.269).

The MIM (ACPO, 2006) proposed that detectives interview in pairs, are trained to the relevant standard, and are given adequate time to prepare for suspect interviews. Interviewers were advised to follow the PEACE framework and the (now outdated) ACPO interviewing guidance, but little other guidance was provided as to how these interviews should be conducted in homicide investigations. While homicides vary in their nature, and concern a range of underlying motivations (ONS, 2022), many suspect interviews may involve broadly similar processes (albeit with different information), especially concerning the planning involved and the structure of the

interview, which may revolve around topic areas and the points to prove for the offence(s) in question (APT, 2021).

Further guidance could be provided on a range of more general issues, which may serve as useful reminders to officers about things to consider when interviewing suspects on serious crime investigations. For example, references to policy suggesting that interviews should be visually recorded in certain circumstances (see Code F PACE). Additionally, principles about the strategic use of evidence (SUE), and the importance of identifying and responding to vulnerability could be beneficial. This is especially the case if officers working in serious crime do not access regular refresher interviewing training. While the case for further guidance could be made, interestingly, there is even less guidance about the suspect interview and interview advisors in the MCIM, which removed many of the references to suspect interviewing previously contained within the MIM.

Section 20 of the MIM focused on suspect management and suggested the SIO consider obtaining an AA if the suspect is a juvenile or vulnerable adult (ACPO, 2006, p.263). This is not included in the MCIM, however, the MCIM does place a greater focus on the importance of disclosure across a range of contexts, including pre-charge disclosure (NPCC, 2021). The Criminal Procedure and Investigations Act 1996 sets out the legal obligations regarding the disclosure of investigative material during an investigation, with the intention of ensuring fairness during the criminal investigation and any subsequent trial (CPS, 2018). However, there are no rules which specify what the police must disclose to legal advisors prior to a suspect interview (Davies et al., 2020). The SIO and investigation team should consider the role of disclosure in the interview process, which is important as it can influence the legal advice provided to a suspect and ultimately, whether a suspect provides an account during interview (Sukumar et al., 2016a; Davies et al., 2020). A suspect is not entitled to pre-interview disclosure in the absence of receiving legal advice (Sukumar et al., 2016b; Davies et al., 2020) and this may further disadvantage a suspect and increase the power imbalance between the suspect and the police. When unrepresented, it is possible that suspects may believe evidence presented during interview to be stronger than it is (Sukumar et al., 2016c), and this may influence any account a suspect may provide during interview.

The College of Policing (2022) and Blackstone's Handbook for Policing (Bryant and Bryant, 2021) has guidance on investigative interviewing, which considers working with legal advisors, pre-interview briefings and disclosure, interview structure, and

legal issues such as adverse inferences. However, there is little reference to vulnerability and the AA. Vulnerability and the AA are referred to in guidance regarding the detention of suspects in custody (College of Policing, 2021), yet this does not relate to the suspect interview.

There is specific guidance relating to the interviewing of witnesses and victims, known as 'Achieving Best Evidence' (ABE) (Ministry of Justice, 2022), which focuses on the video interviewing of vulnerable and intimidated witnesses or significant witnesses. The principles of ABE interviewing share similarities with the PEACE model, and adopt a 'phased approach' which focuses on rapport, free recall, questioning (including clear topic division) and closure (Ministry of Justice, 2022, p.76). As part of the questioning phase, it is recommended that the witnesses account of the incident is gathered first, prior to exploring wider investigative material. Guidance is also provided concerning questioning techniques, where it is recommended interviewers use simple language, avoid asking repeated, leading, and multiple questions, and consider restricting their use of 'why' (Ministry of Justice, 2022, section 3). One difference with the PEACE framework is the emphasis placed on the clarification stage (as opposed to challenge – see section 4.3.3). It is noted in the ABE guidance (Ministry of Justice, 2022, pp.94-95) that inconsistencies should be clarified, but only where these are significant, and this should be done after an account has been fully explored and possible explanations considered. This should be explored at the end of an interview (or in a subsequent interview) and in a non-confrontational manner (Ministry of Justice, 2022, p.94-95).

Another key aspect of the ABE guidance is to consider conducting the interview at a slower pace, as many vulnerable suspects have a "slower rate of understanding, and/or thinking and/or replying" (Bull and Griffiths, 2019, p.244). While Bull and Milne (2022) recommend that vulnerable suspects are interviewed in accordance with ABE guidance, the ABE guidance (Ministry of Justice, 2022, p.9) states that 'this document does not cover the interviewing of suspected offenders by the police'. Where a vulnerable witness becomes a suspect during an interview, the guidance suggests that the interview should be terminated and the individual told they will be interviewed about this another time (Ministry of Justice, 2022, p.107). Interestingly though, ABE guidance is more comprehensive than any available guidance for the interviewing of vulnerable suspects, suggesting that the guidance concerning the interviewing of vulnerable victims is more developed. Perhaps, one may infer from this that the welfare of victims and witnesses is held in higher regard than that of those suspected of committing criminal offences. In order to achieve parity in guidance and in the

treatment of those who are vulnerable, Bull and Griffiths (2019, p.253) advocate for guidance in 'achieving best treatment' of defendants who are vulnerable.

While interviewing guidance exists, it is worth acknowledging that the police have historically been resistant to changes to working practices (McConville et al., 1991; Choongh, 1997). Therefore, one challenge may be ensuring interviewers adhere to interview guidance. While PACE (sections 76 and 78) provides safeguards for the exclusion of interview evidence, these only apply in circumstances where breaches are identified, and the courts have previously taken a lenient approach to breaches (see Chapter Two). Identification of breaches may require that a suspect is legally represented (and is done so adequately), or their case proceeds to trial (Dehaghani and Newman, 2019). The next two sections of the chapter explore the role of third parties during the suspect interview, starting with the AA.

4.7 The Role of the Appropriate Adult During the Suspect Interview

The importance of the interview is magnified in circumstances where a suspect is vulnerable, as they may be more likely to falsely confess during interview (Gudjonsson, 2003; Kassin, 2008; Leo, 2008; O'Mahony et al., 2012). Therefore, it is crucial that safeguards are adhered to, work effectively, and that the police interview in an ethical manner. Bull and Milne (2022, p.30) recognise that "the presence (or absence) of third parties can influence the actions of people within the interview as well as perceptions of the interview". This section (and the next) will explore the extent to which third parties participate during suspect interviews and the impact of their presence. However, it is worth acknowledging that these two sections require that an AA and/or legal advisor has been obtained for a vulnerable suspect, which, as discussed in Chapter Three has been highlighted as problematic for a number of reasons.

Code C para 11.15 states that a juvenile or vulnerable adult should not be interviewed or asked to provide a written statement without an AA present. The AA's role is specified in Code C para 11.17:

"If an appropriate adult is present at an interview, they shall be informed:

- *that they are not expected to act simply as an observer; and*
- *that the purpose of their presence is to:*

~ advise the person being interviewed;

*~ observe whether the interview is being conducted properly and fairly;
and*

~ facilitate communication with the person being interviewed.”

While the role of the AA is specified in the Codes, one may argue these provisions do not provide the requisite guidance for AAs, especially those not trained to undertake the role (Pearse and Gudjonsson, 1996a; Pierpoint, 2011; Dehaghani, 2019). How does one facilitate communication? How should a suspect be advised, and on which matters? This may be further complicated as an AA should not provide legal advice (NAAN, 2018) and some AAs may not be clear of the line between advice and legal advice³³. Furthermore, it is unlikely, without knowledge of the law and guidance concerning the interviewing of vulnerable suspects, that an AA (especially familial AAs and volunteers with little experience of the CJS) may be able to identify whether the police are acting properly and fairly, and the potential remedies available if this is not the case (Pierpoint, 2011; Dehaghani, 2019). Pierpoint (2000, p.54-55) suggested that it would be useful for AAs to be provided with an awareness of interview tactics and provide the AA with the skills and confidence to recognise and tackle inappropriate practices, intervening where necessary. This may increase appropriate interventions during the interview and improve the effectiveness of the AA safeguard.

Little research has explored how AAs undertake their role during the suspect interview, but that which exists has identified that interventions by AAs during suspect interviews are infrequent and they are often passive during interviews (Evans, 1993; Pierpoint, 2001; Medford et al., 2003; Quinn and Jackson³⁴, 2007; Farrugia and Gabbert, 2019). Medford et al. (2003) analysed audiotaped suspect interviews using a coding frame and identified that AAs can still play an important safeguarding role because when an AA was present, the likelihood a legal advisor attended increased. Furthermore, when an AA was present, the likelihood of ‘interrogative pressure’ during the interview decreased, the suspect was challenged less and interrupted less frequently (Medford et al., 2003). Quinn and Jackson (2007) also noted that the presence of an AA in the interview appeared to provide some support to juvenile suspects, highlighting the positive impact third parties can have on the interview. This was confirmed by Her Majesty’s Inspectorate of Constabulary (2015, p.186), who found that those who had used AAs felt that they benefitted from having done so,

³³ Additionally, the legal advisor is not able to act as an AA (Code C, Notes for Guidance 1F).

³⁴ Undertaken in Northern Ireland

although few suspects met their AA much in advance of the interview. However, Groves and Brown (1999) spoke with 81 juveniles, many of whom felt the AA did little to assist them during interview. This was echoed by the research of Leggett et al, (2007) where many suspects viewed their previous experiences of having an AA negatively.

Where AAs did intervene, familial AAs intervened more frequently than some professionals (Medford et al., 2003³⁵). However, on occasion, the nature of these interventions was problematic, with AAs acting as agents of the police (themselves questioning and threatening suspects) or acting as barriers to questioning (whereby the AA was defensive of the suspect and/or threatened the police) (Dixon et al., 1990; Evans, 1993; Pearse and Gudjonsson, 1996a; Medford et al., 2003). Palmer (1996) suggested that this may be because the police do not always inform AAs what is expected of them. This confirms the findings of Evans (1993, p.39) who identified that none of the non-professional AAs in his research received any guidance relating to the Codes of Practice and PACE during the interview. If AAs are perceived to be effectively part of the prosecution, or agents of the police, this may impact the willingness of a suspect to trust and interact with the AA, potentially causing more stress and concern to a suspect than not having an AA in the first place.

Pierpoint (2001) identified in her self-report survey of trained voluntary AAs (for juvenile suspects) that 35.6 per cent contributed to the police interview, a higher figure than that identified by Evans (1993) for parents and non-trained professionals. AAs intervened for a range of purposes, including stopping the interview, checking for understanding, asking if the young person wanted to seek legal advice, providing support and highlighting problematic questioning (Pierpoint, 2001, p. 266). This confirms that AAs intervened for a range of reasons, in accordance with the role as defined in Code C. Farrugia and Gabbert (2019) analysed interview transcripts (n=27) for serious offences using a coding framework and identified that AAs were generally passive and often failed to intervene when required during the suspect interview (also identified by Medford et al., 2003). However, when AAs intervened, these interventions were generally appropriate and consistent with PACE guidance. One possible explanation may be that AAs were predominantly trained members of an AA scheme. Although the authors were not aware of the type of AAs used in the research,

³⁵ Medford et al. (2003) considered interventions by 'lay' and 'professional' (social workers *and* trained volunteers) AAs, so the impact of trained volunteers alone cannot be ascertained in their study.

it can be common (in the researcher's professional experience³⁶) for family members in investigations into serious offences to be witnesses, meaning that they are unsuitable to act as the AA.

While the research discussed in this section provides some indication as to the levels of participation by AAs during the suspect interview, it is important to acknowledge that different methodologies (analysis of police transcripts, audio-recorded interview recordings, or self-report studies), sampling and terminology were employed in the aforementioned studies, all of which have their own limitations and strengths. Therefore, it is difficult to directly compare the involvement of AAs during suspect interviews. Furthermore, the methodologies used, (mostly quantitative) did not really explore *why* third parties intervened or not, nor the impact of their interventions on the others within the interview room.

It is possible that the nature of the working relationship between the police and AAs may influence interventions. Nemitz and Bean (1998) observed working relationships develop between AAs and police officers where a volunteer AA scheme was implemented, which led to higher utilisation of volunteer AAs. Nemitz and Bean (1998) also observed the police seeking AAs advice about mental health matters and AAs reminding the police of PACE procedures. That AAs were willing to remind the police of PACE, in 'their domain' suggests that where positive working relationships develop, parties may feel more comfortable interacting with one another. This may result in a higher number of appropriate interventions during the suspect interview. These are areas which require further exploration to establish how AAs impact the suspect interview. This is especially the case as much of the research discussed in the previous paragraphs (with the exception of Farrugia and Gabbert, 2019) is now somewhat dated, being undertaken at least fifteen years ago.

Concern has been raised that the presence of a passive AA during the suspect interview may serve to legitimise the practices of the police (Hodgson, 1997; Medford et al., 2003; Parry, 2006; Dehaghani, 2019). This means that where an AA is present, it may be presumed that the interview has been undertaken fairly, and the vulnerable suspect's rights effectively safeguarded. However, when third parties fail to intervene when required, this is unlikely to be the case. Where applications are made to exclude evidence using section 76 or 78 PACE (see Chapter Two), the presence of the AA, and potentially a legal advisor, may, in part, determine the admissibility of interview evidence, regardless of how well the third parties undertake their roles during the

³⁶ See Chapter Five for further discussion of the researcher's prior police experience.

interview (Dehaghani, 2019). Consequently, a vulnerable suspect *may* be more disadvantaged by the allocation of an ineffective AA, than not having one at all. That said, Medford et al. (2003, p.262) suggested there is some benefit in having an AA present during interviews, regardless of their contribution, for they appeared to positively influence police behaviour (who undertook fairer interviews) and increased the likelihood of a legal advisor attending.

4.8 The Role of the Legal Advisor During the Suspect Interview

This section will explore the impact of the legal advisor on the suspect interview. Code C, Notes for Guidance 6D suggests that the legal advisor provides a suspect with advice and may seek clarification from the police, challenge an improper question and advise the suspect not to reply to a line of questioning. It has been suggested that legal advisors can be of poor quality (Brown et al., 1992; McConville and Hodgson, 1993), although the quality of legal advisors have improved following the introduction of police station accreditation schemes (Bridges and Choongh, 1998; Quinn and Jackson, 2007). Areas of concern included a lack of training, and that some legal advisors were unable to deal with questions about law and evidence or oppressive police tactics (Bridges and Choongh, 1998). Additionally, some legal advisors did not review the custody record and made no effort to obtain relevant information from the police (McConville and Hodgson, 1993).

Additionally, research has identified that legal advisors are passive during the interview (Dixon et al., 1990; Evans, 1993; Nemitz and Bean, 1998; Leahy-Harland and Bull, 2021), and feel that there is little need to intervene in most cases (Quinn and Jackson, 2007). This is consistent with the findings of Pearse and Gudjonsson (1997) who identified that legal advisors intervened in only 15 per cent of interviews (n=161). Bridges and Choongh (1998) identified that legal advisors intervened on 78 per cent of occasions where intervention was required. Furthermore, Baldwin (1993) found that interviewers are not always skilled in dealing with the legal advisor and were seen to become flustered by their presence. One may anticipate that interviewers are more skilled following the introduction of the PEACE framework than those observed in Baldwin's research.

Leahy-Harland and Bull (2021) examined audiotaped interviews of 56 suspects for serious offences (murder (82 per cent of the sample), attempted murder, serious sexual offences and serious assault) and found that legal advisors spoke on average four times per interview and that interventions were most often at the start of the interview and related to procedural matters. Similarly, Edwards and Stokoe (2011)

identified that most interventions by legal advisors were at the start or the end of the interview and were procedural in nature. They did find other circumstances in which interventions by the legal advisor took place, including responding to the suspect's questions, advising the suspect to remain silent, and assisting suspects in formulating an account. Leahy-Harland and Bull (2021) identified similar interventions including advising suspects to remain silent, disclosure matters, facilitating communication and objecting to questioning. The reason for the higher number of interventions in the research of Leahy-Harland and Bull (2021) may be that the offences are serious in nature and interviews were longer in duration.

Leahy-Harland and Bull (2021) also found that interventions by legal advisors in serious crime interviews increased in line with higher use of police strategies and tactics, especially concerning challenging the suspect and inappropriate question types. Additionally, there were a number of interviews where suspects did not adhere to the legal advisor's advice, which may have also been a factor in the increased number of interventions (Leahy-Harland and Bull (2021). However, surprisingly, neither the suspect's age or vulnerability impacted the legal advisor's contributions (Leahy-Harland and Bull, 2021, p.1021). It is worth noting this research involved a relatively small sample (n=56) and although reference was made to vulnerable suspects, it is not known how many suspects fell into this category.

Little research has considered how legal advisors undertake their role when a vulnerable suspect has been interviewed. As noted earlier in the chapter, Medford et al. (2003) explored the impact of the AA during the suspect interview, but in doing so also highlighted the interventions of the legal advisor. They found that when an AA was present, the legal advisor was more active during the interview. This may be because the AA relinquishes their role in the assumption that the legal advisor will undertake this (Medford et al., 2003, p.262). Another possibility is a professional rivalry between the AA and legal advisor, whereby the legal advisor may wish to raise any objections before the AA. Therefore, there may be some interesting dynamics to be explored between third parties (something seldom explored in the literature) and how they impact the suspect interview. That said, Verhoeven (2018) found that when a legal advisor was present during interview, confrontational and manipulative interview techniques did not correlate to shifts in the suspect's responses (regarding admissions etc). However, if a legal advisor was not present these techniques did appear to influence the suspect changing their responses. While this study was undertaken in the Netherlands, which has a different criminal justice system and guidelines for interviewing suspects, it does provide an indication that the presence

of the legal advisor modifies the behaviour of the suspect and may make them less susceptible to coercive interview techniques (Verhoeven, 2018).

Clarke et al. (2011) considered the impact of the legal advisor on suspect interviews and found that the presence of a legal advisor had no impact on the interviewer's behaviours, although it did correlate to an increase in suspects implementing their right to silence and fewer made admissions (Moston et al., 1992; Bucke and Brown, 1997; Gudjonsson, 2003; Medford et al., 2003). CJPOA eroded suspects' right to silence in the suspect interview and has been viewed as a coercive crime control measure intended to place pressure upon suspects to provide an account (Moston and Stephenson, 1993). Concern has been expressed about the ability of vulnerable suspects to deal with interrogative pressure in these circumstances (Gudjonsson, 2003), and therefore legal advice for vulnerable suspects is important to ensure that suspects do not make false or inaccurate statements and are able to make informed decisions about the nature of their participation in the suspect interview.

4.9 Summary

This chapter has explored the way that police interviews in England and Wales should be undertaken, with reference to the seven principles of investigative interviewing and the PEACE framework. Research has highlighted that whilst PEACE training has had some positive impact on interview practices, which are now undertaken in a more ethical manner, areas including the maintenance of rapport, challenging suspects, and the closure and evaluation stages require improvement.

Guidance suggests that vulnerable suspects are given special consideration when they are interviewed (Home Office, 1992). However, there is little guidance specifying exactly *how* interviewers should interview those who are vulnerable, leading to calls for clearer guidance on unfair interviewing techniques (Pierpoint, 2001; 2004; O'Mahony et al., 2012). This would benefit interviewers who genuinely wish to interview in the most ethical way possible, but it would also benefit third parties who may better understand when they should intervene.

There is little academic research which considers the interviewing of vulnerable suspects, especially for serious offences. This appears to be a surprising omission, as investigations of serious offences may exacerbate vulnerability in suspects because these offences are likely to result in lengthier detention, longer interviews, and the nature of such offences can result in a greater deprivation of liberty should one be remanded in custody and subsequently convicted. These factors, amongst others, may result in greater pressure being exerted upon a vulnerable suspect, which

may increase the risk of a false confession or unreliable evidence.

Additionally, rarely has research considered the interactions which take place during interviews of vulnerable suspects, and the working practices of third parties. The interview takes place in the context of a power imbalance between the suspect and the interviewers, which may be further accentuated for those who are vulnerable. Safeguards for suspects, such as third parties have the potential to reduce this imbalance if they are able to ensure that the suspect is treated fairly and is able to participate in the interview process, providing 'equality of arms'. This may enable vulnerable suspects to understand the interview process, their rights, and to provide an accurate and reliable account, if they wish to do so.

However, the research indicates that third parties are sometimes passive during interviews and on occasion, fail to intervene when necessary (Pierpoint, 2001; Medford et al., 2003; Farrugia and Gabbert, 2019). The presence of third parties during the interview may not act as a safeguard for vulnerable suspects unless the role is performed competently. This may depend on the training that third parties receive to undertake the role, their interpretation of their role, as well as their relationship with the suspect and even the police (Palmer and Hart, 1996). Therefore, it is important that the lack of clarity about the roles of third parties and how these should be undertaken is addressed (Tudor-Owen and van Golde, 2022b).

This chapter has explored investigative interviewing, focusing, where possible, on the interviewing of vulnerable suspects and the role of third parties during the interview. It is these gaps in the literature that this thesis seeks to address and further explore. However, it is pertinent to acknowledge that much of the research discussed in this chapter, explores how the police interview suspects and whether they obtain an accurate and reliable account. This is consistent with police (and crime control) objectives but may overlook the perspectives of others within the interview room, whose aims (due process or welfare orientated) may conflict with this. The next part of the thesis is the methodology chapter which explores how I undertook my research into the detention and interviewing of vulnerable suspects who were arrested on suspicion of committing homicide (and attempted murder) offences.

Chapter Five: Methodology

This chapter provides an account of how I undertook research into police interviews of vulnerable homicide suspects. It summarises the overall research design, before detailing access, data collection methods, sampling and analysis. The latter part of the chapter examines the ethical issues considered during the research process.

The overall aim of this research was to critically explore the working practices of detectives and third parties when dealing with vulnerable suspects arrested upon suspicion of committing homicide (and attempted murder) offences. The main focus was on how vulnerable suspects were interviewed by the police, and how third parties undertook their roles during this process. To answer the research questions (see section 1.3), a case study design which utilised multiple qualitative methods³⁷ (analysis of audio/visual police suspect interviews, semi-structured interviews with detectives, appropriate adults (AAs) and legal advisors, and a review of custody records) was employed. Table 5.1 summarises the data collection methods, sample sizes and analysis. The sampling methods are detailed later in the chapter. Fieldwork took place between July 2018 and January 2020.

Table 5.1: Summary of Research Methods, Sampling and Analysis

Data Collection Method	Data Collection Tools	Target Population	Sample size	Analysis
Analysis of concluded audio and visual police interviews	Observation schedule Field notes	3 police forces in England and Wales	125 suspect interviews from 26 homicide cases 2015-2018	Thematic analysis (qualitative data) Content analysis (quantitative data)
Semi-structured interviews of police officers	Interview schedule	3 police forces in England and Wales	14 interviews	Thematic analysis

³⁷ I state this, rather than mixed methods, as although I noted aspects of suspect interviews which produced some quantitative data (such as interview length and the number of third party interventions – see appendix D), statistical analysis extended to univariate descriptive statistics.

Semi-structured interviews of AAs and legal advisors	Interview schedule	AAs and legal advisors in England and Wales	23 interviews	Thematic analysis
Analysis of custody records	Observation schedule	3 police forces in England and Wales	29 custody records relating to 27 suspects	Thematic analysis

This chapter describes how I undertook my fieldwork and why. It also explores my previous experience in the police, and my positionality and how this may have affected my access to police forces, data and participants.

5.1 Epistemological Considerations: A Constructivist Approach

Epistemology is the theory of knowledge and raises questions as to conditions, sources and limits of knowledge (Williams and Arrigo, 2006, p.22). Objectivist and positivist perspectives broadly maintain there is ‘one objective truth’ (Crotty, 1998). These approaches are regarded as scientific, minimising opportunity for researcher bias where possible (Williams and Arrigo, 2006, pp.26-27). In contrast, constructivist and interpretivist perspectives maintain that multiple constructed realities exist (Williams and Arrigo, 2006, p.27). These reflect what is true for each subject (Braun and Clarke, 2013, p.27) and realities are created through the subject’s engagement with the world (Cohen et al., 2007). Personally, I align with an interpretivist theoretical perspective and believe that we individually construct our realities, and that these are influenced by personal experience, beliefs, and culture. As conscious beings, I believe that individuals may experience the same situation differently, and therefore I posit that positivist approaches may not fully explain social interactions.

In line with an interpretivist theoretical perspective, it has been argued that crime and criminal investigation are socially constructed, and that the weight and meaning given to these events shape how the police investigate these offences (Innes, 2003; Peelo et al., 2004; Brookman and Innes, 2013; Innes et al., 2021). When the police investigate crime, they try to make sense of the material which comes into the investigation (Innes, 2003). Material obtained during the suspect interview may contribute to case construction and outcomes, and therefore it is important to establish the working practices of detectives and third parties, and how suspect

interviews are undertaken, especially of those who are vulnerable.

The decision to employ largely qualitative methods in this research contrasts with much of the existing research into police interviewing, which is influenced by objectivist and positivist/post-positivist perspectives. Research aligning to these perspectives includes mock-experiments (Evans et al., 2013; Mac Griolla and Granhag, 2015; Dawson et al., 2017; Kelly et al., 2019) and self-report surveys (Walsh et al., 2015; Snook et al., 2015; Wachi et al., 2016; Cleary and Warner, 2016). Police interviews have also been analysed using quantitative methods, albeit in different ways depending on whether interview transcripts, audio and/or visual recordings are used (Baldwin, 1993; Clarke and Milne, 2001; Medford et al., 2003; Leahy-Harland, 2012; Cleary, 2014; Walsh and Bull, 2015; Clugston et al., 2019). There are some notable exceptions where interpretivist perspectives have influenced the use of qualitative methods, predominantly within the domain of forensic linguistics (Thornborrow, 2002; Haworth, 2006; Rock, 2007; Carter, 2011; Edwards and Stokoe, 2011). On occasion, interpretivist perspectives have influenced the research methods of psychologists, who have previously interviewed detectives, suspects and/or third parties (Griffiths et al., 2011; Westera et al., 2016; Walsh et al., 2017).

While research into investigative interviewing which has been influenced by positivism has greatly furthered our knowledge of suspect interviewing, my research explores this area from an alternative theoretical perspective, which aids our understanding of how vulnerable suspects are interviewed, and why. Qualitative research is well suited to address such research questions (Westmarland, 2011) and allows for the perspectives of multiple actors (e.g., detectives, third parties and the suspect) involved in the investigative process to be explored. However, one limitation of this research is that the perspectives of vulnerable suspects are not included, in part, due to time constraints and ethical considerations (see section 5.6.4). The analysis of suspect interviews may somewhat mitigate this limitation, as it was possible to observe these interviews and better understand how these are undertaken. It may also be possible to infer (to an extent) from language, tone, and body language how the actors present (including suspects) may experience these interviews. Therefore, despite the limitations of this research, the use of qualitative methods and the focus on homicide investigation and vulnerability offers a unique contribution to the field.

Williams and Tredwell (2008, p.60) suggest researchers should consider “how our biographies impact upon the issues that we select to research, and how our

biographies impact upon the way in which we study.” I became more aware of how mental ill-health impacts those detained in custody while volunteering as an Independent Custody Visitor (2007-2008). My previous employment as a police civilian investigator³⁸ in a Major Crime Investigation Team (MCIT) (2009-2015) also influenced this research. One homicide I worked on during 2014, involved a vulnerable (albeit dangerous) young man. Admissions were made by the suspect to the AA after the first interview and the investigation team considered whether these disclosures could be captured evidentially. At this time, I knew little about AAs and the work they do, but this experience left me wanting to explore the involvement of third parties further. While this research was influenced by the literature review which identified the methodological gaps noted earlier in the section, my own epistemological perspective, which is rooted in interpretivism (see earlier paragraphs), also shaped the research design. As I believe that individuals’ truths are created through their engagement with the real world, I gave credence to qualitative methods (observations and interviews), which enable complex social interactions to be explored in detail and may further our understanding of this area.

5.2 Research Design: The Case Study Approach

This study explored the detention and interviewing of vulnerable suspects in the police station³⁹. As this research focused on a specific type of event, it was well suited to a case study design. A case study “investigates a contemporary phenomenon...in its real-world context, especially when the boundaries between phenomenon and context may not be clearly evident.” (Yin, 2013, p.2). Police interviews take place within a unique set of circumstances that arguably are difficult to replicate ethically within an experimental setting. To truly examine this phenomenon, one needed to view interviews within their real-life context. However, there are challenges associated with researching the police (see section 5.3).

A case can include an individual, organisation, or geographical area, and there are several different types of case study; exploratory, descriptive, and explanatory, which can be suited to single or multiple cases (Yin, 2013). This research was an exploratory

³⁸ I spent nearly 6 and a half years working as a Major Crime Investigation Officer alongside detectives, predominantly on homicide investigations. Key aspects of this role included taking witness statements, disclosure and exhibits. I also spent a year prior to this as a case builder in a separate police force.

³⁹ There are provisions within Police and Criminal Evidence Act 1984 (PACE) and Code C for emergency interviews to be undertaken away from the police station. Additionally, voluntary interviews may be conducted at the police station, or elsewhere (Pierpoint, 2020).

multiple case study, examining police interviews across three police force areas. It is important to define the case and its boundaries (Yin, 2013, pp.31-34). The case is the police force where the analysis of suspect interviews took place. As noted earlier, three forces took part in this research. I sought to select forces of variable sizes (by the number of police officers and citizen population) and homicide rates (see Table 5.2). The boundaries of the research were determined by the offences under investigation, e.g., homicide (murder, manslaughter, infanticide and gross negligence manslaughter (Crown Prosecution Service, 2021). The sample also included attempted murder cases) and the involvement of vulnerable suspects⁴⁰. Only concluded cases within the last four years⁴¹ were included in the research as participants from suspect interviews may be easier to trace and interview, and older cases may be harder to recall. Furthermore, interviews prior to 2013 were less likely to be visually recorded⁴².

My priority was to gain an in-depth understanding of how vulnerable suspects are detained and interviewed, raising awareness of a population whose experiences are often overlooked. Such an approach is associated with qualitative research, which seeks to explore participants' lived experiences (Brookman, 2015, p.236). Qualitative methods often generate rich data, providing insight that allows for a greater understanding of social phenomena which may not be obtained using other research designs (Markle et al., 2011). This research combines multiple research methods (analysis of documentation, analysis of police suspect interviews and semi-structured interviews – see Table 5.1). One advantage of utilising multiple methods is that a form of triangulation may take place, for the purposes of completeness (Jick, 1983). This means that data can be used to better understand the issue at hand and contribute to the jigsaw being built (Knafl and Breitmayer, 1991). This is a similar process to that of 'mosaicking' as described by Innes et al. (2021) when exploring how investigation teams collate and assess different types of material in order to build a picture of what has taken place.

5.2.1 Generalisability of Case Study Research

This section will initially set out some of the arguments concerning the generalisability of case studies, before exploring how these relate to this research. Generalisability is

⁴⁰ See Chapter One for further discussion and definition of homicide, and Chapter Three for further exploration of vulnerability.

⁴¹ At the time fieldwork was being arranged, which was from 2014 onwards.

⁴² PACE Code F was introduced in 2013 regarding the visual recording of police interviews.

a term which describes the extent to which research findings can be applied to other similar research settings, for example, those in other places or time periods (Davies and Francis, 2018, p.523). Generalisation has been addressed in different ways by qualitative researchers and several types have been described in the literature, including 'logical', 'theoretical' and 'analytical' generalisation (Hammersley and Gomm, 2000, p.4). However, research which utilises qualitative research methods such as interviews, focus groups and observations is often thought to lack generalisability or external validity, in part, due to the use of case study methods and small sample sizes (Walliman, 2006; Bryman, 2016).

For some qualitative researchers, generalisability is not an aim of their research and has little perceived relevance (Gray, 2022, p.299). Yet, for others, generalisability is perceived as important, although there are differences in opinion over to what extent this can be achieved (Bryman, 2016). Lincoln and Guba (1985) proposed using an alternative criterion of trustworthiness and authenticity to assess the quality of qualitative research studies, and suggested that findings can be generalised by considering their fit (e.g., their similarities) to the wider population, with Donmoyer (2000) also noting that differences can be equally valuable in aiding our understanding of the social world. While Hammersley (1992) acknowledged the importance of validity, he also suggested that the relevance of research is important, which Bryman (2016) relates to the importance of the topic and the contribution that it can make to its relevant field.

That said, some academics have moved away from naturalistic generalisation and transferability, proposing that qualitative studies should aim to make some general conclusions (Gomm et al. 2000). Gomm et al. (2000) proposed that this can be done in two ways; theoretical generalisation and empirical generalisation. The first concerns what may happen in a theoretical situation and enables inferences to be drawn about abstract concepts and theories that the case study exemplifies (Hammersley and Gomm, 2000, p.10).

Empirical generalisation draws inferences from the study to a larger, similar population and proposes that findings may be generalisable where the case is representative of the wider population (Hammersley, 1992; Gomm et al. 2000). Gomm et al. (2000) believed that this can be done in case study research where evidence is provided as to the demographics of the sample and the general population, and if cases are systematically selected and/or are representative of this population. This raises the question as to what aspects of the case should be

compared to the wider population. When applying this to my research, should this relate to the police force, the types of homicide cases observed, the demographics (including training and experience) of the detectives, third parties and suspects participating, or a combination of all three?

Generalisability is discussed by Schofield (2000) who proposed that multi-site case studies, as undertaken in this research, are one method which may increase generalisability, in addition to the aggregation of other independent empirical studies which support the findings obtained. That said, while there are arguments for some generalisability from case study research, it is important to also acknowledge the limitations of one's research, such as the sampling methods and size (Bryman, 2016).

The sampling of police forces in this research is reflective of the diversity of forces within England and Wales (a rural, mid-sized and urban force), involved male and female detectives of a range of ages, with a wide range of MCIT experience and training. Therefore, it is possible some of the findings will be reflected across forces nationally and will have applicability to detectives who work on the investigation of major crime. The sampling method employed in this research was a purposive sample (see section 5.4 to 5.6) which was selected based on the suspect's vulnerability (and included mental health conditions, age, a lack of police contact, learning disabilities and substance misuse). However, Bryman (2016) notes that a probability sample may enable better generalisation to the wider population.

The rules governing the detention and interviewing of vulnerable suspects and the investigation of homicide apply throughout England and Wales. Yet, each police force is distinct due to the differences in geographical area, funding, organisational structure and crime rates. Although the professionalising investigations training programmes (PIP) which are based on the nationally adopted PEACE framework are delivered across England and Wales, advance interview training may be delivered 'in-house' by forces (Griffiths, 2008, p.54). MCITs may also be set up differently across police forces (West Mercia Police, 2021; Avon and Somerset Police, 2022), with varying compositions of civilian staff and police officers. These factors may result in forces and departments developing their own specific cultures (Reiner, 2010). As such, it may not be possible to generalise all findings from this research to all forces across England and Wales. This was something identified by Gravelle (2014, p.48) when exploring mixed method policing research with a small sample size, and by Dehaghani (2017) and Pike (2018) in their qualitative research exploring the implementation of the AA safeguard and homicide investigation respectively.

Similarly, Fahsing and Ask, (2013, p.163) acknowledged their small sample of detectives “may not be fully representative of the detective populations in the respective countries”. However, they did go on to note that their sample included detectives from two countries (the UK and Norway, both of whom used investigative interviewing methods) and that there was a strong consensus of opinion which indicated respondent’s views may be more widespread (Fahsing and Ask, 2013), and that their findings are somewhat generalisable. These studies highlight the complexities in generalising findings where small sample sizes are involved.

However, that some of the findings from this research complement those of Dehaghani (2019) indicates that there may be some generalisability to other police forces. It is also possible that the broad theme which underpins this thesis (non-adherence to rules and guidance and the potential explanations for this) may have wider theoretical generalisability (as discussed by Gomm et al. (2000)). This could be inferred from the range of studies which have highlighted, both in the UK and internationally, that officers and third parties do not always adhere to the rules and guidance which govern their respective roles (Clarke and Milne, 2001; Innes, 2003; Leo, 2008; Carter, 2011; Brookman et al, 2019; Dehaghani, 2019). Therefore, this thesis has potentially broader reaching implications for the interviewing of vulnerable suspects and the adherence to rules and guidance, increasing its relevance and importance to policing studies. Furthermore, as an exploratory study, this research can act as a springboard for a range of future projects, both quantitative and qualitative, which could include larger sample sizes across a wider spread of police force areas. Before the data collection methods are discussed in greater detail, consideration will be given to accessing police forces and their data.

5.3 Researching the Police

Historically, the activities of the police have been hidden from public view (Milne and Bull, 1999, p.73; Sanders and Young, 2003). Punch (1979, p.4) notes “The police is often held to be the most secluded part of the criminal justice system...structural features of isolation and secrecy, coupled with the intrinsic dangers of police work, help to form an occupational culture which is solidaristic and wary of non-initiates”. However, police work, even in custody, has become more visible in recent years (Skinns, 2009b, Dehaghani, 2017a; Kendall, 2022; Skinns, 2022). Increasingly, third

parties attend the police station to assist suspects⁴³ and the introduction of Independent Custody Visitors, Her Majesty's Inspectorate of Constabulary and the Independent Office for Police Conduct have increased the transparency and accountability of the police. Additionally, the police participate in television documentaries, providing the public with an insight into their work⁴⁴. There is also a drive towards evidence-based policing (EBP), encouraging the police to work alongside researchers to advance policing techniques (Sherman, 2013). These changes have opened policing up to researchers, although Skinnis (2022) does note that research *with* the police as opposed to *on* the police is more common.

Brown (1996) considered the issue of gaining access to institutions and identified four types of relationships: 'Outside outsiders', 'outside insiders', 'inside outsiders' and 'inside insiders'. 'Outside outsiders' are external to an organisation. 'Outside insiders' are those external to the organisation, who may have previous experience of working in that arena. 'Inside outsiders' could be contracted by the organisation to undertake research and 'inside insiders' work for the organisation, in the area being researched (Brown, 1996). The status of the researcher, which may evolve and change during the course of a research project, may impact access and how participants engage with the researcher during fieldwork (Gravelle, 2014). Punch (1989) explored the relationship between the researcher and those being researched, using the term 'going native' to describe circumstances in which the researcher becomes overfamiliar with those being researched. This is likely to result in losing one's objectivity as a researcher. Gravelle (2014) delicately explored the competing demands of gaining access and building trust with participants, which required building and developing relationships with those being researched, with staying objective and detached during the research process, acknowledging that at times remaining neutral was challenging.

At this point in the thesis, it is worth, briefly, exploring the term 'objective' within the context of social science research. There are some, such as Durkheim, who approached research from a scientific and positivist epistemological position, positing that the social world exists independent of individuals (Lukes, 1982). Research influenced by this paradigm often seeks to observe and measure variables and

⁴³ Suspects accessing legal advice has risen gradually since the introduction of PACE (Brown, 1992; Phillips and Brown, 1998). Attendance by AAs has also risen (National Appropriate Adult Network (NAAN), 2015).

⁴⁴ Examples include 24 Hours in Police Custody, The Murder Detectives, Traffic Cops, Police 24/7 and The Detectives: Murder on the Streets.

establish causal relationships between these, in circumstances where the researcher is deemed to be objective. However, some argue that this paradigm does not lend itself to research on an individual's thoughts and emotions (Bhattacharjee, 2012). I personally, do not align with a positivist perspective, as I do not believe that the social world exists independently to individuals. As noted earlier in section 5.1, I align with an interpretivist perspective, in which the social world and individuals interact with one another and that we construct our own realities (Cohen et al., 2007). Therefore, I question whether social science research can be *truly* objective, an approach also shared by others (Pandey, 2014; Khatwani and Panhwar, 2019; Becker, 2021). Even in experimental research, the design of research questions, the conditions within which people are placed and the materials used to test them, are likely to be influenced in some way by the researcher's experiences and cultural and social beliefs. As such, I believe while objectivity should be an aspiration for researchers to alleviate bias, it can never be completely negated. What may be more achievable is to try to reduce bias where possible.

Gravelle (2014) notes that avoiding prolonged interaction with the same individuals and the triangulation of data collection methods can help to reduce the opportunity for researcher bias, as the reliance on a small number of individuals is reduced. Furthermore, Gravelle (2014, p.58) suggests that once one is aware of potential for bias, that this makes it easier to take measures to reduce these risks. Therefore, to be reflexive and aware of one's positionality in research is important.

There were several steps I took to try and establish my status as an independent researcher and prevent myself from 'going native' (see sections 5.4.5 and 5.6.5 for measures taken once access had been obtained). Hughes (2000, p.242) notes that prior working relationships with those being studied may raise questions about the researcher's objectivity. This was one factor which influenced my decision to leave the police soon after starting my doctoral research as I was conscious of how I would be perceived as a researcher if still a police employee, especially by those outside of the police. Hence, at the time of undertaking the research, I had 'outsider' status because I no longer worked for the police. However, my former role and experience may have afforded me 'outsider insider' status because I had worked on homicide investigations previously, and I hoped that this may assist with requests to undertake research involving police interviews (I had previously been security vetted and knew how to use some force custody systems). During fieldwork, I had no prior relationships

with respondents (except AA1⁴⁵), although I had conversations with several gatekeepers who knew people with whom I had worked previously⁴⁶. I do not know whether my former employment aided access, it is a strong possibility. Yet, PhD researchers with no prior policing experience have been able to obtain access to detectives (Pike, 2018), highlighting that insider status is not critical to undertaking research in the police.

Shaw et al. (2020) and Copes et al. (2022) highlight the importance of the researcher’s background and how this may influence data collection and analysis. Therefore, it is pertinent to consider how my positionality may have impacted gaining access to the police (see section 5.6.5. for positionality in relation to interviewing respondents). As noted earlier in the chapter, my prior policing experience may have influenced the willingness of police forces to participate in the research. It has been suggested that gatekeepers may not request the same amount of information from female researchers prior to access being granted (Reeves, 2010, p.318). However, as will be discussed shortly, this was not my experience during this research. The next section will detail my experiences of navigating access and gatekeepers in the police.

5.3.1 Identifying Police Forces

This research was designed to take place within three police forces in England and Wales to ensure a larger sample of vulnerable suspect interviews (some forces only averaged 10 to 15 homicides a year (Statistica, 2022). Forces were approached based on their geographical location and the population of the force area. The three participating forces and their respective demographics are detailed in Table 5.2.

Table 5.2: Police Force Demographics for Forces Participating in the Research

Force	Categorisation	Cities within force area	Number of homicides per year⁴⁷
Alameda	Urban (> 5,000)	3	40-45

⁴⁵ I had briefly met AA1 at a NAAN conference previously.

⁴⁶ These conversations took place once I had started fieldwork in a force but may have assisted in officers’ willingness to be interviewed, assist with my research by suggesting cases and obtaining materials.

⁴⁷ Calculated from the average number of homicides per year, over the last five years. The exact figure could lead to the force being identified so this has been generalised within a range of five.

	police officers ⁴⁸)		
Bluesville	Mid-sized (>2,000 police officers)	2	18-23
Sunnydale	Rural (<2,000 police officers)	1	5-10

Initially, I considered approaching forces through existing contacts, but my supervisors recommended I make requests formally via the Chief Constable as this was a more professional approach. I was a little nervous about this and I wondered whether this may make requests less likely to be granted. At the same time, I wanted the research to be undertaken in a professional manner. A letter requesting access to each force was drawn up, detailing the aims of the research, a proposed methodology and benefits to the force (appendix A). It was important to frame my research within force goals and objectives, so the benefit of my research could be appreciated (as advised by Cunliffe and Alcadipani, 2016). Originally, I requested access to audio-visually recorded police suspect interviews, to interview detectives and review case documentation but also to undertake non-participant observations within MCITs⁴⁹. However, during discussions with gatekeepers, it became apparent that the observations were a problematic aspect of the request, so I amended the research design to remove this method.

In the research request letter, I referenced my prior experience as a police civilian investigator and my knowledge of force systems/processes to highlight my ability to navigate force systems without taking up the valuable time of other officers, lessening my burden upon the police. In addition, details of my supervisors were listed in the letter, which may have impacted the decision to approve the research request, as both were credible and established researchers. Brookman (2000) herself notes the importance of some of these factors in gaining access to convicted violent offenders for her PhD research.

Requests to participate in the research were sent by post to five Chief Constables, and three forces agreed to support the research. One force replied stating that they only had a couple of homicides a year, which were mostly domestic and did not involve any vulnerable suspects. Another force initially agreed to support the

⁴⁸ Data used is from United Kingdom Government (2017b)

⁴⁹ In the first request letters sent, I also requested to undertake non-participant observations in custody. When I realised during initial discussions with gatekeepers in two forces that this was problematic, I did not make this request in the later letters.

research, but one gatekeeper was very difficult to contact and when I requested clarification about a phrase in the information sharing agreement (ISA), she withdrew support for the research.

Access is not simply granted by one person, at one point in time. It is a “complex, dynamic and ongoing process” (Brookman, 2000, p.75) which required me to undertake lengthy negotiations with a range of gatekeepers. Cunliffe and Alcadipani (2016, p.537) note that while primary access may be granted, secondary access can be challenging, and multiple doors can open and close at any time. While access was initially granted relatively quickly by the Chief Constable in all three police forces, negotiating access was a lengthy process indeed. The next section will describe some of these negotiations in more detail.

5.3.2 Gatekeepers and Information Sharing Agreements

Initial decisions to support the research were made within weeks, subject to vetting and the drawing up of ISAs. Whilst vetting was unproblematic, taking on average eight weeks to obtain, the ISAs took some time to be completed, in part due to the introduction of the General Data Protection Regulations 2018 (GDPR). This resulted in one ISA being revised by one police force which I had to complete afresh and required approval from scratch. Once forces were content with the ISAs, these were sent to the University Postgraduate Research Department, which forwarded this to a university lawyer for authorisation. It took some time for approvals to be granted. In total, from sending the initial request letter to commencing fieldwork, it took ten months to gain access in Alameda and Bluesville and seven months in Sunnydale.

The procedures undertaken across the three forces by secondary gatekeepers were quite different. In Alameda, I was quickly passed to the EBP team. I met with an Inspector from that team and a Detective Chief Inspector from the homicide team to talk about the research and access. In Bluesville, a similar ISA was set up promptly, but delays ensued as my point of contact left the force and was not directly replaced. After a couple of months, I was worried the research was not going to be able to proceed, but after reaching out to a senior gatekeeper I was allocated a contact in major crime. In Sunnydale, the procedure was a little different and I was requested to attend a briefing of senior officers and present my research proposal. I was then requested to complete an ISA and was allocated a contact in major crime.

While it was agreed in three forces that I could access police suspect interviews of concluded cases, interview detectives working in major crime, and review custody

records, there were elements of the research which were not proceeded with: the observations in major crime and custody. One concern raised by gatekeepers was that I could potentially become a witness if I observed something of relevance to a live homicide investigation. In Alameda, I met with my gatekeepers at an early stage and discussed alternative ways that each method could be undertaken. I considered where the research could take place (on police premises or remotely), and how documentation and interviews could be accessed (in hard copy or on force systems).

When I realised there were reservations about the observations, I offered to withdraw these from the research request, and this was accepted. This could be perceived as the police force controlling the agenda for my research, as not all aspects of my research design were able to be undertaken. However, while the observations were not possible, this did not require my research aims to be amended, as these could still be met using other methods which were approved. Furthermore, the research was devised without the input or sponsorship of the police, and, as such, I believe it was not greatly influenced by the police and would be consistent with Innes' (2010) typology of 'research on the police', as opposed to research by, with or for the police. That said, as discussed in the section on sampling (sections 5.4.2 to 5.4.4), there was potential for forces to influence the sample of suspect interviews I observed, especially in Alameda, where I had least control over the sample. However, having reviewed the interviews in Alameda, and identified practices which were not consistent with best practice, I do not believe that interviews were cherry-picked with their potential impact in mind.

I made the decision to remove one of my proposed data collection methods to try to ensure that I was able to undertake the methods which were most important to the research; undertaking interviews of detectives and third parties and reviewing police suspect interviews. I anticipated that live observations may prove the most problematic aspect of the research having worked in major crime and witnessed the risk aversion and control that homicide detectives often exhibited during investigations (for example, sending officers from major crime to conduct enquiries usually undertaken by custody officers, such as taking samples and seizing clothing/personal items). While it was not possible for me to observe how detectives planned for interviews and what took place in custody prior to/after suspect interviews, I was able to review custody records and interview detectives and third parties about their experiences, which enabled some triangulation of data to take place. Furthermore, there is existing research which explores what takes place in custody

(Skinns, 2009; Dehaghani, 2019), so this was an aspect of the research which was not critical to achieving my research aims.

Some of the discussions with gatekeepers felt like a negotiation (Reeves, 2010), where I traded away parts of the research proposal in order to achieve some of my goals. Negotiation does not appear uncommon in research involving organisations which are harder to access, such as the police (see Belur (2014) and Skinns (2022)). Indeed, most chapters in Gravelle and Rogers (2014) edited collection on researching the police detail some form of negotiation with gatekeepers concerning access, and an acknowledgment that this may also be influenced by one's status, in my case, as an 'outsider insider' (see section 5.3).

Going into discussions with force gatekeepers, I felt my experience working for the Ministry of Defence as a Commercial Officer (and having a working knowledge of negotiation theory) aided my decision making, as I understood what was key to my research (the interviews with detectives and reviewing suspect interviews) and at what point I would be prepared to walk away and try to gain access through another force). Obtaining access was a layered process, as although the Chief Constable initially granted approval for the research, it was secondary gatekeepers who provided authorisation for the ISAs and the methods ultimately undertaken. There were many months of negotiations, emails and phone calls which fortunately paid off, although I did have concerns at various stages about access. The next part of the chapter will consider the individual methods which were used during this research.

5.4 Analysis of Digitally Recorded Police Interviews with Vulnerable Suspects

This element of the research involved a survey⁵⁰, where I accessed and analysed 125 digitally recorded police interviews from 26 homicide investigations involving 27 suspects. Suspects may be interviewed on multiple occasions during a period of detention, so the number of interviews analysed was considerably higher than the number of suspects, albeit some interviews were short in duration (17 were less than 15 minutes long).

Analysis of visually recorded suspect interviews provides primary data of what takes place during police interviews. The benefit of this method over a review of interview

⁵⁰ Methodologically speaking, the sampling of interviews in this manner is consistent with survey research, which includes the observation of behaviour and analysis of documentation (Denscombe, 2014, p.7). It is acknowledged that the term survey is traditionally associated with questionnaires so to avoid confusion the term analysis will be used throughout the rest of the chapter.

transcripts, was that the layout of the room and nonverbal cues could be observed, such as body language and gestures. To capture what occurred during suspect interviews, I devised an observation schedule (appendix D) to capture information about suspect interviews, the actors present, their interactions and information on the outcome of the interview (e.g., admissions provided). Some of this information was pre-coded, but the design also enabled field notes to be taken about interventions by third parties, actors' demeanour and the layout of the interview room. One aim of the schedule was to have the relevant information presented in an organised manner, which would make analysis easier.

My preferred method of observing suspect interviews in their entirety would be in-person observations, which may enable data to be gathered that is not captured on a visual recording, especially as some cameras did not capture all actors or parts of the room. However, it was unlikely that I would be granted access to live suspect interviews given that the police would not want anything to potentially impact an investigation. Moreover, the presence of a researcher in an interview may affect actor's behaviours, known as the 'hawthorne effect' (Matthews and Ross, 2010, p.259), which may ultimately impact whether the suspect provided an account, or the reliability of this account. Additionally, if I observed something relevant to an investigation, there was a possibility that I would be required to give evidence as a potential witness. I managed my whole police career without having to attend court (as a witness) and this was not something I wanted to start now!

Therefore, I decided that a sample of interviews on concluded investigations would be sought to review retrospectively. Although I would not be present in the room at the time suspect interviews took place, if I accessed visually recorded interviews, I could still get a 'feel' for the dynamic in the room and understand what was taking place. One advantage of observing police interviews is that "visual material provides a form of thick description, which helps in the exploration and understanding of theoretical ideas...recognising multiple layers of social reality." (Spencer, 2011, p.33). Visual recordings can allow for body language and gestures to be observed, which may provide another layer of reality in addition to the language used during an interview. However, while my intention prior to data collection was to solely analyse visually recorded suspect interviews, gaining access to these in some forces was problematic. This sampling issue will now be explored further.

5.4.1 The Sampling of Police Suspect Interviews

I adopted purposive sampling to gather diverse kinds of police interviews with vulnerable suspects in homicide investigations. A purposive sample is a non-probability sample where cases are selected based on their qualities (Etikan et al., 2016). There were two main selection criteria: homicide investigation and vulnerability, which I will now explore further.

I defined homicide cases broadly and sought to analyse cases where the suspect was arrested on suspicion of committing a homicide or attempted murder offence (see section 1.1 for definitions) post-2014. Therefore, cases where a suspect was not charged with an offence or was acquitted at court were eligible for inclusion. This allowed for a wider range of interviewing practices to be observed. For instance, if a suspect was arrested and detectives believed during the interview that they were potentially not responsible for committing the offence, they may be treated differently compared to someone presumed to be guilty (Elaad, 2019; Portnoy et al., 2019). However, cases needed to be concluded for inclusion in the study, meaning that a decision about the case had been finalised (regardless of the outcome and whether or not a conviction was obtained). The majority of cases resulted in a conviction (n=22), although four convictions were for lesser offences including wounding with intent and perverting the course of justice. Therefore, only 19 cases in the sample resulted in convictions for murder, manslaughter or attempted murder (see Table 5.3). It is possible that the higher proportion of cases resulting in conviction may have impacted the practices observed (which one *may* associate with interviews undertaken in line with good practice), and this may, perhaps, constrain the implications of my findings to interviews undertaken on concluded cases.

That said, three cases did not result in any conviction. In one case no further action against the suspect was taken, in the second case the charges were dropped at court and in the third case, interviews were ruled inadmissible at the first trial and the suspect was acquitted after a second trial (see Table 5.3). There were few similarities between the interviews on these three cases, nor were there notable differences with the other 22 which resulted in convictions. While Case 14 resulted in interviews being ruled inadmissible, there were interviews across the whole sample where an AA was not obtained, interventions by third parties were variable and a range of practices were observed by detectives (as discussed in Chapter Eight).

Within my sample, I was keen to include interviews with suspects who were

vulnerable in different ways (e.g., age, mental disorder, learning disability). This was important in order to establish whether the working practices of detectives and third parties (and their treatment of vulnerable suspects) varied. Consequently, the operationalisation of vulnerability required consideration and needed to be communicated to each force participating in the research. If forces operationalised this differently, it could impact the sample obtained and potentially the working practices subsequently observed.

Research suggests that vulnerability is inconsistently and poorly defined, and there are difficulties in identifying vulnerability in some suspects (Gudjonsson et al, 1993; Pearse, 1995; Dehaghani, 2016). Therefore, I developed a table of ‘indicators of vulnerability’ (appendix J) which was used to identify vulnerable suspects. This drew on the pre-existing legal definitions of vulnerability within PACE and the Codes of Practice⁵¹. These included juveniles (those under the age of 18 years⁵²), those experiencing mental disorder⁵³ or deemed to be mentally vulnerable⁵⁴. However, I took a wide, situational approach and included a range of other characteristics which *may* render someone vulnerable, including homelessness, no prior police contact, old age and substance misuse (see appendix J for further details). An overview of cases sampled, the outcome and the suspect’s respective vulnerabilities are listed in Table 5.3 below⁵⁵.

Table 5.3: Overview of Cases where Interviews were Observed

Case No.	Force	Outcome Following Arrest	Vulnerability of the Suspect (identified in the custody record, suspect interview or court reporting⁵⁶)
1	Alameda	Found guilty of murder	Depression and anxiety
2	Alameda	Pled guilty to manslaughter	No prior police contact, emotional/distressed in custody
3	Alameda	Found guilty of murder	Juvenile

⁵¹ Prior to the changes to Code C in July 2018 which broadened the definition of vulnerability.

⁵² As set out within PACE, amended by section 42 Criminal Justice and Courts Act 2015.

⁵³ As defined within section 1 Mental Health Act 1983; 2007.

⁵⁴ As discussed within Notes for Guidance 1G, Code C, PACE.

⁵⁵ In some of these cases, other suspects were also interviewed by the police. However, these individuals were not identified as vulnerable (by myself or the police) and were not eligible for inclusion in this research.

⁵⁶ In the majority of cases, vulnerability was identified from the custody record, sometimes recorded as part of the rationale for obtaining an AA.

4	Alameda	Pled guilty to manslaughter	English not first language, mental health
5	Alameda	Pled guilty to manslaughter	Juvenile
6	Alameda	Found guilty of murder	Mental health, brain injury
7	Alameda	Found guilty of murder	Mental health
8	Alameda	Found guilty of murder	Mental health
9	Alameda	Found guilty of murder	Substance misuse
10	Alameda	Found guilty of murder	Schizophrenia
11	Bluesville	Pled guilty to murder	Learning disability
12	Bluesville	Pled guilty to child cruelty	Depression
13	Bluesville	Pled guilty to attempted murder	Mental health, post-natal depression
14	Bluesville	Trial 1 – hung jury, retrial required Trial 2 - acquitted	Learning disability, borderline IQ
15	Bluesville	Found guilty of murder	Mental health, suicidal
16a	Bluesville	Pled guilty to murder	Psychopath (diagnosed)
16b	Bluesville	Pled guilty to murder	Personality disorders
17	Bluesville	Found guilty of murder	Juvenile
18	Bluesville	Charges dropped at court; not guilty verdict invited	Juvenile
19	Sunnydale	Found not guilty of manslaughter, found guilty of perverting the course of justice	Juvenile
20	Sunnydale	Not charged with any offence	Juvenile, substance misuse
21	Sunnydale	Pled guilty to wounding with intent	Mental disorder, substance misuse
22	Sunnydale	Pled guilty to attempted murder	Personality disorder
23	Sunnydale	Found guilty of murder	Autism (raised post-charge)
24	Sunnydale	Pled guilty to murder	Mental disorder
25	Sunnydale	Pled guilty to murder	Substance misuse
26	Sunnydale	Pled guilty to ABH	Mental disorder, substance misuse

5.4.2 The Sampling of Police Suspect Interviews in Alameda

I initially spoke to senior investigators or gatekeepers in MCITs to identify cases involving vulnerable suspects, in line with the 'indicators of vulnerability' framework (see appendix J). The sample was selected differently in the three forces in which I undertook my research. In Alameda, I discussed the 'indicators of vulnerability' with my gatekeeper who then suggested ten concluded cases. However, this force had only started recording interviews digitally recently, and most of the original sample predominantly involved audio cassettes. I was advised that master copies could not be opened without the approval of the Crown Prosecution Service. I was already conscious of how long access had taken and felt seeking additional approvals could delay the research further. Therefore, my gatekeeper identified another sample involving digitally recorded interviews. I wanted to obtain visually recorded interviews, and although this force had the facilities to undertake these, most interviews of concluded cases were audio recorded, except for two.

Negotiations regarding access had been ongoing for nearly six months and I did not want to turn down the opportunity to review these recordings for fear of not getting access to another force, or similar problems arising elsewhere. I valued the opportunity to review suspect interviews, even if not in my preferred format, so decided to go ahead with fieldwork in this force area. Laverick (2010) noted the challenges she experienced negotiating access to the prison estate and the compromises entailed, including restrictions on the location of the fieldwork and conditions over the material used. Therefore, researchers may need to be flexible if they wish to achieve their research aims (Bengry-Howell and Griffin, 2012), and this is why I decided to proceed with a sample which included audio recorded suspect interviews.

5.4.3 The Sampling of Police Suspect Interviews in Bluesville

In Bluesville, after two points of contact left, it proved difficult for someone within the force to assist with identifying cases involving vulnerable suspects. Therefore, I offered to locate potentially eligible cases, to which my gatekeeper agreed. I spent several hours searching news reports of homicides involving vulnerable suspects/defendants⁵⁷. I identified seven cases, six of which were approved (one was

⁵⁷ This involved a search on Google, where a combination of the name of the force/crown court(s)/offence types/year and terms consistent with vulnerability were searched for (see appendix J). Additionally, I also used search terms including psychiatric report and a truncated searches based on vulnerab*.

subject to appeal and was not fully concluded). Once I was within the police station and spoke to staff about my research, another two cases were suggested which were included in my sample. Other cases were also suggested, but these took place outside the time parameters. This force did not have a high murder rate (see Table 5.2), and therefore only eight cases were identified. Most of the interviews in this force were visually recorded, although one interview was audio recorded.

5.4.4 The Sampling of Police Suspect Interviews in Sunnydale

In Sunnydale, a similar approach was taken to Bluesville, where I identified a sample of interviews which potentially involved vulnerable suspects. This force did not have a high homicide rate, and of the six investigations I suggested based on my open-source research of news reports (using the same search criteria noted in the prior section), five were incorporated in the sample. The remaining three cases were suggested by a gatekeeper who had a good knowledge of the homicides dealt with in the force.

5.4.5 Analysing Police Suspect Interviews

Previous research on police suspect interviews has predominantly involved reviewing transcripts and/or audio tapes (Evans, 1993; Gudjonsson et al, 1993; Clarke and Milne, 2001; Medford et al, 2003; Leahy-Harland, 2012). There are notable exceptions where visually recorded interviews are reviewed (Baldwin, 1993), However, these studies have been less prevalent because visually recorded interviews have not been widely available⁵⁸.

As mentioned earlier in the chapter, I developed an observation schedule (appendix D) which captured some quantitative data about the length of the interview, for example. It also obtained data which could be coded, such as the type of AA present and the suspect response (e.g., no comment or admissions). Whilst I noted the number of interventions made by third parties during each interview, I felt it was important to make notes about the things I heard and saw during the interview, because there are many reasons for interventions and multiple ways these can be done, which quantitative data may not identify. One benefit of using pre-recorded police interviews was that recordings could be paused and replayed, should there be something I wish to see again. This was something I did on several occasions,

⁵⁸ Some police forces have only been routinely recording homicide interviews post 2014/2015.

especially when making a note of verbatim speech.

While completing schedules I was also mindful of my impact on the research (Roberts, 1999, p.27), especially my former police experience and how this may influence how I perceived police interviews. I tried not to view any actor more or less favourably, based on any unconscious biases I may have. However, ultimately, these findings include my subjective interpretations of the behaviour of others. That said, my observation schedules were structured, which did mitigate the potential for bias and where possible, I tried to include verbatim speech in my schedules to improve the accuracy of the information recorded.

Police forces were understandably unwilling to let sensitive content leave the police station, so analysing police suspect interviews took place on site. Additionally, one force requested to see what data was leaving the force in the observation schedules. All data were anonymised, and I did not need to make any adjustments to schedules. To standardise my approach, and to try and deal with police forces in the same way, I provided my gatekeepers in all forces with the observation schedules that I completed.

All forces provided me with an ID card to gain access to the police station, so I did not feel I was a burden on staff having to escort me in and out of the premises. In Alameda, I was based at police headquarters, away from the homicide investigation team but in Bluesville and Sunnydale, I was asked where I would like to work, so I requested to work alongside the MCITs. This provided an opportunity to talk to detectives and identify some who were willing to be interviewed. However, I was often sat in quieter areas, either alone or with admin staff, and I did not socialise (e.g., share lunch breaks) with detectives. This enabled me to avoid close and regular interactions with detectives, which may have impacted my objectivity. While undertaking fieldwork in the police station, I was provided with a temporary computer login within Alameda. However, in Bluesville and Sunnydale this was not provided, and material was reviewed on disc, using my laptop. The nature of reviewing this material, which involved wearing headphones also reduced the potential for interaction with others as I could often not hear and participate in conversations with those around me. This highlights some of the complexities and differences when undertaking research in police forces.

What takes place during detention may impact the suspect interview (College of Policing, 2022) and therefore it was important to ensure that the suspect interview

was not explored in isolation from a suspect's detention. Therefore, as part of this research, custody documentation was also reviewed. This aspect of the methodology will now be further explored.

5.5 Reviewing Custody Records

To prevent suspect interviews from being researched in isolation, I wanted to examine what happened prior to and between interviews, to explore whether anything took place which may influence the interview itself. I reviewed 29 custody records (two suspects were brought into custody on more than one occasion) for all 27 suspects whose interviews I analysed. Custody records were reviewed in Alameda on the force custody system. In Bluesville, I reviewed paper records and in Sunnydale, I viewed these electronically on disc. In Alameda, some custody records were reviewed after suspect interviews, because it took a little time to access the custody system. However, in Bluesville and Sunnydale custody records were reviewed prior to analysing suspect interviews as these were available when I started fieldwork in each force. Reviewing custody records prior to an interview gave me an inclination of how a suspect may present during their interview, as some records noted the suspect's emotional or hostile demeanour during detention.

The review of custody records aimed to establish whether anything during a vulnerable suspect's detention may impact their interview (e.g., identification and management of vulnerability, or their demeanour). I also sought to explore any entries relevant to third parties. For each custody record reviewed I made notes on the observation schedule (appendix G). On occasion, the custody record helped to identify a suspect's vulnerability, which was not always clear during the interview, especially if the suspect responded 'no comment' to questions asked. Additionally, they provided insight into the role of healthcare professionals (HCPs) in the identification of mental disorder and the recommendation of AAs.

Brookman (1999, p.52) distinguishes that documentation can be "a resource for social research or as a topic of social research". Therefore, when reviewing documentation, one may consider the content, but also who contributed to the production of this documentation and what can be inferred from this. It is pertinent to consider that custody records are completed by the police and therefore, the perspective of the police is the dominant narrative portrayed in this documentation. During a homicide investigation, multiple individuals contribute to the custody record, often because a suspect is detained for days, and many people are involved in their care. Although

third parties are entitled to a copy of the custody record and can make representations to the police for matters to be included on the custody record, the police make the entry. While the College of Policing (2021) reiterated the importance of accurate custody recording, it has been identified that record-keeping in custody is poor (Her Majesty's Inspectorate of Constabulary, 2015, p.92, p.116). Therefore, I analysed both suspect interviews and custody records to identify and potentially corroborate information about a suspect's vulnerability. While there were a small number of cases (n=4) where the custody record made reference to a vulnerability which was not raised during the suspect interview, the police, third parties and suspects are not under any obligation to mention this during an interview. There were no occasions where contradictory information was identified between suspects' respective custody records and their interviews.

The next stage of the research involved semi-structured interviews with detectives and third parties to learn more about their involvement in interviews with vulnerable suspects. It is these interviews, to which I now turn.

5.6 Semi-Structured Interviews with Police Officers and Third Parties

Interviews can explore complex phenomena such as opinions, emotions and experiences (Denscombe, 2014). To learn about the perspectives of those involved in the interviewing of homicide suspects, I conducted 37 semi-structured interviews with detectives and third parties (AAs and legal advisors). I tried to recruit third parties from the same force areas I undertook my fieldwork in, and contacted local legal firms and AA providers, however, it was difficult to recruit participants and so I sought these from elsewhere within England and Wales (see section 5.6.3 for further details). I originally intended to interview vulnerable suspects, however, this proved problematic due to time constraints and ethical considerations (see section 5.6.4).

Semi-structured interviews have a broad structure where specific topic areas are discussed, but these interviews are flexible and reactive to the respondent (Davies, 2018, p.278-279). Further questions may be asked which explore the subjective meaning respondents attach to concepts or events (Gray, 2014, p.382). Interview schedules were drawn up for interviews with detectives and third parties (see appendices E and F) which explored the respondent's role, training and conceptualisations of vulnerability, before a homicide case study was examined. I undertook two pilot interviews to establish whether questions were interpreted as I intended, and how long the interviews would take. The first involved a detective who

was a former colleague. This interview was not digitally recorded, which in hindsight was a mistake, as although handwritten notes were taken these did not capture the same level of detail as an audio recording. As there was no transcript, this data was not included in my research findings. I also approached an AA I briefly met at a conference to participate in the pilot (AA1). Although recently retired, she had relevant experience of homicide interviews. I learned from the previous interview and recorded that interview, so I have included this data in the research. I found the pilot interviews beneficial and felt more confident about starting fieldwork. I also refined the interview schedules to be more concise as both interviews lasted nearly 90 minutes. I removed some specific questions but made the questions wider and included suggested prompts to aid interviewees if required. I believed that this would also better allow for natural conversational and rapport to be built.

5.6.1 Sampling of Semi-Structured Interviews of Police Officers and Third Parties

To recap, this research involved semi-structured interviews with 37 respondents. Table 5.4 details the respondents who participated in this research, which involved AAs, detectives and legal advisors.

Table 5.4: Table of Respondents Participating in Semi-structured Interviews

No.	Reference	Role	Force Area ⁵⁹	Type of AA / Tier Training
1	AA1	Former AA	Other	Recently retired
2	AA2	AA	Other	Professional paid adult only
3	AA3	AA	Other	Professional paid adult only
4	AA4	AA	Other	Professional paid adult only
5	AA5	AA	Other	Professional paid adult only
6	AA6	AA	Other	Professional paid adult only
7	AA7	AA	Other	Professional paid adult only
8	AA8	AA	Other	Professional paid adult only
9	AA9	AA	Other	Professional paid adult only
10	AA10	AA	Alameda	Professional volunteer adult only
11	AA11	AA Scheme Coordinator	Alameda	N/A

⁵⁹ If from an area outside of the fieldwork force areas this will be referred to as 'other'.

12	AA12	AA	Other	Professional volunteer youth and adult
13	AA13	AA	Other	Professional volunteer adult only
14	AA14	AA	Other	Professional volunteer adult only
15	AA15	AA	Alameda	Professional volunteer adult only
16	AA16	AA	Alameda	Professional volunteer adult only
17	AA17	AA	Alameda	Professional volunteer adult only
18	AA18	AA	Alameda	Professional volunteer adult only
19	AA19	AA	Bluesville	Professional volunteer youth only
20	AA20	AA	Bluesville	Professional volunteer youth only
21	DC1	Detective Constable	Alameda	Tier 3 trained
22	DC2	Detective Constable	Alameda	Tier 3 trained
23	DC3	Detective Constable	Alameda	Tier 2 trained
24	DS4	Detective Sergeant	Bluesville	Tier 5 trained
25	DS5	Detective Sergeant	Bluesville	Tier 5 trained
26	DC6	Detective Constable	Bluesville	Tier 2 trained
27	DC7	Detective Constable	Bluesville	Tier 3 trained
28	DC8	Detective Constable	Bluesville	Tier 3 trained
29	DC9	Detective Constable	Bluesville	Tier 2 trained

30	PS11	Police Sergeant	Sunnydale	N/A
31	DCI10	Chief Inspector	Alameda	N/A
32	DC12	Detective Constable	Sunnydale	Tier 2 trained
33	DC13	Detective Constable	Sunnydale	Tier 5 trained
34	DC14	Detective Constable	Sunnydale	Tier 5 trained
35	LA1	Legal Advisor	Alameda	Police Station Accredited
36	LA2	Legal Advisor	Alameda	Police Station Accredited
37	LA3	Legal Advisor	Sunnydale	Police Station Accredited

Research is a compromise between incorporating methods that are valid and reliable, and that are practical (Jupp et al., 2000, p.11). Respondents were recruited through purposive sampling, in several different ways depending on their role. Purposive sampling involves a sample which is “handpicked, constructed to serve a specific case and/or issue” (Francis, 2018, p.53). In this research, respondents were predominantly selected based on their experience of taking part in a homicide interview with a vulnerable suspect. There were a couple of other respondents who had knowledge of a relevant specialist area (such as police custody, or AA schemes), and three respondents were sampled on this basis. This is a form of non-probability sampling, a limitation of which is generalisability to a wider population (Etikan et al., 2016). However, as stated earlier in the chapter, generalisability was not an aim of this research.

5.6.2 The Recruitment of Detectives

I hoped to interview detectives who took part in the suspect interviews I had observed. As I knew their identity (they introduced themselves at the start of interviews), detectives were quick to identify and contact (in most cases). Some officers, from Alameda in particular, took part in more than one investigation (reducing the potential pool of participants).

The involvement of gatekeepers had an impact on how detectives were approached. In Alameda, a list of detectives I wished to speak to was passed to a Detective Chief Inspector in the homicide team, who approached detectives about the research.

Twelve detectives were on the list and out of the ten contacted, four agreed to be interviewed (although one detective did not respond to emails to facilitate an interview). In Bluesville and Sunnydale, the recruitment of detectives was different as I met some detectives whose interviews I analysed while working in the police station. When discussing my research, I asked detectives if I could interview them, and they agreed. The MCIT in Bluesville comprised of hubs at different locations. Detectives based elsewhere were emailed by my gatekeeper, who forwarded an email that I drafted requesting participation in the research. My gatekeeper mentioned my former police status, which may have helped to recruit detectives, as this email acted as an endorsement for the research. During the recruitment of participants, a small number of detectives in each force had retired, moved forces, or were on long-term sick/maternity leave. There were also a couple of detectives who responded to emails initially but did not commit to an interview, and some who did not respond at all to requests to participate. The next section will explore the recruitment of third parties.

5.6.3 The Recruitment of Third Parties

Recruiting third parties to take part in interviews was a difficult stage of the research, for several reasons. Firstly, ISAs stated I could not contact any third party named in their data, presumably for data protection reasons, which precluded direct approaches of individuals. Therefore, an approach was made to AA schemes and legal firms (which will be explored shortly). There was one exception where a detective in Alameda offered to contact an AA they used frequently to ask if they were willing to speak to me. Once this AA confirmed he was happy to speak to me, the detective passed on the AA's details.

I decided not to contact untrained AAs because this could include family members of the suspect, and I could not ethically obtain their contact information. However, there were familial AAs involved in suspect interviews (see Table 5.3) and a limitation of this research is that their voices are not heard, and their participation may have generated different insights.

I contacted via email legal firms and AA schemes which operated within the force areas where I undertook my research. AA schemes were identified on the NAAN website (NAAN, no date (a)), and legal firms through Google searches for firms providing criminal solicitors with police station accreditation. I asked whether they had any staff/volunteers who had attended police interviews of vulnerable suspects in the last four years for homicide offences and would be willing to participate in my

research. Few legal firms responded to my enquiry, so I also published a poster (appendix K) in the Law Society online magazine⁶⁰ but did not recruit any additional respondents. That I only recruited three legal advisors is a limitation of the research and does mean that the findings from the interview data predominantly are from the perspectives of AAs and detectives. I received responses from most AA schemes, although some providers stated they did not have any eligible members. To widen the number of AAs participating in the research, I emailed AA schemes across the country and asked if they had members who had participated in homicide interviews and were willing to talk to me. Several schemes were interested in the research. I spoke with coordinators who emailed their AAs to see if anyone was eligible and interested in the research. AAs either contacted me directly or the coordinator passed on their email address. Of the AAs who initially expressed an interest, the vast majority were interviewed for this research. Two were not eligible (no experience of a homicide interview) and one changed their mind.

5.6.4 The Exclusion of Vulnerable Suspects in the Research

Athens (1980, p.14) suggested that the perspective of a person under observation should be explored in the research process. I wanted to speak to different actors who participated in suspect interviews to ensure a range of voices were represented in the data and therefore, I initially intended to interview vulnerable suspects for this research. However, this raised several ethical considerations. Firstly, these suspects were vulnerable (and included a small number of suspects with learning disabilities), so may not have been able to give full informed consent⁶¹. Secondly, approaching these individuals was problematic. Although I could view personal contact data in a suspect's custody record, it would have been unethical to use this. I considered approaching the barrister/solicitor that represented the suspect (if the case went to trial) and asking them to pass on my research request. However, it would have been difficult to identify all suspects from the sample, as some suspects were not charged or proceeded to trial.

There were further considerations about how and where I would meet vulnerable suspects. If incarcerated, I needed to go through the prison estate and obtain National Offender Management Service permission for the research, yet another layer of

⁶⁰ I did not have access to the members-only magazine but was told that it would go out in the following month's edition (May 2019).

⁶¹ I did consider making simplified versions of information sheets and consent forms to aid understanding

approvals and gatekeepers to navigate. It was also possible some suspects were not convicted or had been released from prison having served part of their sentence. In an informal conversation with a lecturer who sat on the Faculty Ethics Committee, it was suggested that I avoided meeting former suspects in the community on the grounds of personal safety. Due to these reasons, I decided not to interview vulnerable suspects. However, this is something I wish to explore in future, as I believe their perspectives are required to understand the interview process, and its impact on vulnerable suspects better.

5.6.5 Undertaking Semi-Structured interviews with Police Officers and Third Parties

To learn more about actors' experiences of suspect interviews, detectives were asked to discuss the interview that I observed in the analysis of police interviews. Third parties were asked to recall involvement in their last concluded homicide interview, which, in most cases, I knew nothing about. Interviews were audibly recorded using a dictaphone, a benefit of which was that it did not disrupt the flow of conversation and enabled accurate recall (Martin, 2000, p.226). I transcribed these as soon as practicable after an interview took place. As per British Society Criminology (BSC) ethical guidelines, respondents were told the recording could be paused and terminated at any time (2015, p.7).

All police interviews except one (undertaken by telephone) were conducted in a police station. Interviews with AAs took place in a range of locations including a library, hotel lobby, workplaces and AA's home addresses. I conducted five telephone interviews, mostly of AAs. Although these were audibly recorded and I still gained valuable insight into respondents' practices, I did prefer meeting respondents in person as I could build rapport and read non-verbal cues better. That said, Novick (2008) identified benefits of telephone interviews as cheaper, time-efficient, and a wider geographical reach. During the Covid pandemic, I became more aware of video conferencing software and in future, I would seek to use these facilities instead of telephone interviews, because they allow for visual interaction and have built-in voice recognition, which could save hours of transcribing!

The police has traditionally been a male-dominated environment (Horn, 1997). While the majority of detectives interviewed were men, the gender split of third parties was almost equal. There were several female detectives observed taking part in the interviews sampled, who were approached to participate, but many did not respond to my requests. Horn (1997), Brookman (1999) and Reeves (2010) explored whether

their gender impacted their research experiences. However, it is impossible to ascertain to what extent being a younger-looking (although I have aged somewhat throughout this process!), white female impacted my research experience and the data I obtained. It has been suggested that female researchers may be perceived as less professional or knowledgeable (Horn, 1997). I tried to be professional, friendly and interested throughout my research and made efforts to attend fieldwork on time and to keep people updated in relation to appointments.

Horn (1997) also noted that during some interviews she was patronised by a few respondents. This was generally not consistent with my experiences, and in fact, some respondents assumed I had more knowledge and experience than I actually possessed, potentially as a result of my prior policing experience. This occurred in relation to force systems (which were different to those I was familiar with), but also with my experience of interviewing those who were vulnerable, which was limited. As practices can vary, I encouraged respondents to explain things in detail, rather than assume I knew what they were talking about. Being aware of such possibilities may reduce the potential for bias (Sarniak, 2015). However, this can never be completely removed in qualitative research, as the researcher becomes a co-creator of the data (McGrath et al., 2019). Gravelle (2014, p.61) acknowledges the potential for bias and going native while undertaking fieldwork, and found that regular debriefs and conversations with colleagues helped him to refocus and remain scientific. I found that writing up my field notes at the end of each day similarly helped me to focus on the aims and objectives of the research.

Copes et al. (2022) acknowledged that the social background and race of the researcher may impact gaining access to respondents and whether rapport is built. I do believe being a white, middle-class, female ex-police employee may have impacted some of the interviews undertaken, as although I always offered to meet respondents in a neutral location, many AAs invited me into their homes. I am not sure whether all respondents would have felt comfortable doing so were I a male researcher, admittedly a gender-based assumption on my part. Undertaking interviews in an environment where respondents appeared to feel comfortable and shared similar demographics with myself (the vast majority of respondents were white and many appeared to be middle-class based on their current or former profession, education or comments about retirement) may have aided the building of rapport and generated more forthcoming and plentiful responses. That said, there was an age disparity between myself and some respondents I interviewed, and it is possible that

this impacted the data I obtained.

Interviews were enjoyable experiences and I really valued learning from respondents. I was nervous interviewing police officers as I was conscious that these were trained interviewers, who were more experienced in asking questions than myself. However, the pilot interviews helped to manage my expectations of undertaking research interviews. I was mindful of how my prior police experience may affect interviews, both in terms of rapport building (too much or too little), and the data gathered (Chenail, 2011). Many AAs were pleased I took an interest in the role and were eager to tell me about their work. Sometimes I had to keep respondents focused on the interview questions at hand, but this was a sign of their enthusiasm and a good challenge to have.

During interviews, some respondents found it difficult to recall specific details about the interviews in which they had participated. This was understandable as some investigations occurred a couple of years previously. This could have been overcome (for interviews with detectives) by showing extracts from suspect interviews, however, I was not permitted to take material away from the police station, and many interviews took place at a different location. Additionally, this would treat interviewees differently, which I wanted to avoid. Detectives who frequently interviewed suspects appeared less able to recall specific interviews in detail, potentially because they interviewed people regularly. On the other hand, AAs who acted on one or two homicides appeared to recall events in much more detail, possibly due to their unfamiliarity with such content. Prolonged exposure to homicide investigations may result in detail that some perceive as shocking, being treated as relatively 'normal' (Palmer, 1983). Therefore, these interviews may be less memorable for detectives than for third parties.

5.7 Data Analysis

The multi-method approach adopted during this research generated predominantly qualitative data, specifically, 126 completed observations schedules from suspect interviews involving 27 suspects in 26 homicide investigations, verbatim transcripts from 37 semi-structured interviews with detectives, AAs and legal advisors, and 29 observation schedules from the review of custody records. I also made field notes throughout the duration of my fieldwork.

The observation schedule used for the analysis of suspect interviews (appendix D) contained some coded and numerical data. While some quantitative data was

produced, this related to descriptive statistics and no statistical analysis was undertaken. All qualitative data (observation schedules, interview transcripts and field notes) were uploaded to Nvivo and analysed thematically. The rest of this section will explore thematic analysis, initially setting out the accepted process in the literature, before applying this to the analysis undertaken in this research.

Thematic analysis involves qualitative data which is “segmented, categorized, summarized and reconstructed in a way that captures the important concepts within the data set” (Given, 2008, n.p). This is a flexible form of interpretive data analysis which can identify patterns in practices, behaviour, and experiences (Clarke and Braun, 2017, p.297). Thematic analysis involves a six-stage process: familiarizing yourself with the data, generating initial codes, searching for themes, reviewing themes, defining and naming themes, and producing the report (Braun and Clarke, 2006, p.87). Furthermore, thematic analysis can be done from an inductive or deductive perspective. Inductive thematic analysis has been described as a process whereby themes emerge from and are driven by the data (Gray, 2022, p.759).

Deductive thematic analysis (also known as theoretically driven coding) concerns the use of relevant theory, often identified during the literature review stage of research, in shaping data collection tools (interview questions/observation schedules) and subsequent analysis of the data (Pearse, 2019, p.264-265). Pearse (2019) suggests many researchers combine both deductive and inductive analysis to form a hybrid approach to thematic analysis. A combined approach was adopted in this research. For example, aspects of the PEACE framework and theory concerning investigative interviewing and vulnerability influenced the design of data collection tools and helped me to identify examples where rules and guidance were or were not adhered to. Equally, as the data were interrogated, inductive thematic analysis was employed (an example of this relates to ‘control’, which is discussed later in the section).

Guided by Braun and Clarke’s (2017) six-stage process, I started my thematic analysis by familiarising myself with the data. This involved reading my notes/schedules or transcribing data from semi-structured interviews. This was useful as it allowed me to immerse myself in the data and remind myself of participants responses, as recommended by Gray (2022, p.752). This enabled me to reflect on the data and on occasion I identified areas of interest which did not seem important at the time (especially during the first few interviews). As I familiarised myself with the data, I also began to notice patterns across transcripts and observation schedules. I made notes of these on a whiteboard and this influenced some of my initial coding

(for example, it made me more aware of rule breaking concerning legal privilege).

Once my data were transcribed and in an electronic format, all data were uploaded to Nvivo, where initial coding took place. This involved highlighting relevant sections of text and assigning them a label, known as a node in Nvivo. I was keen to ensure I was thorough but I also had a wealth of data, which resulted in the creation of many initial nodes, see Table 5.5 below.

Table 5.5: Details of Initial Data Sets and Nodes in Nvivo

Data Set	Initial Nodes	Total No. of Items Coded
Custody Record Notes (n=29)	9 - including managing risk, vulnerability, safeguards, officer interaction	158
Observation Schedules (n=125)	16 – including rapport building, layout of the room, suspect welfare, legal advisor interventions, AA interventions, vulnerability, disclosure, silence.	821
Interview Transcripts (n=37)	91 – including AA scheme, training, legal privilege, disclosure, legal aid, vulnerability, role of the AA, impartiality of the AA, professionalism, interview preparation, inter-agency working, risk, conflict, importance of admissible evidence at trial, control.	1,128

My nodes primarily arose in two different ways. Some nodes were influenced by the topic areas of the observation schedules or interviews. For instance, ‘legal advisor interventions’ or ‘vulnerability’. These were driven by the research aims and the existing literature in the area. However, these were often broad areas involving differences of opinion or practice and therefore sub-nodes were created where necessary. An example of this involved vulnerability, where sub-nodes were developed to account for different positions respondents took, depending on whether they thought there were graduations of vulnerability, that vulnerability related to personal factors, or that anyone could be vulnerable. Nodes also arose from my interpretation of the meaning contained within the data (as has been described by Gray (2022, p.759)). I inferred meaning where I identified respondents behaving in a similar way or discussing the same concepts. One example concerned achieving

police objectives, where detectives talked about the importance of obtaining an account from a suspect, but some also talked about the importance of erring on the side of caution to ensure evidence could not be excluded at court.

To aid in the management of the data I also created nodes which were administrative in nature. For example, one node contained material not relevant to the thesis (this node grew bigger as I refined my coding) and one sub-node contained material which may be useful for future work (e.g., concerning voluntary interviews). One interesting aspect of data analysis which arose during the research was the comparison of data sets, which can be used to triangulate data (see section 5.2). Yet, on occasion, there appeared to be some contradiction between the notes I made from the observations of suspect interviews and the interview data with detectives. As suggested elsewhere, one potential explanation for this is a self-selection bias of detectives, but it highlights the importance of thorough data analysis and viewing the data holistically.

Once I created the initial codes, I began to search for the wider themes represented in the data. This was undertaken in line with the processes suggested by Braun and Clarke (2006) by looking at the existing nodes and data, and identifying areas of similarity where the same concepts were being discussed, albeit sometimes in different ways. Ryan and Bernard (2003) (as discussed in Bryman, 2016) also suggested looking for repetition, metaphors, similarities and differences, missing data, typologies and categories when trying to identify themes. However, Bryman (2016, p.586) does note that repetition may not always be associated with a theme, and that themes should be relevant to the research questions and aims.

One example of a theme identified in the data was the concept of control, which was something several respondents discussed, albeit often across different contexts, ranging from detectives controlling the layout of the interview room, to disclosure (noted by both legal advisors and detectives), and detectives' perceptions of 'their' interview room. Examples of control were also identified during observations, where detectives set out the ground rules during the interview, where suspects tried to exercise some control over the interview, or on one occasion, where detectives did not adhere to a request for a suspect consultation (Case 1). Although some nodes varied, depending on the data I was analysing and/or the perspective of the respondent, the theme of control was represented relatively frequently across the data. Another common theme was the importance of admissible evidence at trial, which overlapped with blame avoidance and highlighted the importance of crime control objectives. There were multiple themes, which is unsurprising considering the

scale of the research and the multiple methods employed. One challenge was narrowing these down, and deciding which ones were most important and relevant to answering the research questions.

At this point it was important to review the themes which were emerging against the data. The overarching main theme in this research related to the non-adherence of rules and guidance, or practices which were not consistent with the spirit of the law, both of which will be explored further in the findings and discussion chapters. Once this was identified, the themes were reviewed and potential explanations for this were prioritised for inclusion in the thesis, see Appendix L for a coding table of the main themes. This is consistent with the recommendation in Bryman (2016, p.588) where themes need to be justified as to their inclusion. In the case of this research, themes explored in this thesis aid our understanding of how detectives and third parties undertake their respective roles and why, with specific focus on the adherence to rules and guidance. While some respondents discussed adherence to rules directly, some talked about the motivations and drivers which influenced how they undertook their respective roles. I considered how each theme fit with the overall narrative of the thesis (as recommended by Gray (2022, p.759)) and chose to focus on the adherence to rules, exploring the use of discretion, crime control objectives and suspect welfare. Interpretations of vulnerability, professionalism and control are also themes which arose during the research and are discussed during the findings chapters.

5.8 Ethical Considerations

Consideration must be given to ethical issues which may arise during the research. Ethics are important as they give research integrity and protect both those researched and the researcher (Skinns et al., 2016, p.186). Issues of informed consent, harm, anonymity and confidentiality will be explored in this section. This research adhered to ethical guidelines developed by the BSC (2015) and the University of South Wales General Ethical Guidelines for Research and Consultancy (GEGRC) (2016), which framed ethical considerations around the mnemonic FAIR, treating people fairly, respecting their autonomy, acting with integrity, and seeking the best results (GEGRC, 2016, p.8). Ethical approval for the research was granted in August 2017, see appendix H, and included approval for the approach discussed in section 5.8.4 concerning confidentiality.

Diener and Crandall (1978) suggested ethical considerations involve issues of harm to participants, informed consent, invasion of privacy and deception. While research

concerning vulnerable suspects is a sensitive area, there are important ramifications resulting from how vulnerable suspects are treated within the criminal justice system (CJS). It may be argued that it is important to highlight the experiences of those in society who may be marginalised (Scott, 2018, p.153) and therefore research which seeks to further our understanding of how vulnerable suspects are detained and interviewed by the police should not be overlooked. However, when researching vulnerable people there is an ethical responsibility not to increase their vulnerability (Liamputtong, 2007, p.32), so any research in this area needs to be undertaken sensitively. The following sections explore some of the ethical considerations relevant to this research.

5.8.1 Informed Consent

Informed consent involves participants agreeing to take part in research, being fully aware of their involvement, and the rights they have in relation to information gathered about them (GEGRC, 2016, p.8). Suspect interviews are the property of the police so consent to view the recordings was not required from the parties involved in the interviews. This is an approach that others have taken when conducting similar research (Carter, 2011; Leahy-Harland and Bull, 2016). In addition, interview transcripts and witness statements are often presented in court, and sometimes part of an interview is played⁶². Once aired in court, this can be reported by the media to the wider public (with limited exceptions⁶³). This was a further justification for not requiring participant's consent to review suspect interviews.

Informed consent was a primary consideration when undertaking semi-structured interviews. An information sheet was provided to respondents (appendix B) stating that involvement was voluntary, and respondents could stop the interview at any time (BSC, 2015, pp.6-7). The purpose of the research was clearly explained prior to interview, allowing for time for respondents to digest the contents of the information sheet and ask questions. This meant that respondents could make an informed decision about participation and what they wished to discuss in advance of the interview. Consent forms were obtained prior to interview (appendix C), although where telephone interviews were conducted, consent was recorded prior to the interview commencing. Respondents were told that they could withdraw their consent

⁶² R v Hoare and Matthews [2016].

⁶³ Court reporting restrictions can be issued for sensitive cases. It is the default position that juveniles are not allowed to be named unless permission is given by the judge to the contrary. Victims of sexual offences are also given anonymity.

to participate without giving a reason and without any consequence to themselves, although no participant withdrew their consent to participate during the research.

5.8.2 Risk of Harm

Another ethical consideration was the potential for harm to be caused, both to participants and the researcher. There was no potential for harm to others when reviewing pre-recorded footage of interviews or documentation. During semi-structured interviews, I was aware that discussing previous cases, especially those of a serious nature, may cause respondents to become upset. A debrief sheet was developed (appendix I) for respondents to be provided with information about counselling organisations, if appropriate, as recommended within the BSC guidance (2015, p.6). During fieldwork, one respondent did get briefly upset during interview when recounting the homicide investigation in which she participated, and particularly the consultations she had with the suspect where he asked her to pray with him. The building of rapport and dealings with the young man, who was polite and respectful towards the AA, contrasted with the violent nature of the offence, and so managing these emotions must have been a challenge for the AA during this investigation. I paused the interview and offered to terminate it or to move on to a different subject, but the AA regained her composure and was happy to continue. Shortly after the interview concluded, I emailed the participant to check in with the respondent and to thank her for her time. She responded that it was a pleasure and that if it helped to improve things for suspects, then it would be worth it.

Brookman (2015) and Davies (2000, p.92) note the effect that listening to interviewees discussing their offences may have on a researcher. Having worked for the police on homicide investigations, I felt experienced in dealing with such information and equipped mentally to deal with the research. If I wished to seek further support, I could have liaised with my supervisors, but I did not feel this was necessary. If the research involved victims, I may have been more emotionally impacted by the fieldwork. Whilst conducting research on suspects, I occasionally felt some sympathy with their background or circumstances, but in many cases other emotions were more prevalent, depending on the nature of the case and the demeanour of the suspect. These emotions ranged from contempt, disgust, bemusement, sadness and disappointment to relative indifference. Indifference sounds awful, but I think it is a consequence of having worked in this arena, that very little shocks me. There were even moments when the interviews amused me. This was not due to the nature of the allegations, but often where a comment was made out of context, possibly as a

result of a misunderstanding. An example of this was a detective telling a suspect he 'did not care about his egg sandwich', when the suspect tried to recall what he did the day in question.

5.8.3 Anonymity and Confidentiality

Issues of privacy often concern an intrusion into one's personal/private life, and this is closely associated with anonymity and confidentiality. Lee (1993, p.98) believes these are important within sensitive research, to create a framework of trust. Guaranteeing anonymity involved ensuring that no information was published which could result in respondents/organisations being identified. Homicide offences are not common and certain details, if disclosed, may result in the identification of respondents. I am mindful that someone reading this thesis may work for an organisation involved in the research. Those individuals may have knowledge about offenders and crime scenes which could lead to the identification of respondents if identifying information is not anonymised carefully. Punch (2014, p.48) notes true anonymity can be hard to achieve when conducting face to face interviews and that non-traceability is a more realistic goal for researchers. Therefore, I removed names and addresses, but also other details which may enable identification (Hallenberg et al., 2016, p.114).

5.8.4 Ethical Considerations Relating to the Analysis of Recorded Police Suspect Interviews

One method employed in this research was the analysis of concluded suspect interviews in homicide investigations. Therefore, it was important to contemplate what I would do if, while analysing these interviews, I observed poor practice. I needed to consider what I may observe during a suspect interview, what would constitute problematic practice and whether I should report such behaviour. Should a decision be made to report, I needed to consider to whom I would report, and how.

There are broadly two different types of behaviour that may be observed during a suspect interview which could be deemed problematic, that which is illegal, and that which breaches the rules and guidance which govern how actors undertake their respective roles. As noted earlier in the thesis, PACE and the Codes of Practice govern how the police should treat those detained in police custody and how suspects should be interviewed. Provisions within PACE (sections 76 and 78) allow for the exclusion of material from the prosecution case where it has been obtained using oppression (which includes torture and the use or threat of violence), or where its

inclusion would be unfair. As noted in Chapter Two, breaches of PACE (section 67(10)) do not render officers liable to criminal or civil proceedings, but breaches may fall under the remit of police misconduct. Although the possibility of observing a criminal act could not be excluded, it was anticipated that breaches of PACE and the Codes of Practice were more likely to be observed. Such breaches have the potential to affect the admissibility of evidence, and ultimately, the outcome of a criminal prosecution (Dehaghani, 2019).

In my submission to the University Ethics Committee, I identified three positions I could take when observing suspect interviews:

- Report all behaviour deemed to be a breach of PACE.
- Do not report any behaviour in breach of PACE.
- Report behaviour which falls within predefined parameters (e.g., behaviour which is oppressive).

To aid my deliberations, it was useful to consider how the law and other researchers have dealt with issues concerning the observation of illegal acts, or those which do not adhere to guidance. Generally, it is not against the law to fail to report a criminal offence or assist the police with their inquiries (CPS, 2023b), although there are some limited exceptions concerning the reporting of terrorism offences (sections 19 and 38(b) of the Terrorism Act 2000). There are also instances where professionals with a duty of care (e.g., social workers) should report cases of female genital mutilation in those under 18 (University College London, n.d). Proposals have recently been put forward for professionals who work with children to have a legal duty to report abuse (Bentham, 2022), as presently this is only covered by statutory guidance, in which there is an expectation that a report would be made (University College London, n.d). However, it was not envisaged that any of the circumstances which prescribe mandatory reporting would arise during this research.

There is little universally accepted guidance regarding the observation of criminal acts or breaches of guidance (Wincup, 2017). University College London (n.d) notes that there may be circumstances in which reporting is a requirement of access or funding, but neither situation applied to this research. Westmarland (2001) and Finch (2001) believed it is ultimately up to the researcher, based on their own personal moral code, whether to report activity which may contravene laws and guidance. Finch (2001) acknowledged that relevant factors affecting this ethical decision may include the risk

of future harm, the nature of criminal offences involved, and whether the breach was anticipated.

There is ethnographic research, in which researchers have observed (and on occasion participated in) criminal activity (e.g., Becker, 1963; Polsky, 1967; Pearson, 2009; Lumsden, 2013; Goffman, 2014). Polsky (1967), when reflecting on his ethnographic research, noted that researchers had to contemplate and accept the moral position that they may obtain 'guilty knowledge' about offences committed by others, even if not directly involved in the commission of offences themselves. Yet, there is still a lack of consensus about where the limits of confidentiality lie in research. Worley et al. (2016) reflected on these issues and spoke to researchers (such as Decker) who placed limits on confidentiality concerning future offences, while other researchers (such as Marquart) prioritised the 'code of the researcher' and maintaining silence. Pearson (2009) weighed up the harm caused to participants from breaching confidentiality with whether there is any public benefit, noting that this also needs to be considered in light of the benefits of researching a hard-to-reach population.

One study on police interviewing by Clarke and Milne (2001, p.40) identified poor practice during interviews, and they reported breaches of PACE to the relevant police teams and provided a copy of their evaluation. While this approach may be beneficial for police forces, as they can learn from poor practice, one may question whether such an approach benefitted the suspects subjected to those police interviews. Skinnis et al. (2016) also explored the conflict which may arise when witnessing police malpractice, noting that by failing to act one may feel they are condoning this behaviour, but on the other hand acknowledging that to report such malpractice may compromise the researcher's access.

When considering the complexities of this research and the potential ethical dilemma of whether to report malpractice which may be observed during suspect interviews, I needed to consider the potential benefits and harms of each approach. There are two main benefits of reporting malpractice. Firstly, should a suspect have been subject to malpractice during a suspect interview, one may argue that it is in the interests of justice that this is brought to light and those responsible are held accountable, especially as there is the potential for false confessions and miscarriages of justice to occur. Secondly, details of poor practice could be used for developmental purposes (as was the case in Clarke and Milne (2001)). This may take the form of individual feedback or practices could be addressed in future training.

There are potential harms which may occur should the reporting of malpractice take place, one of which relates to the 'bigger picture' concerning police practices and the treatment of vulnerable suspects. It is difficult to obtain access to recorded police interviews (Baker-Eck and Bull, 2022), and there is relatively little known about how vulnerable suspects are interviewed in England and Wales. One may take an ethical approach based on utilitarianism, which weighs up the costs and benefits of research in light of the benefit to the majority, or the 'greater good' (Ess, 2009, p.492). One may argue that the wider benefits of adding to the knowledge base in this area, raising awareness of how vulnerable suspects are interviewed, and contributing to conversations about how this can be improved, outweighs the potential costs to individuals who have already experienced harm as a result of poor practice during their suspect interviews.

Another harm which has been explored by Skinns et al. (2016), concerned the viability of research if access is compromised. While the reporting of malpractice to gatekeepers in each police force may not necessarily have deterred forces from cooperating in the research per se, this could have impacted the recruitment of detectives to participate in semi-structured interviews. That said, even if the police were made aware of malpractice, they may decide not to take steps to rectify any harm which arose during an interview.

The reporting of police practices to those outside of the police could have also been problematic in relation to data protection and would have conflicted with the principles of anonymity I agreed to provide to police forces. As a result, this may have jeopardised my access and, in turn, the entire research project. Additionally, it is important to acknowledge that the suspect and their legal team may already be aware of any malpractice and could have previously raised this as a legal issue (one would hope that any competent solicitor and defence barrister would identify malpractice⁶⁴, although that cannot be taken for granted). This occurred in the research, as Case 14 involved a set of interviews which were excluded from the prosecution case at trial following representations by the defence. Furthermore, were I to raise awareness of specific instances of malpractice, there is no guarantee this would be acted upon by individuals or even courts (it may depend on the severity of the breach, the other evidence available and the outcome of the case).

⁶⁴ Research indicates that most suspects interviewed for homicide offences receive legal advice (Leahy-Harland and Bull, 2016), and for a sample of vulnerable suspects, if Code C is complied with, there should be AAs present in every interview, although research indicates this is often not the case (Dehaghani, 2019).

After some deliberation, I decided to adhere to the principles of confidentiality and not report any behaviour observed during suspect interviews which may breach PACE and the Codes of Practice. While there was merit to the arguments for reporting malpractice, I justified my approach for the following reasons. Firstly, there were benefits to the production of knowledge in this area which may enable police forces and other relevant parties (such as AA schemes and even policymakers) to reflect on how vulnerable suspects are interviewed. Maintaining confidentiality would best enable this knowledge to be produced as I may have been unable to gain access otherwise. While I decided not to report any examples of breaches observed, this did not preclude me writing about such practices in this thesis anonymously. Therefore, I have been able to highlight both good and poor practices of detectives and third parties, which may increase awareness of how vulnerable suspects are interviewed. I hope that this enables future discussions to take place as to how those who are involved in the interviewing of vulnerable suspects can best undertake their respective roles effectively, whilst ensuring fair treatment, a discussion I may not have been able to contribute to had an alternative approach been taken.

The decision not to report any malpractice was explored and proposed, alongside the options bullet-pointed earlier, in my submission for ethical approval, which was reviewed and approved by the University's Ethics Committee (see appendix H) prior to any research taking place. However, while I decided not to breach confidentiality concerning retrospective police practices, I did have one exception to confidentiality, as advocated by Skinns et al. (2016), which stated that were an intention disclosed to harm oneself or commit a criminal offence, then I would notify the relevant authorities. I made this explicitly clear to interviewees in the information sheet provided prior to interviews (see appendix B). I made this distinction on the basis that these would involve future harms, rather than ones which had already taken place. The next section will explore the ethics concerning the storage of data.

5.8.5 Data Storage

To ensure confidentiality, I adhered to GDPR 2018, which aim to ensure personal data is processed fairly and lawfully, and in accordance with the purposes for which it was obtained. Data should not be kept for longer than necessary and shall be securely stored (GEGRC, 2016, p.12), which can assist with any queries which may arise, as recommended by Bachman and Schutt (2014). Transcripts, observation schedules and field notes were encrypted in a password-protected folder on my laptop and anonymised copies were uploaded to Nvivo. Paper documentation (e.g.,

signed consent forms and anonymised sketch plans of interview rooms) were kept in a locked location at my home address⁶⁵. Other documentation (e.g., access request letters and ISAs) was stored on my password-protected laptop and Microsoft 365 Onedrive cloud storage in line with the University's Research Guidelines. Material generated during data collection (e.g., original observation schedules, audio recordings and transcripts), will be kept for up to two years after completion of the research (as communicated in the information sheet), at which point it will be securely destroyed.

Informed consent, confidentiality, and data storage were the most relevant ethical issues in this research. Steps were taken to reduce the risk of harm, to provide respondents with information to enable them to give informed consent, and to carefully store data. Additionally, the issue of ethics is one which is constantly to be reviewed and one needs to be responsive to any issues which arise during the research (Rennison and Hart, 2022).

5.9 Summary

The methodology employed in this research was a multi-method multiple case study, which analysed 125 police suspect interviews from 26 cases involving 27 vulnerable suspects. 37 interviews were undertaken with detectives and third parties, and 29 custody records reviewed across three police forces. One strength of this research was that I accessed and observed visually recorded police interviews of vulnerable suspects, something which is not commonplace amongst the existing research on investigative interviewing. I am cognisant of my positionality and that my status as a former police employee may have contributed to being granted access this data, but also how interviewees interacted with me and the information they disclosed. The benefit of analysing visual recordings was that they captured body language and gestures, as well as speech and tone of voice, and also enabled the layout of the interview room to be considered. Additionally, I was able to speak to some detectives and third parties who had participated in the interviews I analysed. This enabled me to better understand their experiences and perceptions, and the complex social processes which took place during these suspect interviews.

This research was not without its challenges. Access proved problematic at times and

⁶⁵ Paper documentation was initially stored in a locked filing cabinet in a secure room for PhD students at the University. However, the University removed access to this room and locked storage cabinets in 2019, so documentation was thereafter stored at my home address.

highlights the difficulties associated with researching an area predominantly closed to the public and concerning a sensitive topic. Several layers of gatekeepers meant gaining access to two police forces nearly took a year, highlighting the complexities of undertaking research within organisations to which the public do not ordinarily have access. It was also challenging to recruit third parties who had taken part in the suspect interviews observed earlier in the fieldwork. However, I did recruit a number of respondents who had taken part in homicide interviews of vulnerable suspects and was fortunate to have a wealth of data to analyse. Despite these challenges, I greatly enjoyed undertaking fieldwork and hope that my experiences regarding access and ethics may assist others wanting to conduct research in similar areas in the future. Whilst academic research is not without its challenges, many of these hurdles can be overcome with persistence, adaptability and patience. The next chapter will discuss the findings which have been generated using the aforementioned methodology.

Chapter Six: Obtaining Appropriate Adults for Vulnerable Suspects

The overall aim of this research is to critically explore the working practices of detectives and third parties involved in the interviewing of vulnerable suspects (arrested upon suspicion of having committed homicide or attempted murder offences), in order to establish whether current safeguards enable fair treatment.

The findings chapters are structured and ordered in such a way as to reflect what happens chronologically during detention, with a view, in this first chapter, to identify and explain how decisions made early in a suspect's detention may impact the suspect interview. Subsequent findings chapters focus on what happens once third parties attend the police station, and how the police interview vulnerable suspects.

This chapter explores the earliest stages of police decision-making that impact whether and how the police obtain safeguards for vulnerable suspects, in particular the appropriate adult (AA). The attendance of an AA during a vulnerable suspect's detention is important to ensure suspects understand their rights and entitlements and that these are respected (Code C, para 1.7). Additionally, the AA and other third parties (e.g., the legal advisor) may also play an influential role during the suspect interview (Medford et al., 2003), and their attendance may change the 'dynamic' within an interview room, especially if they play an active role during the interview. The presence of third parties may impact how a vulnerable suspect is treated, their understanding of the process, any account they provide, and their welfare (Pierpoint, 2001). Therefore, it is important to understand what may impact the decision to obtain an AA and to scrutinise how this is done, to ensure that the safeguards vulnerable suspects are entitled to are afforded to them, and that these facilitate 'equality of arms'.

This chapter sets out the extent to which vulnerable suspects were afforded an AA during their time in police custody and how those decisions were made. Focus will then turn to the way detectives conceptualised vulnerability. The chapter then examines how the AA was obtained, highlighting a disparity in this process across police forces. This chapter draws upon data from semi-structured interviews with police officers (n=14), legal advisors (n=3), and AAs (n=20). It also draws upon data from observations of suspect interviews, and a review of custody records relating to 27 suspects involved in 26 homicide investigations, within three police forces.

6.1 The Attendance of an Appropriate Adult During Homicide Investigations

It is incumbent on the police to try to determine whether suspects are vulnerable as soon as they are able (Gudjonsson, 2003; Pierpoint, 2011). The Police and Criminal Evidence Act 1984 (PACE), Code C and the Authorised Professional Practice (APP) for custody and detention (College of Policing, 2021) set out how the police should deal with detainees in custody and who may be regarded as vulnerable (see Chapter Three). If vulnerability is identified, suspects should then be afforded a variety of safeguards, including an AA (Code C, para 1.4). As outlined in Chapter Three, there is some debate regarding the term vulnerability and how it is operationalised (Keay and Kirby, 2018; Dehaghani, 2022). Existing research has suggested that the police are able to identify 'serious' vulnerabilities (e.g., schizophrenia and severe learning disabilities) in suspects but struggle to identify those that are 'mild' (Gudjonsson et al., 1993). Furthermore, even if vulnerability is identified, this may not be acted upon, and an AA not called out to the police station (Dehaghani, 2016; Bath and Dehaghani, 2020). Consequently, suspects do not always receive the safeguards to which they are entitled. Pierpoint (2011) and the Mendez Principles (APT, 2021) highlight that this may impact a suspect's detention, the interview, and any legal outcome. Therefore, the decision to obtain an AA can have important ramifications during a suspect's detention in custody, extending to their involvement in the wider criminal justice system.

The inclusion criteria for the cases sampled in this research was that the suspects involved were vulnerable (see Chapter Five). Therefore, one may assume that all cases sampled had an AA attend the police station and any subsequent interviews. However, this was not the case; only two-thirds of suspects (n=18) had an AA present during their police interviews. This is highlighted in Table 6.1, which details the numbers of cases sampled across each force and whether an AA was present during the suspect interview. This exploratory research is based on a small sample, and therefore, caution needs to be taken with the generalisability of these findings.

Table 6.1: The Number of Suspects who Received an AA

Force	No. of Cases Sampled	No. of Suspects Interviewed
Alameda	10	10 (6 with an AA)
Bluesville	8	9 (7 with an AA)
Sunnydale	8	8 (5 with an AA)
Total	26	27 (18 with AA = 66.6%)

Table 6.1 highlights that an AA was present in two-thirds of cases where the suspect was believed to be vulnerable. There was no suggestion in any custody record reviewed of an AA being requested but failing to attend. Therefore, the assumption may be made that an AA was not requested in one-third of cases. It is important to establish the reason(s) why some vulnerable suspects were not afforded an AA. A review of suspects' custody records indicated that in two-thirds of cases (six in total) where an AA was not present, there was reference to the suspect suffering (or having suffered) from a mental disorder, most commonly depression. That this information was contained within the custody record suggests that the police can often identify sources of vulnerability when suspects are brought into custody. However, it appeared that this information was not acted upon, and an AA obtained. While this was contrary to Code C of PACE⁶⁶, it is consistent with the findings of Dehaghani (2016).

In Case 12, the vulnerability of the suspect was initially not acted upon, despite disclosures regarding the suspect's mental health during the booking in procedure and representations made by the suspect's legal advisor. A medical assessment after the first interview affirmed the need for an AA. Once the healthcare professional (HCP) recommended an AA, one was obtained and attended custody prior to the second interview. The influence of the HCP will be briefly considered in the next section when exploring who makes the decision as to whether an AA is required.

The Mendez Principles (APT, 2021) note the importance of adhering to suspect safeguards and their potential impact on an investigation, which includes ensuring fair treatment, respecting human rights and ensuring reliable, evidential information is obtained. The failure to allocate an AA in approximately a third of the sample, yet the indication of some vulnerability in the custody record for most of these suspects (seven in total, six of which involved mental disorder), suggests that the police did not always adhere to the Codes of Practice when deciding on the requirement for an AA. Whilst the failure to obtain an AA has been noted in prior research (Dehaghani, 2016; 2019) with a broad suspect population, the findings reported here are surprising given that suspects were arrested on suspicion of serious offences such as murder/attempted murder, and many were interviewed on multiple occasions over several days. The next section will explore the decision-making of those involved in

⁶⁶ The cases which formed part of the sample took place prior to amendments being made to Code C in July 2018. Therefore, practices have been evaluated against that version of Code C.

determining whether an AA is required to try and understand why AAs are not always obtained for vulnerable suspects.

6.2 Who Makes the Decision as to Whether an Appropriate Adult is Required?

This section explores who is responsible for deciding whether an AA is required. Para 3.5(c)(ii) of Code C states that custody officers⁶⁷ shall determine vulnerability and subsequently, whether the suspect requires an AA. The research of Dehaghani (2019) explored the extent to which this guidance was observed and found that AAs were not always obtained when vulnerability was identified. However, as shall be revealed, it appears that major crime detectives are taking a more active role in this decision-making process. Additionally, the HCP appears to be somewhat influential and is relied upon by detectives (among others), so will briefly be touched upon prior to consideration of detectives' roles in this process.

6.2.1 The Role of the Healthcare Professional in Deciding Upon the Requirement for an Appropriate Adult

Of the cases sampled for this research, all suspects saw a HCP while detained in custody, many on multiple occasions. The review of custody records identified that in over one-third of cases, a HCP recommended an AA for interview (n=9). In *all* of these cases an AA was provided for the suspect. It is not known whether an AA would have been sought regardless of the HCP's suggestion. However, there was evidence in one custody record that an AA was obtained despite the HCP suggesting one was not required. These findings confirm the previous research (Dehaghani, 2019) that the assessment made by HCPs as to whether an AA was required was influential. That there is such reliance on HCPs is surprising as the training they receive has been criticised (National Appropriate Adult Network (NAAN), 2015). However, HCPs may be experienced in obtaining a medical history, which may highlight conditions indicative of vulnerability.

The influence of the HCP was highlighted in one case where an AA was not obtained, Case 13. This case concerned a suspect who was arrested having been released from a mental health unit, information included in the custody record. Prior to interview, a HCP assessed the suspect as not requiring an AA for interview, which was reflected in the custody record as: 'AA – no requirement, doctor states she

⁶⁷ Often the term custody sergeant was used by respondents. For consistency with PACE and Codes of Practice, the term custody officer will be used throughout the chapter, except for when respondents directly made such a reference.

doesn't need one'. This indicates that the assessment of the HCPs may be influential when deciding whether to request an AA. This was confirmed by one detective, DC5:

"I'm not a professional in that field. So, if I think that person may need an appropriate adult then that'll probably work in conjunction with them being seen or being assessed by a medical professional." (DS5)

This detective acknowledged that he may not be best placed to identify vulnerability. However, he was keen to ensure an assessment was put in place and took responsibility for facilitating that process. Nemitz and Bean (1994) described police surgeons⁶⁸ as 'gatekeepers' when making decisions regarding vulnerable suspects and observed that the police often relied upon their decisions. However, whilst the decision-making process of the police may undoubtedly be aided by HCPs, it does appear that some detectives are more actively involved in deciding whether an AA is required.

6.2.2 The Involvement of the Detective in Deciding on the Requirement for an Appropriate Adult

Previous research has highlighted that the custody officer is predominantly involved in the identification of vulnerability (Gudjonsson et al., 1993; Dehaghani, 2016; 2019). However, vulnerability may also be identified by HCPs (see section 6.2.1), by friends/family of the suspect (Dehaghani, 2019) and by the arresting officer (albeit this was observed infrequently) (Dehaghani, 2019). However, none of the previous research (as far as I am aware) has identified the involvement of detectives in making this decision or obtaining the AA. That said, the Mendez Principles (APT, 2021, p.24) note that the interviewing officer should be responsible for the suspect's needs, which may include arranging for the attendance of third parties, so there is existing guidance which supports the involvement of the interviewer in obtaining third parties.

It is possible that the more serious the offence, the greater the involvement of detectives in deciding whether an AA is required and obtaining the AA. One detective, who was an interview advisor, discussed his role concerning third parties when a suspect was detained in custody:

"You have sort of overall responsibility for the custody process... I'll be in touch with custody to introduce myself...and to find out what's been done so far

⁶⁸ The term they used in their research.

since the person's been in custody. You have to consider what things need to be in place, or what things need to be considered...do they need an appropriate adult? Do they need to see a doctor? Do they need an interpreter? All of that needs to be considered prior to any interview taking place.” (DS5)

As well as considering what safeguards are required prior to interview, another detective stated that he felt this was his decision to make, as the interview was his responsibility:

“That's up to the interviewer really whether we need [an AA] or not, rather than custody sergeant. We're the people who are responsible for carrying out, conducting that interview and making sure that we have conformed to PACE, and that the interview's been conducted fairly, so it's our decision what we do in that interview.” (DC9)

This suggests that some detectives are assuming responsibility for the interview and the wider process which are associated with this, which is consistent with para 103 of the Mendez Principles (APT, 2021). One detective was happy to get an AA if required, and noted that on his homicide team there was a tendency to err on the side of caution and obtain an AA:

“If he needs an appropriate adult, well you go and get one. I think certainly for a few years now there's more of a propensity to get an appropriate adult rather than not.” (DC2)

Over half of the detectives interviewed had some previous involvement in deciding whether an AA was required when interviewing vulnerable suspects. However, this may not always be the case. One detective stated that although the decision as to whether an AA was required was often his, he would sometimes take a collaborative approach:

“If one person says, whether it's the solicitor, the custody sergeant, the interviewer ‘That person needs an appropriate adult’, well then you go with it.” (DC13)

However, when discussing the decision-making process, another detective took a less active role and noted the importance of deferring to the decision of the custody officer:

“If the custody sergeant is saying ‘No, this person needs an appropriate adult with them...’ we go ‘Ok, Sarge, you’re in charge down there, this is your domain’...you’re telling me this person is vulnerable, then we would never question that.” (DC6)

In the case involving DC6, an AA was present for the suspect interview. However, this quotation and the ones preceding it highlight the different levels of involvement detectives may have in deciding whether an AA is required. One potential reason for this could depend on whether the suspect is arrested as part of a planned operation or is arrested spontaneously, as detectives may research a suspect and identify potential vulnerability where an arrest is pre-planned. However, these findings indicate that several detectives in this research assumed some responsibility for decision-making in relation to AAs, although some still deferred to the custody officer on this matter.

6.2.3 Why are Detectives Involved in Obtaining the Appropriate Adult?

This research has identified the involvement of detectives in deciding upon and obtaining an AA. There are multiple reasons why homicide detectives might play an active role in these decisions. One explanation may be the experience that homicide detectives have amassed over many years of working in major crime:

“When you were young in service, the custody staff would sort of dictate who was acting as appropriate adult, and they seem to almost take the lead with regard to that. And then certainly now...I mean MIT, it’s completely the other way.” (DC12)

Experienced detectives may feel able to identify vulnerability in suspects and may also be more confident making decisions which will impact investigations. One reason for this approach was suggested by another detective who noted that custody officers are only with a suspect briefly, and are responsible for a number of other detainees:

“They’ve got potentially 30 prisoners to deal with. You’re the one dealing with them one to one and you’re the one doing the interview, you’re the one who has to stand up in court and explain potentially to a judge why you felt that it was suitable to interview someone without the safeguard of an appropriate adult...Why would you put yourself in that position? So yeah, to just leave it to a custody sergeant who might have a few minutes at the booking in desk, I just think you’d be crazy to do that.” (DC13)

This detective identified that the responsibility for the interview, and the associated processes which may impact this, lay with him. It could be argued that deciding on and obtaining suspect safeguards have crept into the remit of detectives, akin to the concept of 'role creep' (Pierpoint, 2011), which is explored further in Chapter Three. This may be because decisions made while the suspect is detained, and whether safeguards are provided, can directly impact the interview and the wider case if a suspect is charged and goes to trial. It may also be a feature of a blame avoidance culture that detectives find themselves working in, as some felt that having an AA protected them, and acted as a safety net:

“Professionally they're great because they're that safety net for us essentially, you know, so if anything goes wrong ‘Well, we had an appropriate adult’.”
(DC1)

Detectives believed that the presence of an AA ensured that they are 'covered' procedurally and protected the integrity of the investigation, echoing research by Gendle and Woodhams (2005, p.78) where police sergeants noted during interviews that they were keen to use an AA to ensure the case did not collapse. Detectives were conscious of the ramifications of not getting an AA and being questioned about this at court. One concern raised by several detectives was that interview evidence may be ruled inadmissible and excluded at trial, which potentially could impact whether a defendant is convicted:

“There's more of a thing to ‘Let's get somebody in because it covers later on any issue, and if I'm honest it is more about covering, getting that interview into court later more than...‘Is that person alright?’ There's a bit more of a thought of ‘we need to get an appropriate adult or an intermediary in to sit with us’, because we want this interview to be heard at court and if they can kick it out at court, then they will.” (DC2)

One benefit of detectives' involvement in this process is that, if a vulnerability has been missed earlier in the process, it is an opportunity for this to be identified and an AA obtained. Detectives certainly appeared mindful of making sure that if an AA was required, then this was done prior to any interview taking place:

“As a professional interviewer, I wouldn't go anywhere near that person until I would be 100% happy that they were suitable to be interviewed, either with or without an appropriate adult.” (DS4)

This section has highlighted the involvement of detectives in the decision-making process of one safeguard for vulnerable suspects, the AA. Additionally, HCPs may also assist in that determination. It appears that the decision as to whether an AA is required does not solely lie with the custody officer when serious crimes such as homicide are being investigated. The next section explores how detectives operationalise vulnerability, which may influence their decision making in this area.

6.3 Detectives' Perceptions of Vulnerability

Detectives were asked about how they perceive vulnerability to understand the factors involved in their determination of this complex concept. This was important because it became apparent during the research that homicide detectives had varying degrees of involvement when deciding on the requirement for an AA. Interviews with respondents took place after changes to the Codes of Practice in July 2018, although the observations of interviews were sampled prior to these changes (see Chapter Three for definitions of vulnerability and further discussion of the changes to Code C). Broadly, two-thirds of participants cited examples of personal factors that could render suspects vulnerable and just over half considered situational factors in their assessments of vulnerability (there was some overlap between respondents who explored both of these, and several respondents solely considered the impact of vulnerability e.g., unable to communicate effectively). These will each be explored in turn, followed by consideration of 'levels of vulnerability' and the impact of the seriousness of the offence.

6.3.1 Personal Factors Perceived to be Indicative of Vulnerability

Two-thirds of detectives interviewed noted examples of factors that they perceived could render suspects vulnerable, including mental health conditions, age, and learning disabilities:

“Learning difficulties, mental impairments, even physical disabilities. I would suggest communication issues is a huge one.” (DC13)

“Simply by virtue of your age, so you might be able to read and write, you might be compos mentis, you might be able to hold a great conversation with me, you might understand everything that you're being asked, but if you're in a certain age bracket you automatically fall in that vulnerability.” (DC1)

A third of detectives also noted the wider impact of being vulnerable, such as a lack of understanding:

“Someone who would be more susceptible to being influenced, maybe saying something inappropriate, saying something that isn't in their best interests, not understanding the processes that they're undertaking, not understanding the questions that they're being asked.” (DC6)

That detectives discussed age and mental health was anticipated, especially as Code C (prior to the 2018 revisions) specifically referred to juveniles, mental vulnerability and mental disorder. Several detectives said that vulnerability was something they had become more conscious of in recent years and related this to an increased awareness of vulnerability within society. However, there also appeared a reliance on how the suspect had been dealt with previously, if known to the police.

6.3.2 The Impact of Prior Police Contact with a Suspect

Another relevant factor in determining vulnerability appeared to be the suspect's history of police contact and whether they have received an AA previously, a finding which confirms the research of Dehaghani (2019). One legal advisor identified that there was a tendency for the police to rely on safeguards the suspect received last time they were in custody:

“I feel that they ought to have an appropriate adult, that they will look at previous records and say ‘Well he didn't have an appropriate adult last time’. I find myself frequently arguing that mental health is not linear. People's mental health improves and deteriorates, and it can deteriorate with a number of hours spent in a police cell, waiting to be interviewed.” (LA1)

The risk of this approach is that suspects become pigeon-holed as vulnerable or not, and their current state may be overlooked. This may also indicate an over-reliance on data held on police systems, which may not always be a reliable indication of vulnerability at a later point in time, especially if overlooked previously. As well as noting personal factors and a history of receiving an AA, some detectives also associated a range of situational factors with vulnerability, which will now be explored.

6.3.3 Situational Factors which may be Indicative of Vulnerability

Just over half of detectives interviewed discussed a range of situational factors when exploring the concept of vulnerability. These included the complex social situations suspects may find themselves in, such as prior victimisation, intimidation from other offenders, and bereavement. Situational factors (including victimisation, trauma, pregnancy and immigration status) are also listed in the Mendez Protocol (APT, 2021,

p.29), indicating that detectives should be mindful of a range of factors which may impact a suspect's vulnerability. In addition, one police sergeant considered that someone may be vulnerable if they have not had prior contact with the police:

“Previous victimisation...previous exploitation, never being arrested before, never having any contact with the police.” (PS11)

A similar approach was taken in Case 2, where a suspect with no disclosed personal factors indicative of vulnerability was allocated an AA. The custody record stated, ‘no prior contact with the police’. However, this suspect was also emotional during detention, especially once he knew the victim had died (he was initially arrested for grievous bodily harm and rearrested in custody for murder). This highlights that multiple factors may combine to increase one's vulnerability and it may be difficult to isolate these factors and their impact. Some detectives took an even wider approach, and a fifth of respondents suggested that vulnerability is a universal condition:

“Basically, anybody could be vulnerable...through a set of circumstances that make you vulnerable at that time.” (DC9)

This is consistent with the view of Fineman (2008), whereby anyone could be vulnerable at a point in time. Additionally, Dehaghani (2019) and the Mendez Principles (APT, 2021) suggest that anyone detained in police custody may be vulnerable. However, this viewpoint was not widely held amongst respondents, and the majority of detectives did not consider all detainees to be vulnerable.

6.3.4 The Seriousness and Nature of the Offence

The offence that a suspect was arrested for appeared to influence perceptions of vulnerability, again, a factor expressly considered in the Mendez Principles (APT, 2021, p.29). A third of detectives believed that someone in custody, especially for a serious offence, could be vulnerable:

“If someone's arrested for homicide, then one may argue that they automatically become vulnerable.” (DC8)

This perspective did not translate across the research findings, as only two-thirds of suspects arrested for homicide offences were allocated an AA. However, one detective noted it was important that suspects received a thorough assessment where serious offences were involved:

“If it was a more serious investigation, if I had the FME doctor that did that initial assessment and they went ‘fine’, I’d still be looking to get the Rolls Royce assessment done of that person.” (DC14)

In addition, there was an acknowledgement from an AA that they had been called out based on the type of offence being investigated⁶⁹. Therefore, the seriousness of the offence may be influential as to whether an AA should be obtained for a suspect. It was suggested that in these investigations there is a tendency to err on the side of caution and obtain an AA.

Another relevant factor when considering vulnerability may be the nature of the offence itself. This does not relate to the seriousness of the offence per se, but the modus operandi; how the offence took place. This is highlighted by one of the cases in the sample, Case 9. This case was recommended to me as a ‘good one’ by gatekeepers in one force, whilst discussing sampling. The nature of the homicide was described as rather unusual, as the suspect continued to reside for a period of time with the victim in their bedroom. No AA was present during the interviews and there was no specific reference to vulnerability on the custody record, although the suspect admitted to being a recreational Class A drug user during the interview. This case appears to have been suggested due to the modus operandi, with the rationale that no ‘normal person’ would behave in that manner. Therefore, vulnerability appeared to be inferred due to the suspect’s actions. This case does highlight the difficulty in identifying vulnerability and deciding whether an AA is required, if a senior detective would consider the suspect vulnerable for the purposes of inclusion in the sample. However, an AA was not obtained for this suspect during his detention.

That the seriousness of the offence may impact whether an AA is obtained is not a new finding; Palmer and Hart (1996) and Dehaghani (2019) both found that custody officers were more likely to obtain an AA where an offence was perceived to be serious, and it was suggested by Dehaghani (2019) that this may be because less serious cases receive little scrutiny. For example, the decision not to obtain an AA may not be questioned or even identified by outside parties such as the Crown Prosecution Service (CPS) or courts where a summary offence takes place for which a caution may be issued. However, despite suggestions that the seriousness of the offence may render a suspect vulnerable and that the police may err on the side of

⁶⁹ A minority of AAs also suggested they had attended the police station for suspects they did not perceive to be vulnerable.

caution in obtaining an AA, as section 6.1 highlights, only two thirds of this sample of vulnerable homicide suspects were afforded an AA. This raises the question as to why vulnerable suspects are not always afforded the safeguards to which they are entitled. The implications of these findings concern how fairly vulnerable suspects are treated, as without an AA present a vulnerable suspect may not be able to fully understand and participate in the custody process, impacting 'equality of arms'. More broadly, it has also been suggested that failure to adhere to suspect safeguards indicates a lack of respect for human rights and the fair treatment of suspects, and such failures can result in inaccurate accounts being obtained from suspects and ultimately miscarriages of justice (APT, 2021).

While perceptions of what may render someone vulnerable may differ, the discretion that the police appear to have in relation to vulnerable adult safeguards may explain why some individuals are afforded an AA, and others are not (Dehaghani, 2019). The danger is that discretion can lead to inconsistencies in how people are treated (Tregle et al., 2022), and ultimately raises questions about the fairness with which safeguards are implemented.

This section of the chapter has explored some of the factors which may result in suspects being identified as vulnerable. However, this identification did not always result in suspects being afforded an AA. Some detectives believed that being vulnerable did not necessarily mean that an AA was required. This will now be explored.

6.3.5 'Levels' of Vulnerability

During interviews, a small number of respondents drew a distinction between someone being vulnerable, and the requirement for an AA:

"For me, it's anybody...you think anybody's vulnerable at any time...God forbid I was in custody now for something, I'd be vulnerable. Would I need an appropriate adult? Probably not, but it's just identifying the levels of vulnerability." (DS4)

DS4 described 'levels of vulnerability' and this is something a small number of respondents discussed during interviews, albeit often in different terms. Furthermore, one sergeant drew a distinction based on suspects' ability to understand:

"If you take the PACE definition to its letter, everybody that has a mental health diagnosis, whether it be depression, anxiety, bulimia...need an AA. That as a

police service wasn't really conducive with the work that we do...so we've taken a very, very practical approach of 'does this person understand?'"
(PS11)

This assessment revolved around the suspect's intellect and capacity for understanding the detention and interview process. This is consistent with previous research where custody staff felt some suspects were not vulnerable enough for an AA (Dehaghani, 2016). Additionally, such an approach was also echoed amongst some AAs, who on occasion associated a suspect's capability to understand, with the need for their attendance. However, such an approach may neglect those who require emotional support during their detention, as opposed to intellectual support. The implications of differing interpretations of vulnerability will now be explored.

6.3.6 The Implications of Detectives' Perceptions of Vulnerability

This research indicates that detectives are taking a range of personal and situational factors into account when conceptualising vulnerability. That some detectives associate vulnerability with the seriousness and/or nature of the offence, or a lack of prior police contact, suggests that awareness of vulnerability has improved in recent years. However, it is important that awareness translates into positive action and compliance with the Codes of Practice and other guidance, such as the Mendez Principles. Differing interpretations as to what may render someone vulnerable can impact the decision to obtain an AA and result in discrepancies as to how vulnerable suspects are treated. Ensuring relevant safeguards are obtained is important regardless of the offence being investigated. For serious offences, however, the consequence of evidence being excluded at court and a dangerous offender acquitted, or a false confession resulting in a conviction and life sentence can be substantial.

Potential explanations for detectives' varying conceptualisations of vulnerability include training, personal experience, career experience and the culture within forces, and/or homicide teams. Whilst a wide interpretation of vulnerability may be preferable, PS11 considered the resource implications that could arise from a strict interpretation all suspects with a mental health condition are vulnerable and must have an AA:

"If we were to have an appropriate adult for everybody that had depression and anxiety, we would never release people from custody because we wouldn't get enough appropriate adults in...And it's about not watering down the role of the appropriate adult... It's about the necessity and the

proportionality for me...Is that appropriate adult going to enhance the understanding of that person? It's very, very individual; one size doesn't fit all in relation to an AA." (PS11)

Existing research highlighted that AA schemes can be reliant on a handful of dedicated volunteers (Pierpoint, 2001; 2004). If more AAs are required to attend the police station, one reasonable question is to ask from where these AAs would be obtained. Furthermore, there could also be financial implications (depending on the AA scheme in operation). One may argue that a strict interpretation of Code C should be taken in the most serious of cases, but this raises an ethical dilemma; how does one distinguish between what does and does not require strict interpretation?

This research highlights that not all suspects who were identified as vulnerable were afforded an AA, although the majority of these suspects (seven suspects out of nine) had reference in their custody record to something which may render them vulnerable. Therefore, it is possible that the way in which vulnerability is perceived impacts the likelihood of an AA being requested. This is consistent with the research of Dehaghani (2016; 2019) and raises questions about the extent to which officers complied with Code C, para 1.4 which stated (at the time the research was undertaken) that if an officer had any suspicion or was told in good faith that a person was mentally disordered or mentally vulnerable, then they [suspect] should be treated as such. It appears that the police are able to exercise their discretion as to whether an AA is obtained and one possible reason for this is that the provisions within Code C are not sufficiently clear (Dehaghani, 2019). Once a decision has been made as to whether an AA is required, the next step is to arrange for an AA to attend the police station. Detectives in this research were also involved in obtaining an AA, although the extent of their involvement varied across all three police forces.

6.4 Obtaining an Appropriate Adult: Disparity in Practice

This research highlighted that AAs are obtained differently across force areas, with detectives in one force area having direct influence over the specific AA attending the police station. The type of scheme in operation, and how it is run may influence this, as if there is no rota for AAs then the police may have to make direct contact with AAs. However, this does also raise questions over the neutrality of the AA if they are frequently working alongside the same detectives.

AAs may be known to the suspect (e.g., family members), trained by AA schemes (paid or unpaid), or paid professionals such as social workers (Pierpoint, 2011; NAAN,

2015). The type of AA asked to attend the police station can depend on several factors, such as the time of day. For instance, the emergency duty team (EDT) may be contacted when the requirement for an AA falls outside the operating hours of an AA scheme. Detectives also spoke overwhelmingly of their preference for a professional and trained AA, rather than an untrained family member. Several detectives stated that family members of suspects would often routinely be spoken to as witnesses in homicide investigations, and therefore, would not be suitable to act as an AA.

In the forces where fieldwork was undertaken, AAs were supplied for juveniles by the Youth Offending Team (YOT) in Alameda and Sunnydale, and by a charity in Bluesville. AAs for vulnerable adults were provided by a Police and Crime Commissioner (PCC) organised scheme in Alameda, and by a charity in Sunnydale. In Bluesville, AAs were supplied by a professional AA scheme, but some of the interviews observed took place while the contract prior to that was in operation whereby AAs were provided by a local charity. How the AA was obtained in Alameda will now be considered, before contrasting this to practices in Bluesville and Sunnydale.

6.4.1 Obtaining the Appropriate Adult in Alameda

During interviews with detectives in Alameda, it became apparent that the way in which AAs for vulnerable adults were obtained varied. This research identified that some detectives were actively involved in obtaining an AA:

“We just stick to ones that we know really and we just call them up on a mobile and say ‘Oh, are you free?’” (DC1)

Furthermore, not only did detectives have direct influence over obtaining an AA, but there was a tendency for a specific AA to be requested to attend the police station. This individual was undertaking the AA role on homicide investigations regularly and attended two, possibly three, of the six cases sampled in Alameda where an AA was present. It is worth noting that this individual was a member of the relevant AA scheme and was trained to undertake the role. This was reflected upon by one detective, DC2:

“To be honest...everybody at this police station, I would suggest, uses a chap called [Name]. He's knowledgeable, he knows what he's doing and he seems to be always available to do the role....I think because he's been available, because he's bent over a little bit backwards for us in the past.” (DC2)

In addition, it was suggested that there was a lack of 'good AAs', which might explain why some detectives relied upon a small number of volunteers:

"Personally, we have a few, and I could definitely only count them on half a hand really, of really good appropriate adults that we use for homicides that understand everything. They understand the police perspective, so what we need to get, how we're likely to need to get that." (DC1)

In this force, it transpired that there was no on-call system, where an individual would take a call from the police and then arrange for an AA to attend the police station. Instead, custody units had a list of AAs who would be contacted and asked to attend. Officers could select a particular individual from that list and do so on a regular basis. This practice raises questions concerning the nature of the relationship between the police and the AA, specifically the independence and neutrality of this suspect safeguard. This will be discussed further after the way in which AAs are obtained in Bluesville and Sunnydale is explored.

6.4.2 Obtaining the Appropriate Adult in Bluesville and Sunnydale

Contrary to practices within Alameda, detectives in Bluesville and Sunnydale took a different approach to obtaining an AA, and detectives had less direct input over the specific individual that attended the police station:

"You contact [Scheme], they contact someone, they come out and you know, job on." (DC13)

In these forces, AA schemes often had rotas in place that determined which AA attended the police station. Detectives were asked whether they had any input as to the specific individual that attended, to which one replied:

No. If I felt that person was inappropriate...Then yes." (DS4)

With regards to what was deemed to be 'inappropriate', this was further explored:

"Leading them [suspect] down the path, or answering on their behalf, or actually if I felt they weren't representing their rights, I would certainly stop that. But you've also got to remember that...to get an appropriate adult is like gold dust at times anyway...so once you've got one, you don't want to let them go...unless they're really, really bad." (DS4)

This detective highlighted an interesting point, that there may be occasions where an AA is not suitable for the role. However, he also noted difficulties in obtaining an AA in the first place. A potential consequence of such difficulties could be that the police are reluctant to change an AA who is not suitable, especially where this does not disrupt the aims of the police interview, for fear of not being able to replace an AA. During this research, third parties did change during the series of interviews, although the reasons for this were not known. In one case, not only did the AA change, but the type of AA changed, from a familial AA to one supplied by a scheme the following day. This indicated that detectives are willing to change AAs, obtaining them from different sources if required.

While detectives in these two forces did not have input over the specific individual who attended the police station, they did have influence over the type of AA attending (e.g., from an AA scheme or a family member):

“I would hope that decision will be left to me to be honest as the Tier 5... So I would be looking to either get a social worker, which I would prefer, or I would look to get a more distant family member rather than a parent.” (DC13)

These findings highlight that the way in which an AA was obtained varied between Alameda, Bluesville and Sunnydale. Some detectives in Alameda could contact their preferred AA and request them to attend the police station. In contrast, detectives in Sunnydale and Bluesville had a choice whether to arrange for an AA from a scheme or not, but the AA scheme determined who would attend the police station. Therefore, detectives in these forces were not able to personally select the AA they wanted to attend, and as a result, DC7 noted that he would “seldom see the same AA twice”. Potential explanations for this divergence in practice will now be explored.

6.4.3 Explanations for the Disparity in Practice in Obtaining the Appropriate Adult

This section considers potential explanations for the disparity in the way that AAs are obtained for homicide suspect interviews. Detectives in Bluesville and Sunnydale contact AA schemes for an AA, who is allocated at random, in contrast with some detectives in Alameda who contact the specific AA they wish to attend for their investigations.

Force area demographics and the rate of homicide within a force should be considered when seeking to understand these disparities. There are notably more homicides a year in Alameda, than in Bluesville and Sunnydale (see Table 5.2).

Therefore, Alameda's homicide team may have a greater requirement for AAs due to a higher volume of offences committed within their force area. Whilst AA schemes need to be staffed to respond to demand, the nature of voluntary work means there may be a reliance on a handful of experienced AA volunteers, as was indicated within Alameda. However, a couple of AAs within Alameda commented on how they were used by the police, which suggested it was not solely a lack of volunteers responsible for the heavy reliance on a small number of individual AAs, but the working practices within the homicide team:

"I think the homicide team are close-knit...and they try and use only certain appropriate adults, if you can understand what I'm saying." (AA18)

AA18 perceived that there was a tendency within the homicide team in Alameda to use specific AAs for their suspect interviews. To explore this further, the scheme coordinator was asked about the use of AAs for homicide offences:

"There are particular AAs that are used quite a lot...we're not sure whether they're used a lot because officers know that AA, and know they're quite available, so just ring them straight away. We do have a suspicion that might be the case because there's some AAs that have said 'I've never been called', or 'I'm not being called often'...and I suppose that's where the failure, because we haven't got a rota or point of contact to sort of try and equally distribute AA calls." (AA14)

A couple of factors may explain the tendency for certain AAs to be used on a regular basis. Firstly, if the details for current AAs are not regularly updated on the lists used by custody and investigative teams, officers may not be aware of all the AAs available. The second explanation is that investigators do prefer using a particular AA(s). This could be because of the perceived knowledge and experience of an AA, and their reliability, as suggested by detectives earlier (DC1 and DC2). Additionally, positive working relationships with particular AAs may result in a preference to use those individuals. However, there are implications of such an approach, which will now be explored.

6.4.4 The Implications of the way in which the Appropriate Adult is Obtained for Independence and Neutrality

Requests for specific AAs in Alameda have a number of potential implications, notably around the independence and neutrality of the AA. As discussed in Chapter Three,

the role of an AA should be independent of the police (NAAN, 2018). This is important because an AA must ensure that the police act fairly and properly towards a vulnerable suspect (Code C para 1.7A). If a suspect detained in the police station perceives a close relationship between the police and third parties, they may question whether the third party is truly independent (Medford et al., 2000; Pierpoint, 2008). Subsequently, they may find it hard to trust the AA which could impact the communication and rapport built between the suspect and the AA. As a result, a suspect may not disclose information about their vulnerabilities or if they do not understand something, and as a result may feel unsupported during their detention. In such circumstances, the AA may no longer be an effective due process safeguard for a vulnerable suspect.

One other consideration of a close working relationship between detectives and AAs relates to interventions that AAs make during a suspect's detention. In fact, this could be relevant to third parties more generally. It is possible that an AA with a close working relationship with the police does not intervene (in an interview), when necessary, for fear of damaging that relationship, a concept identified as 'interview room lore' (Pierpoint (2005), see sections 2.7 and 3.6.2 for further details). However, on the other hand, a close working relationship may give an AA the confidence to intervene because they feel that they are respected and valued by the police. This is an area worthy of further exploration in future research. Furthermore, if the impartiality of the AA is questioned, this may risk a potential legal challenge. This was something one of the detectives in Alameda identified:

"If we're thinking long term for a court case, if a solicitor or barrister, a decent barrister, going 'Oh I see [Name] was involved in this murder', 'Oh how many murders has [Name] been involved in?' 'Why all the murder team?' 'Hold on a minute, what's going off here?' '[Name] is always in all these homicides, he's been in the last 15 homicides'...I suppose some smart barrister might say 'Well it's showing it's not independent...so therefore my client's interview...with this man isn't an independent interview...I know it's a bit farfetched...all you need to do is convince a jury that it's not quite right. Then all of a sudden you know it's out the door isn't it and that's not what we want. So yeah, I think perhaps it could be more, a more professional way that we approach allocating appropriate adults for me.'" (DC2)

This detective acknowledged that there could be scope for a challenge by the defence over the frequent use of a particular AA, albeit he perceived this would be unlikely.

However, he did note that AAs could be allocated to cases more professionally, a conclusion which appears reasonable in the circumstances. Not only may this protect the integrity of an interview and secure evidence obtained by the police, but it may improve the independence of the AA safeguard for vulnerable suspects.

6.5 Summary

This chapter has explored the decision-making involved in determining arrested suspects' vulnerability and, in turn, whether and how they are afforded an AA. A key finding was that vulnerable suspects are still not always afforded an AA, which is consistent with previous research (Dehaghani, 2016; Bath, 2019). However, this finding was surprising because of the serious nature of the offences under investigation. While vulnerable suspects who require an AA are not having this safeguard put in place, the potential for miscarriages of justice remains.

In addition, it has been identified, potentially for the first time, that some detectives participate in the decision-making process as to whether an AA is obtained, and are also involved in obtaining the AA. Detectives felt a sense of responsibility for not just the interview but the wider processes which may impact this. They were also mindful of obtaining admissible evidence which could be used at trial, and not being criticised for failing to follow relevant procedures. However, the way in which AAs were obtained differed across police forces. In the current research, some detectives in Alameda had direct input over the specific AA who attended the police station. In contrast, detectives in Bluesville and Sunnydale may influence the type of AA (professional or familial) but had no input on the specific individual attending. There were several reasons why detectives appeared to be involved in obtaining the AA. Some wished to obtain AAs who were trained and to avoid issues where familial AAs may become witnesses. Where specific individuals were requested to attend in Alameda, it was suggested that that this was due to the training and availability of the AA, but also that they 'understood the police perspective'. This does raise some concerns that AAs may be selected to further the objectives of the police. Furthermore, where there is an over-reliance on a small number of volunteers, there may also be implications for the independence of the AA.

These findings are an addition to the knowledge base in this area as previous research focused on the role of the custody officer in making the determination of vulnerability and obtaining the AA. Detectives in this research took responsibility for these tasks to an extent not previously identified in the literature (Nemitz and Bean,

1994; Dehaghani, 2016), although this is consistent with recent guidance contained within the Mendez Principles (APT, 2021), and these findings highlight the discretion the police exercised in relation to the decision to obtain an AA, but also who was requested to act as the AA. The next chapter explores chronologically third parties' attendance at the police station and the further planning detectives undertake prior to the suspect interview, specifically, adjustments for interviews with vulnerable suspects.

Chapter Seven: Preparations Undertaken Prior to Interviews with Vulnerable Suspects

This chapter explores the working practices of detectives and third parties (the legal advisor and appropriate adult (AA)), focusing on how they prepare for interviews with vulnerable suspects who have been arrested for homicide offences. Preparations include the consultation between the suspect and the AA, the legal consultation, and pre-interview disclosure. Additionally, the adjustments that detectives may consider for interviews with vulnerable suspects are examined.

As discussed in Chapters Three and Four, there is a relatively little research which explores the preparations which take place prior to the suspect interview (n.b. Kim et al. (2018) and Chin et al. (2022)), especially concerning vulnerable suspects. It is important to explore these practices, as early interactions between vulnerable suspects, the police and third parties may influence what subsequently takes place during a suspect's detention and interview, but also the outcome of an investigation and potential trial (Shawyer, 2009; APT, 2021). For example, legal advice (which can be influenced by pre-interview disclosure) may impact whether a suspect provides an account during the interview (Sukumar et al., 2016a; Davies et al., 2020). Consideration of these working practices contributes to our understanding of whether vulnerable suspects are provided with 'equality of arms' during their detention, and ultimately, whether they are treated fairly.

Data are drawn from semi-structured interviews with police officers (n=14), legal advisors (n=3) and AAs (n=20⁷¹), and from analysis of suspect interviews and custody records relating to 27 suspects from 26 homicide investigations, within three police forces in England and Wales. Fieldwork took place between July 2018 and January 2020.

7.1 Third Parties' Attendance at the Police Station

Third parties⁷² are those who may attend a police interview, excluding the police and the suspect. These include the AA, legal advisor, interpreter or an intermediary, although, as noted in Chapter Five, this thesis focuses on the AA and legal advisor⁷³. Once a request has been made for an AA and/or a legal advisor, they should attend the police station as soon as practicable and ensure that the suspect understands

⁷¹ Whilst police officers and legal advisors worked within forces where fieldwork took place, only 40 per cent of AAs were based within these force areas (n=8). AAs from other force areas were members of volunteer AA services, both paid and unpaid.

⁷² As referred to in Code C

⁷³ There was a lack of intermediaries and interpreters in the fieldwork sample

their rights and entitlements (Solicitors Regulation Authority, 2007; National Appropriate Adult Network (NAAN), 2018). Once at the police station, third parties may review the custody record (para 2.4 Code C; NAAN, 2018) and meet the suspect prior to interview (section 58 PACE; Bridges and Choongh, 1998; Home Office, 2003; Skinnis, 2009a; NAAN, 2018). The importance of third parties meeting with the suspect will now be explored, with the AA consultation addressed first.

7.1.1 The Appropriate Adult's Consultation with the Suspect

During semi-structured interviews, most AAs noted the importance of a suspect consultation when they attended the police station. This would ideally occur privately, away from the police and legal advisor:

“The important thing is about getting some time with that young person by yourself. Away from police, away from the solicitors, and just to be able to sit down, explain who you are, why you're there, you're not part of the police, you're not part of the legal team in any way, shape or form.” (AA20)

A consultation gives the AA an opportunity to meet the suspect, introduce themselves, build rapport and establish a relationship with the suspect:

“Normally I would arrange to go into a consultation room with the vulnerable adult to have a chat, to introduce myself, to get to know a bit about them. I've got to establish a relationship with them at the earliest opportunity in very unpromising circumstances.” (AA12)

Establishing a relationship and building rapport with the suspect during the consultation may be influenced by the AA's understanding of their role. Pierpoint (2006) identified that some AAs evaluated their performance, in part, depending on whether they built rapport with suspects. However, AAs also considered other due process tasks important, including reviewing the custody record and ensuring the police adhered to relevant procedures (Pierpoint, 2006). My research builds on Pierpoint's (2006) findings, which highlighted that AAs built rapport with suspects by emphasising their impartiality, listening and providing support. It is important to consider *why* AAs believed that building rapport and developing a relationship was a key part of their role. AA1 proposed two reasons, which were noted by several other AAs:

“To try and establish enough of a relationship with them to try and in my own mind decide whether I was comfortable that they were going to be ok for interview or not...and to see if I could establish some degree of trust with them,

so that if they needed my support or advice, they would feel able to seek it.”
(AA1)

AA1 spoke of building trust with the suspect, and this was something many other AAs felt was important. The AA consultation was also used for other purposes, to explain custody processes, provide support and ensure that the suspect understood what was going on. Additionally, AA1 noted the importance of establishing that the suspect was 'ok for interview' and other AAs noted similar considerations. Any concerns about a suspect's fitness should be raised with the police and/or the suspect's legal advisor, if present (Solicitors Regulation Authority, 2007; NAAN, 2017, p.2). Pierpoint (2006) identified that AAs infrequently made representations to the custody officer (28 per cent of respondents to her questionnaire). When representations were made, these concerned a range of due process and welfare concerns, although none related to the fitness of the suspect (Pierpoint, 2006). The extent to which third parties do make representations about fitness is not widely known, although most AAs interviewed reported making such representations in the past.

Not all AAs stressed the importance of a suspect consultation and a minority (AA10, AA15, AA16, AA17 – all based with Alameda) suggested they often undertook a quick chat with the suspect. AA10 said that whether a suspect consultation took place depended on if the police had already explained the role of the AA to the suspect:

“It depends on the circumstance...if the custody sergeant's there and he's already explained half the role, then I'll just add to it.” (AA10)

However, AA10 did say he may be more likely to have a consultation if the suspect was resistant to having an AA:

“I try to take them into one of the consulting rooms myself and explain my role just in layman's terms; what I'm here to do, and I'm here to protect everybody, the process and so on...just try and build up a little bit of a rapport so they can actually see that you're not just there as a...social service 'do gooder' or something like that.” (AA10)

Although some AAs did not insist on suspect consultations, they still placed importance on introducing themselves to the suspect and explaining their role. In terms of the AAs role, AA10 said that he was there to protect everybody, yet one may argue that the AAs role does not extend to everyone, or the 'process', which, by implication, may mean ensuring that evidence can be used in court by the police. Generally, AAs from paid and trained volunteer schemes, or those set up by charities,

were more likely to insist on a private consultation. An AA consultation is supported by NAAN standards (NAAN, 2018, para 6.7) and some AAs suggested this was recommended practice during their training. At the time of research, the Police and Crime Commissioner (PCC) scheme was not a member of NAAN as there were questions about the independence of the scheme and concern that some AAs also acted as custody visitors (NAAN, 2018).

“Unfortunately, we're not part of NAAN. We did try and join, but there is a feeling that they don't like PCC officers...running an AA scheme. They like to have us a bit more removed and a bit more independent. But saying that, (we) still want to use the scheme to meet their national standards.” (AA14)

These findings suggest that the training delivered by AA schemes may influence whether the AA has a private suspect consultation. The consultation is an opportunity to build rapport, explain the AA's role and to provide support to a suspect. Those who undertook a suspect consultation appeared to find them beneficial, however, whether suspects valued a consultation is a question which remains unanswered in this research, but also in the existing literature. AAs who stressed the importance of a suspect consultation were also specific about when this should take place, as discussed in the following section.

7.1.1.1 The Timing of the Appropriate Adult's Consultation with the Suspect

Several AAs noted the importance of when a suspect consultation took place, stressing it should occur before the suspect consulted with the legal advisor:

“I should be the first person that he sees, because he doesn't know, if he's never been in custody, what the role of the solicitor is...and that he should be honest because it's totally confidential. I get a bit frustrated by that because I should be able to say 'The process is... and your solicitor is here to act in your best interests...and it's in confidence, they can't disclose it, nobody else will be there, so you must tell them, particularly on a murder'. I hadn't had that opportunity on this [homicide investigation] so I was a bit [sighs].” (AA5)

AA5 wanted to speak to the suspect before the legal advisor, to ensure the suspect understood the legal advisor's role, and that what the legal advisor and suspect discussed alone was confidential. It was also important for some AAs to consult with the suspect prior to interview, and AA8 was prepared to delay the interview until this had taken place:

“We are not going to interview before I had a consultation...I don't know him, you know, we need to chat. And some of them [police] say ‘Oh do you need to, can you not?’. You have to be firm as an appropriate adult...you know what you have to do, and you insist you do it, and we don't go into interview without having a consultation.” (AA8)

However, a private suspect consultation was not always possible. AA13 noted that during one homicide case, the police perceived the suspect as ‘too high risk’ to have a consultation alone with the AA as he had recently been discharged from a mental facility and allegedly committed an act of extreme violence. The AA was allowed to speak to the suspect, but he was asked to remove his pen out of his top pocket beforehand for safety reasons. This consultation took place in the presence of officers, which may have impacted what was discussed between the AA and suspect. It is not known whether the legal advisor in this case was allowed to meet the suspect alone, although all suspects have a right to receive private legal advice (section 58 PACE)⁷⁴.

There are several benefits of AA consultations. These include explaining the AA role to the suspect, checking the suspect’s wellbeing, and building rapport. The legal advisor, if present, should also have a consultation with the suspect, albeit the aims of this may be different (Solicitors Regulation Authority, 2007; NAAN, 2018) and include obtaining an account from the suspect and providing legal advice (Shepherd and Griffiths, 2021). The legal consultation and the impact of legal privilege will now be discussed.

7.1.2 The Legal Consultation and Legal Privilege

Many legal advisors attending the police station will have a consultation with the suspect prior to an interview, to obtain an account from the suspect and provide legal advice. The legal consultation may take place after the legal advisor has received disclosure from the interviewers prior to the interview. One of the unique aspects of the legal advisor role is that they have legal privilege. This is a term set out in common law (*Walter Lilly & Company Ltd v Mackay & Anor* [2012]), which provides legal advisors with a right not to disclose communication from a client. However, this does not extend to an AA (Notes for Guidance 1E, see Chapter Three for further details).

⁷⁴ It is possible that the police could request legal advice is provided over the telephone if there are serious reservations over the safety of the legal advisor.

This section will explore the attendance of the AA in the legal consultation and subsequent issues that may arise.

Pierpoint (2005) found that where a legal consultation took place, three per cent of AAs were present for the legal consultation (n=146). In contrast, findings from the current research indicated several AAs (7 out of 20) had previously attended legal consultations (for homicide and less serious offences), and two respondents said this helped them to understand the case better. This research indicates that some AAs are attending the legal consultation regardless of the risks posed concerning legal privilege. Reasons for attendance included the suspect or the legal advisor requesting the AA's presence:

"We are there for that vulnerable person, and if they do want me and it does help them settle down...you're looking after their welfare, then why not."
(AA13)

"Sometimes the solicitor will actually say 'Can you sit on his consultation...because I'm struggling to get through to him'. And then I will obviously go in and try and help in that consultation, but whatever they say during that consultation I do not divulge to the officers, and they know that."
(AA18)

Additionally, two AAs raised concerns about the ability of a suspect to understand the consultation, another reason why an AA may attend:

"I've no issue with that [not attending the legal consultation] as long as that person understands...what the solicitor's there to do and he's getting that support...I suppose it's a little bit awkward...he might not be able to understand that legal advice...it could be a bit of a gap there for me, but like I say, we have no legal privilege." (AA10)

This highlights why many AAs prefer to hold a suspect consultation prior to the legal consultation, as highlighted by AA5 earlier. However, while it is important that the suspect understands their legal advice, legal advisors are given training in the identification of vulnerability (Solicitors Regulation Authority, 2007) and guidance is also available on the Advocates Gateway (2021) on how to identify and question vulnerable individuals. Legal advisors interviewed were conscious of speaking to the suspect in a language they understood, and additionally, not all were keen on the AA attending the legal consultation. LA3 believed that the role of the AA was to facilitate

communication between the police and the suspect, and that the legal advisor should speak with the suspect alone:

“We don't always have the appropriate adult in for consultation because of the lack of confidentiality between them and the police.... You have to be able to speak to people and to deal with their vulnerabilities, and to be able to have a conversation with them about the offence under investigation and explain those things. And you do it in such a way that you ensure that they're able to understand you, that the appropriate adult doesn't get involved in that process. You use language that is at a level that the person that you're speaking to is capable of understanding... They [AA] come into interview and I can't ever think of a situation other than the nurse and patient situation... where the appropriate adult was really of any benefit to the individual.” (LA3)

LA3 believed she could adequately consult with a vulnerable suspect without the need for an AA present. However, not all legal advisors appeared to adopt this position. AA10 suggested that the presence of the AA in the legal consultation may depend on the legal advisor's experience:

“I tend to find with the older, more experienced solicitors they're quite... comfortable and happy having you as part of the consultations. But certainly, the younger ones there's the case of 'We don't need the appropriate adult in for the consultations', so I just see the person in custody on my own.” (AA10)

While this was the perspective of AA10, LA3 was a legal advisor with 15 years' experience who still believed the AA should not participate in the legal consultation. Although a couple of AAs observed a distinction in practices concerning the legal consultation based on the legal advisor's experience, it is possible that it is the nature of third parties' working relationships which influenced whether the AA was requested or allowed into the consultation. The AAs attendance may only be permitted once the legal advisor trusted the AA not to divulge any details or believed the police would not seek to obtain this information from the AA, and this may be more likely where AAs and legal advisors have worked alongside one another in the past.

7.1.2.1 The Risks of the Appropriate Adult Attending the Legal Consultation

One implication of the AA attending the legal consultation was that they had no legally recognised right to legal privilege, something many AAs were aware of:

“We shouldn't be doing that...because we haven't got legal privilege but [sighs] I just feel that if they want me there as support, I will go along and do it.” (AA13)

Despite this awareness, several AAs still participated in the legal consultation, potentially placing themselves in a precarious position where they could be asked to provide the police with a witness statement. This could damage their relationship with the suspect, who may find it hard to trust another AA. Attitudes of AAs towards being exposed to suspect accounts was variable. One AA said that if she felt compromised, she would recuse herself from the role:

“It's drummed in training ‘you do not sit in the disclosure’ because you just put yourself at risk...If you hear something, you've then got to go home, somebody else has got to come in, so that's delay for that young person, isn't it? (AA20)

The question remains why some AAs attend this consultation, if, as AA20 suggests, it is contrary to the guidance received. Pierpoint (2005) noted the circumvention of rules in custody (when searching suspects), when it was believed to be in the suspect's best interests. Pro-social rule-breaking involves the breaking of rules for the benefit of others (Morrison, 2006), and some parallels may be drawn in these circumstances, where the AA may attend the legal consultation for the benefit of the suspect, in order to provide support or facilitate communication.

Rules are more likely to be broken where there is less risk of undesirable consequences (Dahling et al., 2012). A minority of AAs did not perceive any risk in attending legal consultations, because they believed the police would not ask them about conversations they may have had with the suspect:

“I'm not worried if some policemen said afterwards, which they never ever do, ‘What did you say in there?’” (AA13)

These perceptions appeared to be well founded as none of the AAs interviewed had been asked by the police about what took place during a legal consultation. Furthermore, some AAs said they would not divulge what was said, even if the police asked:

“I will say to them ‘Whatever you say during this consultation, I will not divulge to the officer’. Because it's not fair, I don't think it's right.” (AA18)

If an AA refused to provide a statement when asked, they could be ultimately summonsed to court (section 169 Serious Organised Crime and Police Act 2005). Pierpoint (2005, p.70) argued that AAs who failed to respond to a police request for information relevant to their investigations, “may be ignoring an ethical as well as a legal duty to uphold justice and maintain a safe society”. When the police investigate serious offences, information withheld could influence whether a suspect is released under further investigation or charged. As such, ethical questions accompany any decision made to uphold confidentiality.

However, while some AAs were willing to attend the legal consultation, others were mindful of legal privilege. AA9 explained how he tried to mitigate this risk:

“They could ask me because I'm not covered by legal privilege...that's why I always say to everybody, 'Whatever you tell us in this room is confidential between you and the solicitor, sadly between you and I, it's not confidential so that's why I don't want to discuss the allegations about the offence'...but that doesn't stop people.” (AA9)

It is not known why AAs are not asked for accounts by the police if they have taken part in the legal consultation. One possible explanation is that informal rules between the police and third parties ensure that detention (and interviewing) is not disrupted by having to obtain another AA in circumstances where legal privilege is compromised. As noted by DS4 “to get an appropriate adult is like gold dust at times anyway...so once you've got one, you don't wanna let them go”. Replacing an AA may take time and delay an interview, putting pressure on investigators who must adhere to the PACE custody clock (see Chapter Three). It is also possible that, akin to ‘interview room lore’ (Pierpoint, 2005) that the police may choose to overlook the AAs attendance in the legal consultation as they do not wish to damage their working relationships with AAs, especially where there is a reliance on a small number of volunteers to attend the police station. Additionally, Tyler et al. (2007) suggested that moral values influence rule adherence. The police may treat the AA like the legal advisor in relation to legal privilege, if they believe, like AA18, that ‘it would not be fair’ to divulge content from private conversations.

Finally, there is the possibility that the police are not aware of legal privilege rules and their implications, which is why they do not ask AAs about the legal consultation. Where the AA attends the legal consultation, this potentially jeopardises the value of the AA as a suspect safeguard, should the police seek to treat the AA as a witness to any suspect admissions. However, if AAs are not asked about their attendance in the

legal consultation by the police, this positively reinforces these working practices and increases the likelihood of this behaviour being repeated in future. The next section will briefly refer to another consultation, pre-interview disclosure, which takes place between the legal advisor and detectives.

7.1.3 Pre-Interview Disclosure

Pre-interview disclosure is an important process where interviewers inform the legal advisor of evidence against the suspect. This may influence the suspect interview because the information provided may affect the legal advice given to the suspect (Kemp, 2018; Davies et al., 2020). Disclosure strategies may vary, however, staged disclosure is common during the investigation of serious offences, such as homicide, where multiple interviews often take place⁷⁵ (Griffiths and Milne, 2006).

Research indicates that detectives prefer a gradual method for disclosing evidence before and during the interview in order to achieve investigative goals, which may include obtaining an account (admissions or denials) or highlighting inconsistencies in the suspect's account (Walsh and Bull, 2015; Sukumar et al., 2016a; APT, 2021). If disclosure is provided early, there is a chance that a suspect may use that information to construct a plausible account (Walsh and Bull, 2015) and therefore, detectives may hold back some evidence (often stronger evidence) for later interviews. This was summarised by DC1:

“Most highly qualified solicitors, cos they should be if you are dealing with a murder, should know that disclosure is always drip fed. Some just don't like it, and some just say ‘I'll tell you now if you're not giving me anything, I'm telling him to go no comment’...and you think ‘Right, ok. Well, you know the game, you've been playing the game long enough. You know that the very first interview, we very rarely give anything. We've got a dead body. This is where it's been found. Your client is linked.’ That is normally as standard as it is going to be, because why would we want to set it all out for them? We wouldn't.”
(DC1)

Revealing evidence strategically (e.g., gradually) may preserve the element of surprise (Cape, 2011), and highlight inconsistencies in a suspect's account, if one is provided (Hartwig et al., 2006; APT, 2021; Sandham et al., 2021). If an account is later disproven, this may impact the suspect's credibility at trial. Therefore, what is

⁷⁵ There may be several pre-interview disclosure briefings during a suspect's detention if they are interviewed multiple times.

disclosed, and when, may be considered a balancing act, or as DC1 suggests, 'a game' between the legal advisor and the police.

This research obtained access to a small number of audibly recorded disclosure interviews. In total, twenty interviews from eight investigations within one force were reviewed. These were short recordings, none lasting longer than 28 minutes, and the majority (n=16) were less than 10 minutes in duration. Disclosure briefings were professional affairs, which discussed evidence relating to the allegations for which the suspect was arrested. Most commonly, detectives disclosed information regarding the circumstances of the incident and evidence linking the suspect to the offence. Legal advisors sometimes asked questions about forensic evidence and digital data, but often were not provided with further details, as an extract from observation schedule 1MNO1 highlights:

'Legal advisor is asked if he has any questions and replies, 'Are you prepared to answer any questions on that disclosure?' Officer pauses before saying 'No'. Legal advisor replies 'There's no point me asking any questions then is there?' Briefing terminated.' (1MNO1)

It is important to consider how pre-interview disclosure, especially if staged, may affect vulnerable suspects. The disclosure briefing may provide an indication of the strength of evidence and subsequently may influence the legal advice provided (Davies et al., 2020). However, vulnerable suspects may not fully understand the legal advice they receive or the implications of not following it (e.g., self-incrimination) which could impact their ability to participate in the interview and follow legal instructions. Therefore, it is important that the legal advisor ensures that information is conveyed in a manner that the suspect can understand.

This section also only applies to the vulnerable suspects interviewed for homicide offences who received legal advice, which was 26 out of 27 suspects. Where legal advice is not obtained, a suspect may be further disadvantaged as they are not entitled to any pre-interview disclosure (Sukumar et al., 2016b; Davies et al, 2020). Sukumar et al. (2016c) identified the possibility that where a vulnerable suspect does not receive legal advice, they may believe evidence to be stronger than it is (heightening the risk of false confessions), a matter the authors noted required further research. This highlights the importance of receiving legal advice, especially if arrested for serious offences, and in cases involving vulnerable suspects. The next section will explore the planning undertaken by detectives prior to the suspect interview.

7.2 Detectives' Preparations for Interviews with Vulnerable Suspects

Interview planning and preparation (the first stage of the PEACE framework⁷⁶) is important, regardless of the seriousness of the offence, to ensure that detectives understand the available evidence, prepare their questions around the points to prove for the offences under investigation, and consider disclosure strategies (College of Policing, 2022). As noted in the previous chapter, planning may also highlight a suspect's vulnerability (if not already identified), which requires the attendance of third parties at the police station. However, Geijsen et al. (2018a) found that only 45 per cent of detectives took precautions when interviewing a vulnerable suspect.

During fieldwork, detectives were asked how they planned for homicide interviews with vulnerable suspects and whether they did anything differently to account for a suspect's vulnerability. A range of responses were provided, unsurprisingly, given that suspects can be vulnerable for different reasons and to varying degrees. The most common adjustments can be encapsulated within the following four categories:

- The requirement for third parties
- The language used during interview and question composition
- Temporal factors such as the duration of the interview and the frequency of breaks
- Spatial aspects or layout of the interview room

Two detectives also identified that a change to the interview structure may be required with regards to whether a vulnerable suspect is challenged during interview. However, this was discussed within the context of suspects with serious learning disabilities. The following sections will predominantly focus on the planning for the interview. The implementation of adjustments and their impact will be explored in the next chapter.

7.2.1 The Requirement for Third Parties

Detectives suggested that initially, the planning undertaken for homicide interviews is similar, regardless of a suspect's vulnerability. However, DS4 explained that the requirement for third parties is a key consideration for interviews of vulnerable suspects:

"It's a very similar process and you plan exactly the same as you would if you're doing a suspect interview...but in the back of your mind you've still got

⁷⁶ See Chapter Four for further details of what the planning and preparation stage entails.

to have 'Okay, what's this person's vulnerabilities? Is there going to be an appropriate adult? Is there going to be a solicitor?'" (DS4)

Where third parties were obtained, it was not uncommon for detectives to liaise with them about the suspect, prior to the interview:

"If it's a live job, they're in custody now, it's generally with the appropriate adult, you know, 'what should we do? How am I going to achieve it? What shall I keep away from? What would you suggest is the best way?' I've had good input and I've had bad." (DC14)

DC14 highlights the benefits of third parties' involvement prior to interview. Familial AAs who know the suspect may be better equipped to assist detectives, although one benefit of a suspect consultation prior to interview is that an AA can converse with suspects about their vulnerabilities and any support they may need, which could be relayed to detectives. However, this may be somewhat reliant, on a suspect's self-awareness of their vulnerabilities and a willingness to disclose this information to someone they have potentially only just met.

DC13 also discussed two examples where he obtained a healthcare professional (HCP) to observe the interview of an older suspect with cardiac problems, replicating practices found by Geijssen et al. (2018a). This mitigated the risk of the interview, both to the suspects and to the police, who would have undoubtedly been questioned about their decision to undertake an interview, had a suspect become unwell.

7.2.2 Adjustments Relating to Language and Question Composition

Recommendations for interview adjustments concerning language and questioning were made on the custody records of vulnerable suspects by HCPs. One of these read 'AA required - need to speak slowly in the interview' (2ABC). Another read 'May become upset or emotional if questioned/challenged assertively, in circumstances may need break.' (3DEF).

Language was also discussed during the semi-structured interviews with detectives. DS5 considered his language and how he spoke to a vulnerable suspect, not making assumptions about someone's vulnerability or how they should be treated:

"You've got to adopt a way of talking to people...he's [the suspect] got three personalities, I think he made reference to it as well, the fact that we were talking to him like he was a real person and not some animal...I think it's an appreciation

of whoever you're dealing with, rather than just making an assumption. I think you've just got to be human about it and assess each case on its merits.” (DS5)

This detective identified the importance of taking an individualised approach which was tailored to the needs of the suspect. While based around the suspect’s welfare, this may result in vulnerable suspects being treated differently. However, such an approach may help detectives to build rapport with suspects and may also facilitate ‘equality of arms’. The suspect in this case provided a full confession during his first interview, although it is possible this may have occurred regardless of how he was spoken to by DS5.

Another detective said that his planning for an interview with a vulnerable suspect would not change, however, he would consider his style and the questions asked:

“If I’m honest I wouldn’t say I prepare any differently...because the questions still have to be asked. You might try and temper your questions I suppose, obviously you're not going to speak to a 14-year-old child in the same manner as you would talk to a 72-year-old lady.” (DC2)

Similarly, DC7 noted that the question structure he used would remain the same, although he may simplify his language during the interview:

“If you interview correctly, you should be asking the big open questions, the tell me, explain, describe to me...and as long as you gauge and grade your language appropriately, so sort of simplify everything, the question structure remains the same as far as I'm concerned.” (DC7)

Many detectives were mindful of the language they used during interview and may tailor that according to the need of the suspect, a finding consistent with the research of Oxburgh et al. (2016a), where detectives were mindful of the need to provide in-depth explanations to vulnerable suspects. That said, those with learning disabilities, cognitive impairments and autism may find open questions more difficult to answer (Crane et al., 2016; Farrugia and Gabbert, 2022). This is a departure from PEACE training which prioritises the use of open questions. It is not known whether detectives are aware of this research and the implications for practice, which may require a different approach to be taken when interviewing suspects with these conditions. However, 38 per cent of detectives (n=35) showed an awareness that open questions can be problematic for vulnerable suspects and impact the information obtained (Oxburgh et al., 2016a, p.143).

7.2.3 Adjustments Relating to Temporal Factors

Interviews with detectives highlighted that there is some discretion regarding adjustments for interviews with vulnerable suspects. DC12 stated that any adjustments made would depend on the nature of the suspect's vulnerability but that he had previously made adjustments of a temporal nature:

"It depends on what the vulnerability is. If there's something that's been flagged up...we had three suspects in for a murder. I interviewed one of them and their concentration span was relatively short, in the region of 20 minutes. I suppose in instances like that, if you're aware of that going in, you have to factor that into your planning." (DC12)

On occasion, there were also comments in the custody record which suggested that breaks in the interview may be required if the suspect became upset (3DEF) or aroused (3PQR), indicating that HCPs were also mindful of interview duration and relevant adjustments which may assist suspects.

7.2.4 Adjustments Relating to Spatial Factors

During semi-structured interviews, one detective and one legal advisor (from different forces) spoke of undertaking interviews with vulnerable suspects in a medical facility. AAs also spoke of adjustments they observed during suspect interviews, including AA9 who recalled an interview with an autistic suspect who did not want to sit near the corner of the room or too close to the table, both of which were accommodated by the interviewing detectives. The layout of the room and the potential impact of where parties sat, will be explored in the next chapter.

7.2.5 Other Adjustments which may be Required for Vulnerable Suspects

On occasion, detectives considered adjustments to the structure of interviews with a vulnerable suspect. Two examples will be explored in this section, both of which concerned the challenge stage of the interview. DS4 interviewed a vulnerable suspect with a learning disability and was mindful of this stage of the PEACE framework:

"The planning for [Name], it was very much like 'Right, well let's go in, let's treat it as an ABE', because at no point are we ever gonna be able to challenge her. We can ask her to clarify things, but if we start challenging, we could have her going down any route that we wanted. Because I think she could've been easily led during that interview procedure." (DS4)

DS4, in discussion with his co-interviewer and the interview advisor, decided not to challenge the suspect during these interviews out of concern for leading the suspect. ABE guidance (see section 4.6) does advise interviewers on appropriate question types to use with vulnerable witnesses, and advocates for clarifying accounts, but only where inconsistencies are significant (Ministry of Justice, 2022, p.94). The approach taken by DS4 appeared consistent with the ethical approach to interviewing advocated by the PEACE framework, which prioritises obtaining an accurate and reliable account over obtaining a confession.

Additionally, Case 22 provided an interesting insight into detectives' considerations around challenging the suspect. The legal advisor and suspect went for a consultation leaving the AA and detectives in the interview room with the visual recording still running:

'DC notes that the suspect is happy to talk, but if he probes her too much, he thinks that she will go no comment. Can see the DCs considering the strategy for how they are going to question the suspect' (Case 22 Observations)

It was surprising to hear detectives discuss tactics in the presence of the AA. Whether the detectives perceived the AA to be an ally cannot be established, as these detectives were not interviewed. However, it highlights some interesting dynamics which took place during breaks in the suspect interview.

This section has highlighted some of the adjustments detectives considered when interviewing vulnerable suspects. These appeared to be made on an individual basis, depending on the nature of a suspect's vulnerability. However, with a sample of this size, this research cannot establish the frequency of adjustments implemented for vulnerable suspects to enable better comparison to the research of Geijssen et al. (2018a). The next section will explore the visual recording of vulnerable suspect interviews.

7.3 The Visual Recording of Suspect Interviews

Section 60 of PACE and Code E requires all suspect interviews are audio recorded. While there is no statutory requirement for the visual recording of suspect interviews, para 2.2 of Code F notes an officer may consider this beneficial where a suspect requires an AA, if a third party makes such a request, if the suspect is deaf and/or blind, or if the officer believes it would aid the investigation. While para 2.2 of Code F does not explicitly state that visually recorded interviews should be undertaken for those who are vulnerable, the presence of an AA infers that this recommendation

applies to those who are vulnerable. Additionally, the Mendez Principles recommend that all interviews are audio-visually recorded to act as a safeguard from mistreatment and suggests that any deviations from this standard are documented (APT, 2021, p.23).

The use of visual recording may, in part, depend upon the resources at a force's disposal and the age of interview suites⁷⁷. Officer discretion and the culture within a force or department may also influence whether these interviews are visually recorded. One may anticipate that interviews on homicide investigations may be visually recorded, in part, due to the seriousness of the offences being investigated. This is partially borne out in the research findings. However, some forces implemented visual recording of their suspect interviews more than others, as Table 7.1 highlights.

Table 7.1: Visually Recorded Interviews by Police Force

Force	No. of interviews visually recorded	Total No. of suspect interviews	Time period covered in the sample
Alameda	2	65	Mar 2017 – Mar 2018
Bluesville	23	27	Apr 2016 – Jun 2018
Sunnydale	34	35	Aug 2015 – Feb 2018

These findings indicate that detectives in Bluesville and Sunnydale visually recorded suspect interviews more than detectives in Alameda, despite the fact that some interviews sampled in Bluesville and Sunnyside took place 18 months prior to those sampled in Alameda. Visual recording facilities were available in Alameda as two interviews in this sample were visually recorded. A senior officer noted that while not all interview rooms in Alameda had video recording facilities, there was a presumption for visual recording where the suspect was vulnerable, in line with Code F, para 2.2:

“At every site we have at least some rooms that have that facility...I think there would probably be a presumption in favour of visually recording an interview of a vulnerable suspect...to mitigate any potential complaints, or concerns around due process...but also in order to have a fall back in terms of

⁷⁷ In some fieldwork locations, visual recording facilities were not available.

monitoring their ongoing welfare and treatment...something like 40 to 50 per cent of our interviews have visually recording capability.” (DCI11)

The low number of visually recorded suspect interviews within Alameda suggests that this presumption was not acted upon in practice. It is possible that visual recording facilities were not available at the time some interviews were conducted. Additionally, several suspects in Alameda were not afforded an AA, so they may not have been identified as vulnerable. However, some suspects with an AA did not have their interviews visually recorded. This raises the question why detectives are not enforcing the policy discussed by supervisory officers (DCI11). Possible reasons were noted by a legal advisor who acted within Alameda:

“In this area, the majority of interviews are audio recorded. Homicide interviews are amongst those where some officers have a preference for video recording, but I have to say that’s still in the minority, which is interesting to me given the amount that can be read from body language and nuance. It doesn’t seem to be as relied upon locally as in some force areas. I’ve done video interviews in other force areas where it’s de rigueur; if it’s a homicide case, it’s video recorded. End of.” (LA01)

This suggests the visual recording of suspect interviews was influenced by the preference of interviewing detectives, and that this differed from neighbouring forces. However, this research has not been able to ascertain why practices differed in Alameda. McBarnet (1981a) commented that where the law is unclear, this allows for discretion to be exercised. Para 2.2 does not impose a clear obligation on the police but merely makes a suggestion, where one ‘may consider this beneficial’ and therefore, this may potentially explain why forces are using visually recorded interviews differently. Although the Mendez Principles recommend the audio-visual recording of interviews, this documentation did not exist when fieldwork was undertaken, and therefore, detectives interviewed would not have been aware of this recommendation.

Benefits associated with visually recording interviews include safeguarding suspects’ rights (APT, 2021), but also protecting detectives from allegations of malpractice (Dixon, 2006). The interview itself may also have some evidential value, which may assist the prosecution or defence case. DC13 noted a homicide interview where the suspect acted out the stabbing of the victim, which contradicted his account that the victim ran into the knife. This was played in court and may have been influential in the jury’s decision-making. If visually recorded interviews have the potential to aid the

prosecution case, it is somewhat surprising that these are not universally used across England and Wales, especially for serious offences.

Visually recorded suspect interviews may also benefit vulnerable suspects, as if concerns are raised about the reliability of an interview, one may be able to make inferences from the demeanour of the suspect during the interview. One may also consider whether a suspect appears to understand proceedings with reference to their body language, eye contact and facial expressions. It appears that there are benefits to both the police and vulnerable suspects of visually recording suspect interviews which may support proposals, such as those contained within the Mendez Principles, to standardise the use of audio-visual recording. There certainly appear to be arguments in favour of making this mandatory on serious crime investigations.

7.4 Summary

This chapter has explored the working practices of third parties and detectives which take place prior to the interviewing of vulnerable suspects, highlighting that on occasion rules and guidance are not always adhered to, both by third parties and detectives. Interactions between third parties and the suspect during their detention have the potential to affect the interview itself (Quinn and Jackson, 2007; Sukumar et al., 2016a). Third parties in this research valued having a consultation with the suspect prior to the interview. However, these findings identified that some AAs do not always adhere to the guidance and training they receive, not to attend the legal consultation due to their lack of legal privilege. AAs are subject to a little direct supervision (from scheme coordinators) whilst at the police station and there appeared to be few negative consequences of attending the legal consultation, which may reinforce these practices.

It has been argued that the current rules on legal privilege hamper the ability of the AA to undertake their role effectively (Dehaghani and Newman, 2017; Dent and O'Beirne, 2021). Attending the legal consultation to ensure, where possible, that the suspect understood their legal advice, and/or aiming to support the suspect is consistent with a welfare-based approach. Furthermore, if the presence of the AA enabled vulnerable suspects to understand their rights and legal advice, one may argue that this may facilitate 'equality of arms'. However, this research was unable to establish whether these benefits were realised by vulnerable suspects.

This chapter also explored how detectives planned for interviews with vulnerable suspects. A range of adjustments were considered by detectives, most frequently regarding communication, which indicated that some suspects are treated with due

consideration and respect. Where discretion is exercised to implement adjustments, this could result in the disparate treatment of vulnerable suspects. That said, adjustments made for the suspect's benefit may enable 'equality of arms' and promote fair treatment. However, it was noted in the previous chapter that detectives are very conscious of ensuring that interview evidence is admissible at trial. This may be a stronger driver of behaviour and aligns more with crime control principles, which seek to minimise opportunities for any legal challenge (Welsh et al., 2021). Therefore, it is possible that the motivations for making adjustments for vulnerable suspects are multi-faceted. The next chapter seeks to explore how detectives interview vulnerable suspects and the working practices of third parties.

Chapter Eight: The Working Practices of Detectives and Third Parties During the Suspect Interview

This chapter aims to establish how the police interview vulnerable suspects in homicide and attempted murder investigations. It examines what takes place during the suspect interview, focusing on the interactions between detectives, the vulnerable suspect and third parties. In particular, this chapter explores the decisions (and interventions) made by actors within the interview room, whether guidance is adhered to (or not), and why. It also highlights that some third parties play a much more active role in the interview, than some previous research has identified (Medford et al., 2003; Farrugia and Gabbert, 2019) and begins to explore why this may be the case.

As explored in Chapter Four, the primary aim of an investigative interview is to gain an accurate and reliable account (Shawyer et al., 2009). The general principles of investigative interviewing set out in the PEACE framework (supported by the Authorised Professional Practice (APP) for investigations (College of Policing, 2022)) will be referred to as 'best practice' within the context of how detectives undertake suspect interviews. The suspect interview may form a key part of an investigation, especially if an account (admissions or denials) is provided. However, vulnerable suspects may be at risk of making false or inaccurate statements to the police (Gudjonsson, 2003; APT, 2021). To mitigate this risk, vulnerable suspects are entitled to safeguards during a police interview, including an AA and, where relevant, an interpreter (see Chapter Three). In addition, all suspects are entitled to free and independent legal advice (section 58 Police and Criminal Evidence Act 1984 (PACE)). It is important that safeguards are effective and facilitate 'equality of arms', to ensure that a vulnerable suspect is treated fairly. This means that an interview is not coercive or unethical and any account by a suspect is provided voluntarily (Tudor-Owen et al., 2022, p.viii). This should minimise the risks of false confessions and ensure the suspect is able to act in their best interests.

This chapter draws upon the observations of police recorded suspect interviews (n=126) involving 27 suspects⁷⁸, supported by semi-structured interviews (n=37) to

⁷⁸ This equates to 4.6 interviews undertaken per suspect. However, there were four suspects who were only interviewed once, and one suspect who was interviewed 19 times over two periods of detention (some of these interview parts only lasted 5 minutes as the suspect repeatedly wanted to adjourn to speak to his legal advisor). Additionally, caution needs to be taken with this data as interview adjournments in Alameda formed separate recordings, yet in Bluesville and Sunnyside, brief adjournments were not separate recordings as recordings were paused/left running and not terminated.

explore how interviews of vulnerable suspects are undertaken on homicide investigations. This has seldom been done in previous research, especially using qualitative methods, which can provide rich data and illuminating insights into the interview process. While the sample in this research are small and one needs to be cautious in generalising the findings, it is hoped that this exploratory research will provide an insight into the working practices of detectives and third parties during the interviewing of vulnerable suspects.

This chapter will broadly follow the sequential ordering of a suspect interview in line with the PEACE framework (College of Policing, 2022) to provide the reader with a 'feel' for how these suspect interviews take place. Initially, the layout of the interview room will be explored before attention turns to the introductory stages of the interview (often where the engage and explain phase of PEACE takes place). The account and challenge stage of the interview will then be addressed which will also focus on third party interventions, before closure of the interview is explored.

8.1 The Layout of the Interview Room

One of the first things to occur once actors enter the interview room is that they will take their seats. Therefore, the layout of the interview room and the potential impact this may have on interventions of third parties will be considered. Suspect interviews predominantly take place within the custody unit of the police station (see Code C)⁷⁹. As noted in Chapter Four, a suspect interview room tends to be a relatively small square or rectangular room which is sparsely furnished. Research suggests that officers believe that the layout of the interview room is important and that they are involved in the manipulation of this context (Hoogesteyn et al., 2019).

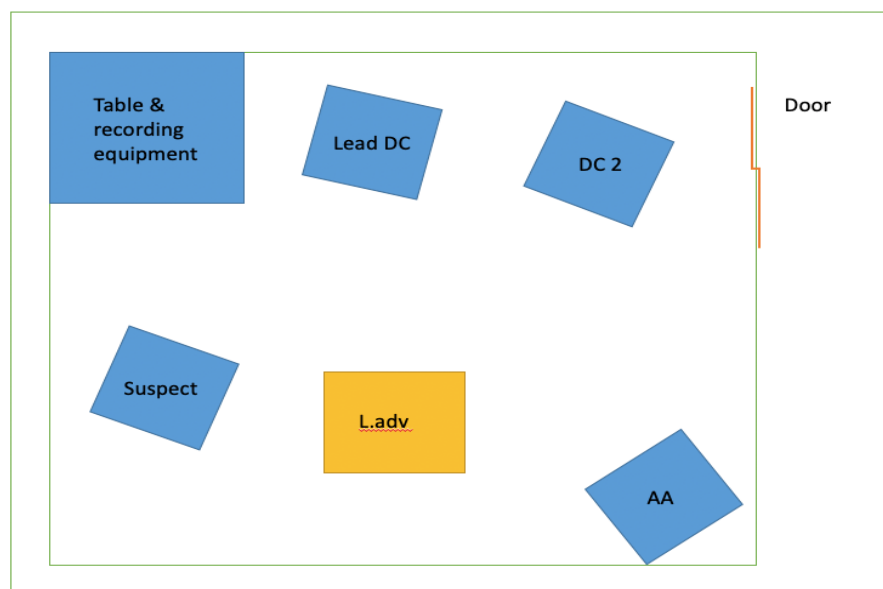
During fieldwork, when interviews were visually recorded, a record was made of the layout of the interview room and where individuals were seated. However, some footage only focused on the suspect so part of the room and the positioning of detectives could not be observed. In these cases (n=4), on three occasions the suspect sat next to the legal advisor and on the other, the appropriate adult (AA) sat next to the suspect. In most visually recorded interviews where the whole room could be seen, detectives sat on one side of a table with the suspect directly opposite (n=5).

⁷⁹ There has been a rise in the use of voluntary interviews (Code C, para 3.21) in recent years (Pierpoint, 2020), although these are beyond the scope of this study, which focuses on suspects detained at the police station.

On occasion, one detective would sit either on the corner of the table or off to the side (n=3), which gave me the impression of a slightly less formal seating arrangement.

There were two cases (Cases 13 and 15, both involving suspects who were the mother of the victim) in Bluesville, where the interview layout was noticeably different. The table was in the corner of the room, with detectives sat opposite and towards the suspect (see Figure 8.1). The only difference between the layout in Cases 13 and 15 was that in Case 13, there was no-one sat in the location of the orange square. This is because there was no AA present and the legal advisor sat in the space marked AA.

Figure 8.1 – An Alternative Suspect Interview Room Layout (seen in Case 15)



At times, detectives leant forward towards the suspect, placing their arms on their legs. My impression was that, in these cases, the detectives appeared interested in what the suspect had to say, and this appeared less confrontational towards the suspect. The table in the corner took away a barrier between the parties and provided spatial openness. Spatial openness has been a factor in improving rapport between individuals (Dawson et al., 2017). However, some suspects may feel uncomfortable in circumstances where a room layout is different to what they anticipated. The detectives involved in these interviews were not spoken to as part of this research, so it was not possible to explore their rationale for the layout of the interview room. However, layout was a consideration of some detectives ahead of the suspect interview, albeit there may be some constraints depending on the facilities:

“In [Station] your seats are very much set where they are, the table is there, the seats are there, so you can't move the things around. But if you put an individual seat in there, that can be moved around.” (DC14)

This detective noted that these considerations often come with experience, which supports the idea that policing is a craft developed over time (see Tong and Bowling, 2006). However, he also noted other reasons for adjusting the furniture in the interview room:

“You sort your room out before you do your interview, so your solicitor isn't sat next to your police officer intimidating them...So you remove it all by...saying to the solicitor, ‘I need to manage and risk assess this interview, where you are, as I can't see you. You need to be sitting there with your client’ and stuff like that.” (DC14)

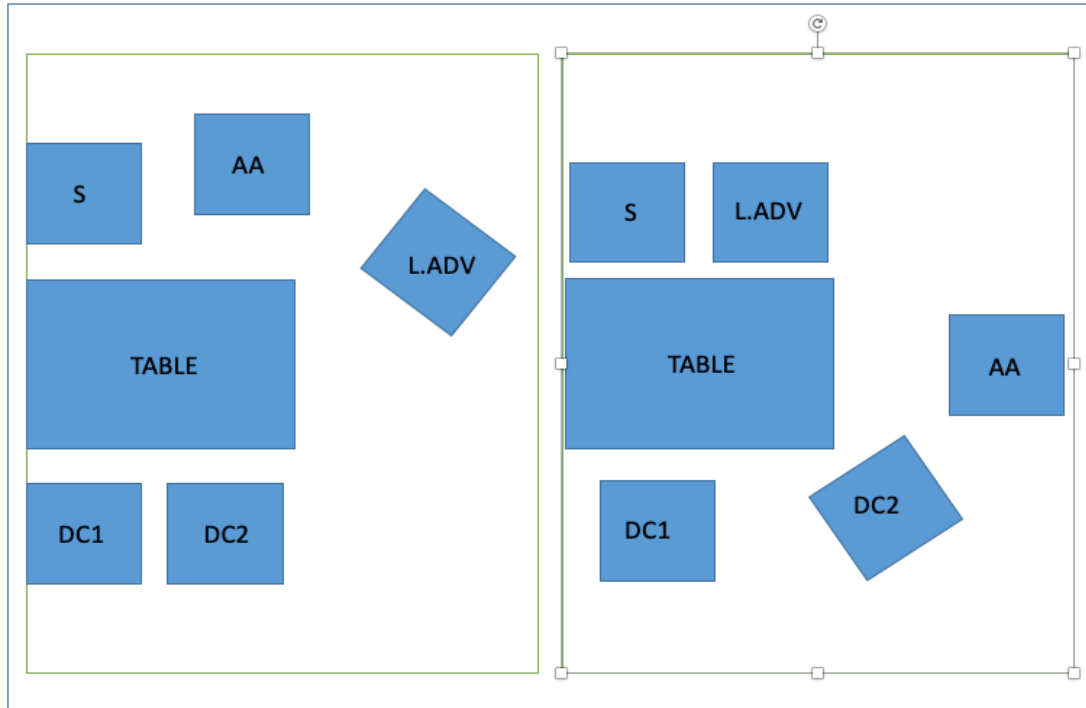
This highlights two interesting points. Firstly, managing the risk of those within the interview room. Risk has become a key theme in policing (Ericson and Haggerty, 1997), and several detectives more broadly felt they had a duty of care to all within the interview room. Secondly, this quotation raises the issue of tactics which may be used during the interview, not just by the police, but also by third parties. The example provided of a legal advisor trying to intimidate detectives (also noted by DC13⁸⁰) may be perceived as an attempt to disrupt the power imbalance and the control that the police have over the interview. However, it is worth stating that third parties were not observed attempting to intimidate others within the interview room during this research.

8.1.1 Seating Arrangements for Third Parties

The positioning of the legal advisor and AA during the suspect interview was the area of greatest discrepancy across the sample. Of the visually recorded interviews sampled, there was one case with no third parties present, and in another three cases, there was no AA present during the interviews. Of the remaining eleven visually recorded cases, the positioning of third parties varied, but predominantly reflected the two examples provided in Figure 8.2.

Figure 8.2 - Typical Suspect Interview Room Layouts

⁸⁰ Detectives 13 and 14 were both within the same force and it is possible that the legal advisor referred to by both, is the same individual.



The legal advisor sat next to the suspect in five cases, with the AA next to the suspect in four cases. In one case the AA was sat behind detectives, facing the suspect and in two cases the AA was slightly behind the suspect. Additionally, in one case the AA was in the corner of the room, notably away from the suspect.

Respondents spoke about the layout of the interview room during their interviews. Firstly, third parties were asked about where they may be sat during suspect interviews and their thoughts on this:

“Sometimes they’ll sit you at the back behind the DP [detained person] and I say ‘No, I can’t sit there’. I need to be in eye shot, because sometimes you can tell that they’re [detainee] sort of thinking ‘What the hell are they talking about?’” (AA5)

This AA notes that detectives would sometimes try and control where they sat. However, if the AA could not see the face of the suspect, it may be difficult to establish if they understood the interview process and the questions being put to them. Another reason that AAs were keen to sit in line, or to face the suspect was to provide support:

“It’s important that I’ll be able to see his facial features, I look at his face a lot. But I’m also watching him a lot for eye contact, so if he looks at me and I like look at him and say ‘Are you alright?’ It gives him a chance to say ‘Yeah, thanks’. Just to reassure him a bit, you know.” (AA4)

Several AAs noted the importance of sitting in a position where they could view the facial expressions of the suspect, and this also enabled them to provide support and reassurance. This indicates that AAs see the provision of support to suspects as an important part of their role, consistent with the findings of Pierpoint (2005). Legal advisors did not comment upon the layout of the room in a similar way, although fewer were interviewed.

There were also two cases where the positioning of third parties changed during the series of interviews. In Sunnydale, one case (Case 20) had a familial AA next to the suspect during the first three interviews. However, the following day the AA was provided by an accredited scheme, and the legal advisor sat next to the suspect with the AA in the middle of the room. This may have been because the legal advisor was more familiar to the suspect than a newly appointed AA. Only once did a third party move during the interview, specifically, an AA moved her chair to be closer to the suspect. This may have only been observed once because in some circumstances the third party was already close to the suspect, possibly moved their seating prior to the recording starting, or another third party was between the two. However, this example demonstrates that the AA made a physical effort to comfort the suspect and provide additional support.

The positioning of parties during the interview is interesting for a number of reasons, notwithstanding that it may provide an indication of the importance with which third parties are perceived by the police. It also may indicate whether the detectives are making efforts to build rapport with suspects and make them feel more at ease by making the interview room feel less adversarial (Alison et al., 2013). Where two people are sat on either side of a desk, a notable barrier, it may be perceived as an 'us versus them' situation which may generate defensiveness in a suspect (Hoogesteyn et al., 2019). This may explain why some detectives removed the table altogether or sat to the side of it, and this may be a tactic to build rapport with a suspect, in the hope that the suspect will feel more at ease and provide an account (Goodman-Delahunty and Howes, 2019).

It is worth considering the positioning of third parties and how this may impact their ability to fully participate in the interview. That the layout of the interview room can be manipulated (albeit to varying degrees), highlights the control that the police have

over the interview process⁸¹. Indeed, the power imbalance between the police and a suspect is one reason why the Mendez Principles argues that detained suspects are vulnerable (APT, 2021, p.28). Where a third party is positioned 'out of the way', this could impair their ability to observe the suspect and it may be difficult to establish whether a suspect is struggling to understand a line of questioning. As a result, third parties may miss opportunities to intervene. One may also speculate that if positioned at the back of the room, a third party may feel somewhat removed from the interview, which may discourage their participation. In such circumstances, one interpretation may be that third parties are not valued by the police and active participation in the interview is not encouraged. Whilst some AAs and legal advisors may raise the layout of the room with detectives or move furniture themselves, this may be dependent on the relationships between the police and the third party, their training and experience and also their confidence to raise any concerns. These findings do highlight that, on occasion, third parties can be sat at the back of the interview room and while some third parties may wish to sit in this position, whether this impacts their participation is not known and requires further exploration.

8.2 Commencing the Interview

This section considers what took place at the start of the suspect interview and builds on the findings in the previous two chapters which detail the planning and preparation which occurs prior to a suspect interview. At the start of a suspect interview, the police should explain to the suspect their rights and entitlements (see Chapter Four). This stage of the interview falls under the 'engage and explain' stage of the PEACE framework which provides an opportunity to build rapport with the suspect (Walsh and Bull, 2012). Generally, detectives were found to be compliant with the guidance set out in PEACE, and explained to suspects their rights and entitlements (replicating the findings of Griffiths and Milne (2006), Leahy-Harland (2012) and Minhas et al. (2017)). However, on occasion, suspects did not appear to fully understand these rights. The decisions of third parties whether to intervene in such circumstances, and the nature of these interventions may contravene the guidance provided to third parties, and consequently, may prove detrimental to the suspect.

This section also explores the working practices of detectives which may influence the course of the interview, delivering the suspect's rights (notably the caution) and setting out ground rules for the interview. The beginning of the interview is an

⁸¹ There are examples where the suspect and/or third parties can exert control, e.g., exercising silence, coming out of their cell etc.

opportunity for the police to exert their control over the actors present, and detectives often set out ground rules for how third parties and the suspect should conduct themselves throughout the remainder of the interview. Additionally, detectives often take steps to safeguard and protect the integrity of the interview, to mitigate against any future challenges concerning the admissibility of evidence at trial. These will now be explored in turn.

8.2.1 Delivering the Suspect's Rights and Entitlements

Detectives in the vast majority of interviews observed introduced themselves in full and all suspects (n=27) were reminded of their right to legal advice, although one suspect did not take up this right. The caution was delivered to the suspect at the start of every interview. This was broken down into three parts and clarified with the suspect to ensure understanding in the first interview, and often this was revisited at the start of interviews undertaken on a separate day. As explored in Chapter Four, this is important as the caution can be difficult to understand (Clare et al., 1998), especially for vulnerable suspects (Fenner et al., 2002).

During observations, not all suspects initially understood the caution. For example, Case 13 involved a suspect who had the caution explained to her and broken down into three parts. The suspect was asked a question to establish understanding, 'Do you have to answer my questions today?' The suspect responded 'yes'. The detective explained that this was not the case. The question was asked again, and this time the suspect responded 'no'. However, whilst saying 'no', she nodded her head, suggesting 'yes', indicating that she may not have fully understood. If the suspect believed she had to answer the detective's questions, she may not have fully understood her right to silence. The suspect provided an account during this interview, yet if she failed to understand her right to silence, she may not have acted in her best interests, providing answers she would not have done so otherwise. There was no AA present during this interview, and although a legal advisor attended, they remained largely passive throughout. One may argue that the legal advisor should have intervened at this stage to ensure that the suspect truly understood the caution and its implications.

Another case where the caution proved problematic involved the interview of a vulnerable lady (Case 14). An AA and legal advisor were present for these interviews, although their interventions were arguably detrimental. Detectives informed me that these interviews were subsequently ruled inadmissible for trial as it was believed that

the suspect did not understand the caution (she had since been diagnosed with a low IQ). In the first interview, detectives spent about 25 minutes on introductions, explaining what a recording is, and discussing the caution. It was broken down into three stages but discussed at length as the suspect did not appear to understand it:

'AA calls the suspect's name, asks her to look at her. 'You had a conversation with your solicitor before we all came in here, yeah? You understood what the solicitor was here for and what you talked about. This is what we want to talk about now. The sooner we can do this the better'. Suspect responds a lot clearer this time. AA says 'he's going to ask the questions and you can answer what you know...ok?' (Case 14 Observations)

'AA asks if suspect wants to speak to legal advisor again. Suspect says she wants to go home. AA says that she can't go home until 'we've done all this and had an interview'...Asks if she is going to answer the officer's questions. Repeats this again. Suspect says 'What shall I say?' AA notes that they haven't asked her anything yet, that she can answer 'yes or no'. Asks if the suspect is going to listen to what the officer says, and the suspect says 'no'. AA replies 'Right, well until you do answer some questions, you won't be able to go home'. Suspect appears surprised by this and AA states 'You've got to answer some questions', 'You keep asking if you can go home. The sooner you answer the officers' questions...if you listen to what is being said'. DC then tries to explain that he has a few questions to ask the suspect.' (Case 14 Observations)

These interventions, by a professional AA, appear to constitute a breach of PACE and one could argue that these render the partial admissions later made by the suspect unreliable (section 76(2) PACE). These interventions occurred at a point in the interview where the caution was being explained. The first part of the caution states that the suspect has a right to silence and does not have to say anything. However, these interventions implied that the suspect cannot go home until she answered the officer's questions. This is contrary to the caution and is likely to be confusing for a vulnerable suspect who may believe they have to answer the officer's questions.

At this point, the suspect may have benefitted from having the caution reiterated and the AA corrected by either the detectives or the legal advisor. It is not known why the legal advisor failed to intervene, although they did later intervene during these

interviews in a manner which may have been detrimental to the suspect's interests (see section 8.4.3). The decision to exclude these interviews from evidence at trial highlights the importance of ensuring that PACE is adhered to, and that suspects understand their rights.

Whilst the advice of the AA in Case 14 appeared well-intentioned (it was said in a soft and supportive manner, and the AA also moved her chair closer to the suspect and provided her with a tissue), it is beyond the remit of the AAs role. Advice of this nature (concerning silence) arguably falls within the domain of the legal advisor who is in a better position to advise the suspect about what to say in the interview, and whether to provide an account or not. The example in this case contravenes guidance provided to AAs concerning the scope of their role during the interview, which does not include the provision of legal advice (National Appropriate Adult Network (NAAN), 2018, section 6.4). That the suspect asked, 'what shall I say?' indicated she may not have discussed with the legal advisor whether she should provide an account or did not understand any advice given. This lack of understanding further raises questions whether the suspect was fit for interview, something neither third party appeared to make representations about.

8.2.2 Setting out the Ground Rules

At the start of the interview, many detectives outlined the purpose of the interview and explained the offence(s) being investigated and the topic areas they were going to cover. In addition, detectives set out ground rules for how the interview was going to be conducted. Ground rules are set out at the start of an interview and provide guidance to the interviewee as to how to conduct themselves (Bryant and Bryant, 2021, p.587) and guidance about these are provided specifically in ABE guidance (see section 4.6 for further details) for vulnerable and intimidated witnesses (Ministry of Justice, 2022, p.79). Ground rules were frequently set out by detectives in the suspect interviews observed and it was relatively common for at least one interview involving each suspect to contain ground rules, similar to those raised in Case 18:

'DC requests that if the suspect decides to answer, he gives detailed answers. Asks the suspect to listen to him, without interrupting and says he won't interrupt the suspect.' (Case 18 Observations)

Less commonly, when detectives set out ground rules, some stated that they expected the suspect to tell the truth:

'DC says that if the suspect does choose to talk during the interview, that he tells the truth. Suspect agrees.' (Case 9 Observations)

Another ground rule emerged in Case 15, where the suspect was encouraged to inform detectives if they did not understand something:

'It is the suspect's opportunity to tell the police what happened, and for the police to ask the suspect questions. DC says it is important for the suspect to say if she does not understand, and if she is not sure of an answer, to say so.' (Case 15 Observations)

This guidance may help to minimise misunderstandings and encourage suspects to seek clarification if they do not understand something during interview. However, there does appear to be a slight contradiction that suspects were told this was their interview, yet that process was controlled largely by detectives who decided when to interview the suspect and what questions to ask, in line with the ground rules mentioned above.

The above quotations are examples where detectives set out their expectations of the suspect during the interview and provides and examples where detectives displayed their authority and control over the interview from the earliest stages. By setting out that the suspect should not interrupt, detectives have more control over what gets raised and when. There were also practical reasons for ground rules, as having one person talking at a time will ensure a clearer audio recording, as if people talk over one another, it may be hard to establish what is said. Whether these ground rules were adhered to was another matter. It was not uncommon for suspects to interrupt detectives, to answer no comment before the detective finished asking a question, and for detectives to comment on this, requesting that they be allowed to finish their question before receiving a response.

The police hold a position of power and authority over suspects while detained within police custody (Skinns, 2010; APT, 2021) and establishing ground rules are a way in which detectives may remind suspects that they are in charge of the interview and what their expectations are. While setting out expectations and ground rules may assist with building rapport (Bryant and Bryant, 2021), not all detectives appeared concerned with building rapport:

"The premise is always the same for me. I will just hold back from them until we're in that interview environment. Because...I own that room. That's my

arena, that's my interview room. I don't want you feeling comfortable in that room. I want you to feel uncomfortable and I don't want you to know me. But I'm gonna know you at the end of it.” (DS4)

DS4 highlights the control he has over the interview, and how he wants the suspect to feel during this process. Yet, if a suspect feels uncomfortable, this may impact the rapport built between the suspect and interviewer and may negatively affect the likelihood of obtaining an account from a suspect (Abbe and Brandon, 2014; Brimbal et al., 2021), which may be contrary to detectives' overall goals. The next section explores how detectives attempted to safeguard interview evidence.

8.2.3 Safeguarding Interview Evidence

As noted in earlier chapters, detectives were mindful about ensuring any evidence that they obtained would be admissible at any subsequent trial. Detectives spoke during the semi-structured interviews of ensuring that procedural guidance was complied with, such as the decision to obtain an AA (although this was not borne out in practice among the sample of suspect interviews which were observed). During the suspect interview, detectives appeared to take steps to legitimise aspects of the interview to ensure that evidence was safeguarded. For example, where there was some uncertainty as to whether the suspect understood the caution, detectives sometimes sought the approval of the legal advisor:

‘Legal advisor is asked by DC if he has discussed the caution with the suspect, or if he is happy that the suspect understands the caution. Legal advisor says that he can not comment if his client has understood this, but he is happy the caution has been explained adequately’. (Case 8 Observations)

Detectives may check whether the legal advisor is happy that this stage of the process has been complied with, as this may act as a safeguard against allegations that detectives have not adequately explained the caution. Similarly, detectives also asked the suspect at the start of most interviews about their welfare. There are many potential extracts from my observation schedules which could be reproduced here, an example of which was from Case 21:

‘Suspect is asked and confirms that he is fit and well. DC confirms that suspect has been seen and assessed by the Dr.’ (Case 21 Observations)

The purpose of welfare checks at the start of the interview may be two-fold. Firstly, the detective may be concerned about the suspect and their welfare, and there were occasions where this genuinely appeared to be the case. Efforts were often made to ensure that suspects were warm and watered. As will be seen towards the end of the chapter, detectives were usually quick to respond to requests for a break in the interview, and sometimes proposed breaks for the suspect's benefit, which is consistent with best practice contained within the Mendez Principles (APT, 2021, p.26). There may also be benefits to treating suspects well. If a suspect believes they have been dealt with fairly and respectfully (consistent with procedural justice theory), they are more likely to accept their detention in custody and may be more compliant (Skinns et al., 2017). Roberts (2011), Bull (2019) and Goodman-Delahunty and Martschuk (2020) also noted that these principles may extend to the suspect interview and whether a suspect provides an account during interview.

Additionally, welfare checks may also help safeguard interview evidence against any future claims that the suspect was not fit for interview and that interview evidence should be excluded. Detectives were keen to ensure that evidence was secured, and DC1 discussed this during her interview:

“Once you are in court, any issues that you overlook or you just don't deal with are going to come and bite you...and you want to make sure that everything that they need is secured, so that there is no comeback. You know, there is no grounds for appeal because you've left something out or you haven't done something...So it does stretch right from the start of the investigation, and I think that can be hugely overlooked.” (DC1)

This provides some insight as to the influences on detective's working practices, and appears to drive some of the decisions that are made during the interview to ensure that evidence is secured and available for any potential future trial. This is consistent with research which acknowledges that the police and prosecutors are concerned with the admissibility of evidence (Heydon, 2018; Dehaghani, 2019).

8.3 The Account and Challenge Stage of the Interview

Once the introductions and legalities had been covered at the start of the interview, questioning related to the offence(s) (predominantly murder or attempted murder) for which the suspect had been arrested began. This section will initially explore how the questioning of suspects took place, and the impact this appeared to have on suspects and third parties. Interventions by third parties will also be considered.

In this research, there were a higher rate of admissions made during interviews than has been identified in previous research focusing on serious offences (e.g., Leahy-Harland and Bull, 2021). Ten suspects out of 27 provided no account to the police during interviews, and two of those provided a prepared statement during their interviews. Not all suspects who spoke during interviews made admissions and four suspects made denials during interviews. Therefore, 51 per cent of vulnerable suspects made admissions (full or partial) during their series of interviews although it is worth noting two suspect's raised defences (e.g., self-defence) and three suspect's accounts were somewhat jumbled. It is acknowledged that this is a small sample, so caution does need to be taken when interpreting these findings. This is a higher admission rate than has been identified in the existing research into interviews for serious offences, which ranged from 23 per cent to 39 per cent (Soukara et al., 2009; Leahy-Harland and Bull, 2016; Farrugia and Gabbert, 2020). That said, when one isolates the sample of vulnerable suspect admissions within Farrugia and Gabbert's (2020) research, admission rates are 46 per cent, which are similar to these findings. This suggests that higher admission rates for serious offences may be connected to the vulnerability of the suspect. It is worth acknowledging though that one limitation of field studies (including this one) is that it is not possible to establish the 'ground truth' and how accurate admissions made by suspects are (Meissner et al., 2012).

Interestingly, it was also identified that during this series of interviews (n=27) some vulnerable suspects shifted from providing an account to remaining silent (n=4), or vice versa (n=2). Only one of these shifts took place during an interview, with the remainder occurring between one interview and the next. Leahy-Harland and Bull (2016) did not identify any shifts in accounts during interviews, although some were noted in the research of Pearse and Gudjonsson (1999), Soukara et al. (2009) and Verhoeven (2018) (see Chapter Four for further details). There may be a range of different factors which influence a suspect to change the nature of their account, and these may vary depending on the type of shift which takes place (e.g., to or from admissions). These will be briefly explored in due course.

8.3.1 The Questioning of Vulnerable Suspects

As noted in Chapter Four, the suspect interview is an interaction which is dominated and controlled by the police. Officers can control the interview through the questioning of the suspect, and the topics covered (Thornborrow, 2002; Haworth, 2006). At the start of questioning, detectives often asked a range of open questions which sometimes elicited free recall from a suspect:

‘DC is very calm and asks lots of open questions, ‘explain to me why you felt like that?’, ‘how?’, ‘tell me about that then?’ (Case 22 Observations)

This is an example of best practice (PEACE, the APP on interviewing and the Mendez Principles), where suspects should be asked open questions at the start of the interview to elicit free recall (Oxburgh et al., 2015, APT, 2021). Questions may become more focused or closed as detectives hone-in on specific details. Questions were asked during interviews around relevant topic areas, and in many interviews the suspect was challenged. This is an important part of the interview and enables detectives to present evidence to the suspect, challenge any inconsistencies and clarify the suspect’s account (College of Policing, 2022). The extent of any challenge may depend on the account provided by the suspect (e.g., full admission or denial), the evidence available and the type of disclosure used during the interview (e.g., the strategic or tactical use of evidence⁸²), in addition to the vulnerability of the suspect⁸³. Detectives introduced a range of evidence during interviews, some of which was discussed with legal advisors in pre-interview disclosure briefings. Evidence commonly presented during interviews included CCTV, telephony, forensic evidence, and witness statements.

The observations highlighted the challenge stage as a key point in the interview which may prompt a change in the account provided by the suspect. This could be seen in two different ways. A suspect may shift from talking to exercising their right to silence, and vice-versa. Challenges took a variety of forms during the interview, and two tactics observed which appeared inconsistent with a fair and ethical approach to interviewing will now be explored further, the use of repeated questioning and attempts to circumnavigate no comment interviews.

8.3.1.1 The Use of Repeated Questioning

One area of tension which sometimes arose during the interview between detectives and suspects (and some third parties) related to repeated questioning. This occasionally generated hostile responses from suspects, as well as interventions from third parties (most often legal advisors):

⁸² These relate to the different methods for the disclosure of evidence during the suspect interview, see Chapter Four for further details.

⁸³ See Chapter Seven in relation to Case 14, where detectives decided not to challenge a vulnerable suspect.

'Suspect gets increasingly frustrated. DCs want to seek clarification but suspect claims they are trying to get him to say something and are asking him the same questions. DC points out an inconsistency in his account...Suspect replies, 'I've just said', 'I've told you' or similar...When discussing the victim's injuries legal advisor says to DC 'you did mention this, this morning,' DC says 'I will ask the question in my own time' and continues with the question...when suspect is asked if he stabbed the victim, legal advisor says to the suspect 'you told them before, you didn't, that's it'. (Case 7 Observations)

While the seven principles of investigative interviewing acknowledge that persistent questioning is not unfair (Home Office, 1992), it does appear to have an impact on the suspect interview and is often an indication of guilt presumptive questioning (Minhas and Walsh, 2021). At times, suspects provided responses to questions, which were vague or a little confused, and so it may be a feature of those interviews that detectives repeated questions to clarify inconsistencies. However, repeated questioning was also used when the answer from a suspect appeared clear. In these circumstances, this may damage rapport with the suspect (and third parties) as it may be perceived that the detective does not believe the suspect. There were three cases where suspects became hostile in response to what they perceived to be repeated questioning, and in two of these cases the suspect provided a no comment interview in subsequent interviews.

It has been suggested that detectives use repeated questioning to influence the account of the suspect (Moston and Stephenson, 1993) or exert pressure on them (Minhas et al., 2017). Where no answer is provided, asking a question repeatedly may seek to obtain a response, even a denial (Moston and Stephenson, 1993). A detective may seek to obtain an alternative response, perceived to be more in line with their hypothesis concerning the events which took place and these question types have been associated with guilt-presumptive lines of questioning (Minhas et al., 2017). However, there is a possibility that vulnerable suspects or those susceptible to suggestibility may change their responses if subjected to repeated questioning, resulting in an inaccurate account (Gudjonsson, 2003, p.348-351). That said, providing an account in response to repeated questioning did not take place during these observations, and if anything, appeared to be counterproductive due to two suspects shifting to no comment interviews.

8.3.1.2 Questioning Intended to Circumnavigate a 'No Comment' Interview

A number of suspects in this research (n=10) exercised their right to silence throughout their interviews and did not provide an account⁸⁴. Some interesting practices observed during these interviews related to questioning tactics which were used with suspects who did not provide an account. On several occasions, detectives asked questions which generated a non-verbal response by a suspect, something which most detectives commented on during the interview recording. Some of this questioning appeared quite effective in circumnavigating no comment interviews:

'DC asks 'when stabbing, show me the actions you were doing?' Suspect goes no comment but does then gesture as to how she was holding the knife and for how big the knife is. DC mentions the gestures that are being made.' (Case 22 Observations).

'Suspect is asked questions around a potential weakness/disability in his wrist. Is asked to hold up his arms, then to hold out his hands. He is asked which arm the weakness is in and he indicates by shrugging a shoulder that his weakness is in his right arm. This is then verbally clarified by the officer. Legal advisor intervenes that the suspect does not have to answer any questions he does not want to.' (Case 11 Observations)

These observations highlight that detectives are eliciting non-verbal responses from suspects who are otherwise exercising their right to silence. These are then stated for the interview recording so they can be used evidentially. This appeared an effective way of gaining information from suspects and sometimes also led to suspects providing limited verbal responses. Although, when these lines of questioning arose, the majority of legal advisors intervened.

It is not known how prevalent this form of questioning is during suspect interviews. However, one may query whether these lines of questioning are consistent with the principles of fairness which underpin investigative interviewing (Home Office, 1992), especially when used with vulnerable suspects who may be more susceptible to these tactics. As such, one may argue that these practices are not consistent with the 'spirit' of the PEACE framework, which sought to promote ethical interviewing (see Chapter Two for discussion of the spirit of the law). It is possible that this form of questioning

⁸⁴ Other suspects (n=6) exercised their right to silence sporadically and inconsistently or did so alongside providing some account.

is an example of compliance drift (see Innes, 2003), where detectives have developed lines of questioning which are perceived effective in trying to achieve an account from a suspect, whilst not being a breach of PACE.

Another tactic observed during interviews involved detectives questioning suspects in a manner which could be interpreted as attempting to provoke a reaction. These questions often used emotive language and were predominantly observed during no comment interviews, in the final interview with a suspect:

'DCs ask questions such as 'was she screaming, was she pleading with you?', 'why did she deserve to be axed in the head 39 times?', 'did you see the axe go in, did you see the blood?', 'did she hurt you that much?' No response given' (Case 8 Observations)

Although the suspect in Case 8 did not react to this line of questioning, this was not always the case. In Case 10 the interviewing detective asked the suspect about allegations relating to the theft of underwear and 'whether he masturbates into it or wears it'. Shortly thereafter, the suspect loses his temper:

'Well shut the fuck up then'. Tells DC to shut up again. DC says that the suspect is getting angry again as he is asking him a question.'...Legal advisor says to suspect that he did warn him that it was going to be challenging, and to keep calm' (Case 10 Observations)

This detective reflected on these interviews and the tensions which developed between the suspect and the detective, but also the suspect and the legal advisor during the interview:

"It had got quite fraught when I was asking him questions, and the solicitor said, 'I'd advise you to go no comment', because I was annoying him with the questioning, which, you know, I'm there to get a little bit of a reaction sometimes. He [suspect] started swearing at him [legal advisor] basically in the interview." (DC2)

Several interesting points arise from the tactics used by detectives in this section. Firstly, that detectives may use questions which elicit non-verbal responses to try and circumnavigate a no comment interview. Additionally, it also confirms that detectives may probe for a reaction during questioning. This may be beneficial to prosecutors

who may wish to develop a narrative⁸⁵ of the suspect as someone angry, with a temper and prone to outbursts. Yet, it may be more challenging for vulnerable suspects to control their temper during an interview, as acknowledged by DC7:

“Ordinarily, you can see them beginning to become agitated, but they hold it together. Vulnerable people probably haven’t, they’re probably at a disadvantage in that sense and it’s more sort of mmm...human nature just to react in some way I guess.” (DC7)

This detective notes a potential disadvantage that vulnerable suspects may experience during the interview, concerning the regulation of their emotions and behaviour. As a result, the aforementioned tactics may have a disproportionate impact, which may further increase the vulnerability and emotional distress of suspects, and also lead them to respond in ways which are not in their best interests.

As referred to earlier in the chapter, the police hold a position of power over a suspect who is detained and interviewed in the police station (Choongh, 1997; Skinns, 2011; APT, 2021). The next section briefly explores where suspects attempt to regain some of this control from detectives.

8.3.2 Taking Back Control from Detectives During the Suspect Interview

As noted throughout this chapter to date (and in Chapter Four), the police determine when an interview takes place, seating arrangements, the topics the suspect is questioned about, and the ground rules set at the start of the interview. However, on occasion, the suspect could be seen trying to address this power imbalance:

‘Suspect says to DC ‘Get me a cigarette and we’ll talk. How much do you want to solve this case?’ (Case 24 Observations)

One DC also noted that suspects could also do this by failing to come out of their cell for an interview in the first place, although there were measures detectives could employ to overcome this difficulty:

“Recently I conducted an interview with a vulnerable suspect who refused to be interviewed in an interview room, and we had to interview them in their cell with portable equipment.” (DC6)

⁸⁵ Which is not to say that this is not an inaccurate portrayal.

Additionally, one of the other ways that suspects could try and retain some control over the interview was by keeping the information that they have about an offence to themselves. However, this may not be in a suspect's best interests, especially if they are innocent or could raise a legally recognised defence. During the account, clarification and challenge stage of the PEACE framework, detectives have been observed undertaking a range of questioning tactics. The next section will explore interventions of third parties in relation to police questioning.

8.4 The Interventions of Third Parties During the Suspect Interview

Previous literature has found that third parties are largely passive during the suspect interview (Medford et al., 2003; Farrugia and Gabbert, 2019) (see Chapter Four for further discussion of the existing research). As can be seen in Table 8.1, legal advisors intervened more than AAs, which was not surprising as legal advisors were present during more interviews than AAs. Interestingly, the number of interventions by AAs in Alameda was noticeably lower than in Bluesville and Sunnyside, despite AAs spending broadly similar amounts of time in interview. There are many reasons which could impact why an AA intervenes, or not, including the skill of the interviewer, the vulnerability of the suspect and the participation of the legal advisor. Whether the way in which the AA was obtained in Alameda (see Chapter Six) had any impact on these findings cannot be ascertained. However, these findings do appear to highlight some interesting differences in the number of AA interventions during interviews undertaken in Alameda, which requires further exploration.

Table 8.1: An Overview of the Interventions by Third Parties During Interviews

Force	No. of Suspects interviewed, and the overall duration of interviews sampled	No. of AA interventions (excluding introductions)	No. of Legal advisor interventions (excluding introductions)
Alameda	10 suspects 2634 minutes	10 interventions over 1310 minutes	144 interventions over 2634 minutes
Bluesville	9 suspects 1610 minutes	56 interventions over 1481 minutes	94 interventions over 1610 minutes
Sunnydale	8 suspects 2083 minutes	62 interventions over 1267 minutes	156 interventions over 1686 minutes

Total	27 suspects 6327 minutes	128 interventions over 4058 minutes	394 interventions over 5930 minutes
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In this research there were interviews where third parties made no interventions. The suspect in Case 23 even noted this at the start of the second day of interviews commenting that “*the woman yesterday, she didn’t say a word did she*”. However, there were a number of interviews where third parties played quite an active role in the interview. The nature of some of these interventions will now be explored, broadly in line with the roles of the AA and the legal advisor (see Chapter Four).

8.4.1 Facilitating Communication

Facilitating communication is one aspect of the AAs role (Code C, para 11.17), however, this is not defined within Code C or the Notes for Guidance. NAAN (2018) suggests that this involves assisting the suspect to understand and answer questions. This is important because if a suspect does not understand a question, there is a risk they may provide an answer which is inaccurate or self-incriminating. During interviews, detectives did appear mindful of the language they used, and it was not uncommon to see detectives explain the terms they were using or rephrase a question. Third parties also helped to facilitate communication. This often involved asking whether the suspect understood, which frequently prompted further explanation:

‘DC reads out a special warning with regards to a weapon. AA looks at suspect and asks if he understood. Suspect confirms not. DC explains the special warning. AA is looking at the suspect during this explanation. AA asks if suspect is sure he understands, which he is not. Legal advisor then intervenes and asks the suspect if he wants a consultation. He does and the interview is paused.’ (Case 11 Observations)

This was one example (from several observed during this case) of collaborative practice, where the legal advisor, AA and detective worked together to ensure the suspect understood the special warning⁸⁶ given during the interview. There were also examples across other cases where third parties clarified understanding:

‘Legal advisor asks suspect ‘Can I just clarify that, when you say you genuinely don’t know...about the court date, or genuinely don’t know about

⁸⁶ A special warning is an additional caution provided during an interview in relation to adverse inferences which may be drawn (College of Policing, 2022)

the day you wrote them?'. Suspect confirms the latter.' (Case 15 Observations)

AAs were asked during semi-structured interviews about their participation in homicide interviews and whether they made any interventions. Several AAs said that they rarely intervened, with a couple noting that they would only do so if they felt the suspect did not understand the questions they were being asked. However, some AAs did report making interventions during an interview and both AA4 and AA6 reported intervening due to repeated questioning.

Interestingly, a couple of AAs reflected that their confidence had influenced whether they had previously intervened during interviews. One AA said she was now more confident and would intervene, whereas previously she may not have. While this indicates the benefit of experienced AAs attending the police station for serious offences, three AAs interviewed said that their first deployment was to a homicide investigation. This may place an awful lot of pressure on an AA in such circumstances, where they may not have had the opportunity to gain experience and build their confidence.

Another AA, AA8, noted that he had the confidence to intervene during interview because of the good working relationships he had with officers, whereby, he felt that if he raised an issue that he would be taken seriously. Similar sentiments were echoed by several AAs, which indicates that there may be some benefit to a closer working relationship with the police. That said, a closer working relationship may, on occasion, dissuade AAs intervening during interview in order to maintain positive relations (a principle akin to 'interview room lore' (Pierpoint, 2005, see Chapter Three). Third parties also intervened in other ways during the interview, and some were observed asking the suspect questions.

8.4.2 Putting Questions to the Suspect

During interviews, some third parties asked questions of the suspect, which could be perceived as an extension of detectives' questioning. This may enable the crime control objectives of the police to be achieved and may render due process safeguards ineffective. In such circumstances, it is possible that suspects may perceive the third party as an agent of the police:

'AA asks suspect 'Was he trying to hit you?'' (Case 19 Observations)

'Legal advisor says to DC 'I need to ask the question again, as I feel she's not understanding the questions put to her'. Asks suspect what day the victim hit her.'...Later in interview, asks suspect 'we're almost there, you've gone to bed, you've put your arm around him. What's happened next?' Case 14 Observations)

Additionally, third parties were seen to infrequently answer questions on behalf of the suspect, or discuss information the suspect had told them:

'AA reminds suspect that he went to the woodwork place on Wednesday when DC asked about his movements.' (Case 20 Observations)

'Legal advisor tells suspect 'you've missed bits out with your son'...'it was the second time the dog attacked you, you told me, Cos your son was there'. Shortly after intervenes to say to suspect 'I don't know, you didn't mention that bit to me'. (Case 7 Observations)

Although some of these third parties may have tried to be helpful, answering questions on behalf of the suspect is beyond the remit of their role (NAAN, 2018, para 6.10). Assisting suspects with their account is a little more of a grey area and may in some circumstances be interpreted as making sure that the suspect understands the questions and their answers, which is consistent with the role profile of the legal advisor (Solicitors Regulation Authority, 2007). However, these observations highlight that third parties, at times, acted beyond their role, and sometimes, arguably, as an agent of the police. It is not the role of third parties to assist the police in obtaining an account from a suspect, especially one which may be used against them, and this may also damage the relationship between the suspect and respective third party. This will likely damage the suspect's access to 'equality of arms' and may be an example of unfair treatment as the measures put in place to safeguard the suspects are somewhat ineffective. Third parties also participated in the provision of legal advice, which will be explored in the next section.

8.4.3 Providing Legal Advice to the Vulnerable Suspect

During suspect interviews several suspects exercised their right to silence. Many of these interviews passed without incident. However, a small number of cases (n=6) contained interviews where the suspect provided an account contrary to the legal advice they had received. Legal advisors often intervened to remind suspects of their advice, both verbally and non-verbally (often by shaking their head or mouthing 'no').

On a couple of occasions, the failure to adhere to legal advice caused tensions in the interview between the suspect and legal advisor. Extracts from Case 22 highlight this particularly well:

'Legal advisor says that the suspect is going to exercise her right to remain silent during the interview. DC says he understands but that he will still ask her questions...Suspect begins to answer questions from the start of the interview. Legal advisor says 'I remind you of my advice' and he looks at her for a couple of seconds.' (Case 22 Observations)

'Legal advisor sighs and says '[name], alright, I can't interject all the time, I remind you of my advice ok, my advice still remains'. Suspect continues to talk. 'Do you need to speak to me in private consultation?' Suspect says that she wants to give her side and legal advisor says 'No, my advice remains very much firmly as it did previously'. Legal advisor appears frustrated...At 12 minutes legal advisor says 'I think it's probably a good idea that you stop the interview and you speak to me'. Suspect asks to stop the interview, interview terminated.' (Case 22 Observations)

Interestingly, the opposite situation was observed in Case 14. As noted earlier, these interviews were ruled inadmissible at trial. Throughout these interviews, the suspect's responses to questions were jumbled and included a combination of responses followed by 'no comment'. This prompted detectives to clarify whether she meant 'yes, no, or no comment'. On several occasions the legal advisor told the suspect to answer the question:

'Legal advisor tells suspect that if she wishes to answer the question she can answer the question, she doesn't have to go no comment.... shortly after legal advisor says '[name], just answer that question', suspect says 'No'. (Case 14 Observations)

There were several interventions of this nature by the legal advisor, where he encouraged the suspect to answer the detectives' questions. These appeared to be borne out of frustration that the interview was taking so long. However, the jumbled nature of the responses provided by the suspect indicated that she may not have understood her right to silence. Furthermore, telling the suspect to answer a question may be a breach of PACE as this could render the interview unreliable or unfair.

There were also tensions observed during this research between detectives and legal advisors in relation to silence and questioning. When the legal advisor reminded the suspect of their advice, detectives sometimes attempted to counter this by reminding the suspect that they could make these decisions for themselves:

'DC notes that this is just advice from a legal professional and that he is 'his own man and can make his own decisions'. States that when the suspect is in court it will not be sufficient for the suspect to blame the legal advisor and say 'he told me to say this'. (Case 8 Observations)

However, it is important to acknowledge that when directly asked about legal advice some detectives did not place any pressure on suspects to provide an answer:

'Suspect is asked a question. He does not want to answer and asks 'is that ok, not to answer a question?' DC says 'You don't have to answer any questions if you don't want to.' (Case 23 Observations).

The reasons these tensions may arise between detectives and the legal advisor is that obtaining an account is one aim of detectives, and when the legal advisor reminds the suspect about legal advice, this could damage the rapport an interviewer is trying to build and may impede obtaining an account from a suspect. This is an example where the crime control aims of detectives may conflict with the due process aims of legal advisors. DC1 discussed 'managing' the legal advisor's interventions during interviews:

"You've got to say 'This is not your interview. I'm not answering questions on their behalf, so I don't expect you to...you've given them the advice'. Suddenly they start answering a couple of questions, you'll see the nudge, or they'll go 'I'll just remind my client I've advised him to go to comment'. No. You gave him your advice in your consultation. You don't need to keep reminding him. I will say to the suspect 'Do you want more time?', 'No', 'He doesn't want more time with you, so I don't expect you to interrupt my line of questioning now'. Because they're doing it, it's a tactic. If I manage to get that rapport and he's talking, great. Butt out. And I've got a right to say to him...'Please don't interrupt my line of questioning', because they don't like it." (DC1)

During interviews, vulnerable suspects may lack concentration or the self-restraint to adhere to legal advice. It is also possible that a suspect does not fully understand the implications of answering questions or making admissions during the interview

(Herrington and Roberts, 2012). Therefore, the suspect consultations prior to the interview are important to ensure suspects understand their right to silence. However, as identified earlier, even when legal advice is adhered to, detectives have some quite effective ways of eliciting information from suspects (see section 8.3.1.2). There were also other interventions observed during suspect interviews which focused on providing support to the suspect. These will now be explored.

8.4.4 Providing Support to the Vulnerable Suspect

During observations, it was not uncommon for third parties to provide support to suspects, despite this not being part of their roles during the suspect interview (see Code C para 11.17 and Notes for Guidance 6D). The following extracts are examples of support provided during interviews with vulnerable suspects:

'AA whispers to suspect at 1hr 11 'you're doing well' when there is a discussion around telling the time.' (Case 14 Observations)

'Legal advisor tells suspect 'That's fine, it gives them something to work on...I'm glad you mentioned that to be honest.' (Case 10 Observations)

While encouragement may be offered during interviews, third parties may have different aims. For instance, encouragement may be provided when the suspect has adhered to the legal advice provided, or it may be provided for welfare purposes to help get the suspect through the process. Additionally, support provided to vulnerable suspects by third parties was also observed in the form of gestures and physical support. These included providing the suspect with tissues, moving closer to the suspect, and placing a hand on the suspect. A couple of examples have been selected from the observation schedules:

'At 32 minutes legal advisor places her hand on the suspect's back for a few minutes'. (Case 25 Observations)

'DC comments on the suspect holding the legal advisor's hand, suspect apologises. Legal advisor says 'It's ok, I'm not objecting at all, it's not a problem, if it will calm you down that is fine'. (Case 7 Observations)

Physical interactions have seldom been commented on in prior literature, but this research indicates that the support third parties provide to suspects extends beyond verbal interactions. This is why the layout of the interview room may be so important. If a suspect is isolated from third parties, it may be difficult to provide and receive this

type of support, assuming this support is welcome of course⁸⁷. However, while the examples above highlight the support third parties provided to vulnerable suspects, physical support and gestures could also be used in a coercive and controlling manner (for instance, a family member sat next to a suspect could intimidate a suspect, which may impact whether they provide an account or not).

This section has explored the interventions made by third parties, which were varied in nature. Both legal advisors and AAs were observed to facilitate communication and intervene to protect the suspect's rights. There was also some evidence of 'role creep' (see Pierpoint, 2011), where third parties provided support to vulnerable suspects during the interview. This is consistent with the welfare perspective some AAs adopt (Pierpoint, 2005). However, third parties were also observed to, on occasion, ask questions of the suspect in a manner which was beyond the scope of their role. This may be problematic when it may negate the due process nature of the third party safeguards and facilitates the crime control objectives of the police.

8.5 Closing the Interview

This section will explore how suspect interviews are drawn to a close. This should take place once there are no questions left to be asked and the interview has been summarised (College of Policing, 2022). In addition, this is an opportunity for the suspect to ask questions and for detectives to say what may happen next. As discussed in Chapter Four, research has identified limitations in how the closure stage is undertaken (Medford et al., 2003; Walsh and Milne, 2008).

8.5.1 Who Decides to Conclude the Interview, and Why?

The interviews studied in this research, on average lasted 41 minutes and ranged from three minutes to one hour 58 minutes in duration. However, many suspects were interviewed on multiple occasions. When the total interviewing time for each suspect was calculated this ranged from 26 minutes to eight hours three minutes averaging three hours 54 minutes in total. To compare, Leahy-Harland and Bull (2016), who also explored serious crime interviews, predominantly for homicide offences, found the average length of time that suspects were interviewed for was three hours and 44 minutes.

⁸⁷ It is important to recognise that, understandably, some third parties and suspects may not feel comfortable with physical contact.

Additionally, there were a small number of interviews (n=9) where the police had to conclude the interview because they had been interviewing for almost two hours. At this point, many interviews are automatically terminated by the digital recorders. It is worth considering that two hours for an interview is a long time, especially when interviewing a vulnerable suspect. In fact, many vulnerable interviewees experience impaired memory and concentration (Gudjonsson, 2003; Cooper and Mattison, 2017; May et al., 2021; APT, 2021). Therefore, whether vulnerable suspects can concentrate on what they are being asked and their responses an hour plus into the interview is questionable.

The majority of interviews were adjourned at detectives' suggestion. However, suspects also asked to adjourn the interview, most often to consult with their legal advisor. Once this request was made the interview was quickly terminated on nearly every occasion. However, this did not occur in Case 1. During the penultimate interview, the suspect was asked about his possession of a knife in relation to a fatal stabbing:

'At 41 mins - Suspect talks about the stabbing, says was not intentional. Admits the knife is in his hand, but not sure how it got there and how exactly the stabbing took place. Suspect then asks to speak to his solicitor for a minute. Detective says yes, but not at this moment as he needs to fine-tune details about the knife. The interview continues for nearly an hour before the break. Suspect did not further request a break. No intervention by the legal advisor.' (Case 1 Observations).

Following the request by the suspect to consult with his solicitor, this interview carried on for another 50 minutes. One may argue that if the suspect wanted a break that badly they could have asked again, but some suspects may not feel comfortable doing so, and do not want to question the police. There was no AA during this interview but the legal advisor was present; although it is not known why they did not intervene. The topic area being covered was key to the suspect's defence of self-defence, and to request legal advice at this point appeared reasonable in the circumstances. There was a risk of the suspect providing self-incriminating evidence and therefore, one may have expected the legal advisor to intervene and request to consult with the suspect when the interview was not brought to a prompt close.

Interviews were also concluded at the request of third parties. When this took place, it was most often at the request of the legal advisor and in relation to a legal

consultation:

'At 12 minutes legal advisor asks to stop the interview to have a chat with suspect. DC says 'You can do but if he wants to speak to us that's...' Legal advisor says 'I want to offer him some advice, I want to have a consultation with my client.' interview suspended.' (Case 25 Observations)

There were other circumstances where requests were made to terminate interviews, including a lack of disclosure and for the suspect's welfare (e.g., tiredness, to eat, receive medication or because they were upset). That third parties requested to adjourn interviews was an indication that they were mindful of their respective roles and were confident enough to intervene and make these requests. In only one circumstance was the interview not concluded promptly, although on another couple of occasions the request was reiterated prior to the interview being concluded (e.g., Case 25). That both the police and third parties requested and/or concluded the interview for the welfare of the suspect is positive and an indication that detectives and third parties are mindful of the suspect's wellbeing. However, one cannot say whether the motivations are always based on the suspect's welfare as some officers may be mindful of safeguarding potential evidence.

8.5.2 Summarising the Interview and what Happens Next

On occasion, detectives summarised accounts at the end of interviews, but it was more common, certainly in lengthier interviews, for detectives to summarise regularly, often at the end of topic areas. It was also noticeable that towards the end of no comment interviews, some detectives made another attempt to encourage suspects to provide an account:

'DC states that this is the last chance for suspect to tell them that he has not killed the victim. There will be no further opportunities and all the evidence points to the suspect. It does not look good. If there is an innocent reason why the victim is dead the suspect needs to be telling the police' (Case 6 Observations)

While similar phrases were also heard throughout interviews, not once did a suspect decide to provide an account if one had not been provided by that point. At the end of the interview, especially those concluded by detectives (as opposed to suspect or third party requests), it was not uncommon for detectives to discuss what may happen next and explain some of the procedures which may be required:

'DC says that there will be a break to talk to the superintendent [for time extension?]' (Case 23 Observations)

This is good practice (in line with the APP on investigation (College of Policing, 2022)) as it manages the expectations of the suspect and gives them an idea of what may happen in the forthcoming hours. One of the worst aspects of being detained in custody may be the uncertainty (Gudjonsson et al., 1993; Skinnis et al., 2017), and therefore knowing what may happen next could reduce a suspect's anxiety during their detention. In addition, closing the interview in a professional manner and providing the suspect with information is an opportunity to leave the interview on good terms, which is important as detectives may require future interviews with the suspect (Bryant and Bryant, 2021).

8.6 Summary

This chapter has explored what takes place during the interviewing of vulnerable suspects who have been arrested on suspicion of committing homicide offences. It has provided an overview of the working practices of detectives and third parties, including the interventions made by third parties and the layout of the interview room.

These findings highlight that each interview is a complex social interaction, unique in what takes place and how it unfolds. It is important to acknowledge that many of the interviews observed were undertaken professionally and respectfully. Some of these good practices, both of detectives and third parties, were discussed in this chapter (e.g., providing support to suspects, explaining terminology and simplifying language, and checking on the suspect's welfare). However, these findings also identified practices during vulnerable suspect interviews that breached the rules and guidance which govern how detectives and third parties should undertake their roles. On occasion, it was possible that these constituted breaches of either sections 76 or 78 PACE, rendering a confession unreliable, or evidence unfair.

Even where no rules were broken, practices were also observed which appeared to be inconsistent with the 'spirit' of the PEACE framework, which was introduced to promote fair and ethical interviewing and should promote due process and 'equality of arms'. Examples included attempts to circumnavigate no comment interviews, third parties questioning the suspect, and a failure to adhere to a suspect's request to consult with their legal advisor. These practices often only become fully apparent when the fine detail of these interviews are explored using qualitative methods, and

these interviews are considered in their entirety, as opposed to a focus on specific aspects (e.g., rapport or question types).

These interviews highlight the conflict that can exist between the crime control objectives of the police to detect and solve crime in an efficient manner, and the due process and welfare perspectives which may be adopted by third parties. Where there is conflict between these competing perspectives, it is possible that rules are not always adhered to in order to achieve objectives consistent with these models. Police culture, compliance drift, 'role creep' and 'interview room lore' offer potential explanations for some of the practices observed during these interviews. These will be explored further in the next chapter, which brings together all three findings chapters to explore one of the key findings to emerge from this research, that the rules and guidance governing suspect interviewing, or the principles of ethical interviewing and fairness which underpin these, are not always adhered to by detectives and third parties during the interviewing of vulnerable suspects.

Chapter Nine: Discussion: Making Sense of the Working Practices of Detectives and Third Parties

This thesis has the aim of exploring the working practices of detectives and third parties involved in the detention and interviewing of vulnerable suspects who have been arrested upon suspicion of committing homicide offences. To explore this aim, I undertook multi-method research which included the analysis of 127 vulnerable suspect interviews and custody records relating to 27 vulnerable suspects on 26 investigations. I also conducted 37 semi-structured interviews with detectives, appropriate adults (AAs) and legal advisors to establish what took place during, and prior to, the suspect interview, and why.

This chapter intends to make sense of the findings presented in the previous three chapters, drawing on existing literature and theory. The main finding examined in this chapter concerns the adherence to rules by detectives and third parties. It was identified that, on occasion, rules, guidance and the spirit of the rules were not adhered to by detectives and third parties. Relevant theory which aids our understanding of these practices include police culture and pro-social rule breaking (PSRB) (see sections 2.6 and 2.8). These will be considered with reference to theories of criminal process (e.g., crime control and due process – see section 2.4), as these may influence the working practices of detectives and third parties. While other explanations for these practices are possible, the ones discussed in this chapter best explain the research findings. The chapter will then discuss the implications of the findings for the fairness with which vulnerable suspects are treated. However, first, this chapter will begin by summarising the key findings.

9.1 An Overview of the Key Findings

Many of the findings broadly examined in this chapter relate to breaches of rules and guidance or practices inconsistent with the ‘spirit of the law’. These findings highlight a continuum of practices ranging in nature and severity, as will briefly be explored below. Comparison will also be made between the findings and ‘best practice’ as set out in the Mendez Principles (APT, 2021), which reinforce the importance and benefits of investigative interviewing and providing safeguards for suspects, especially those who are vulnerable. Fieldwork for this research took place in 2018, prior to the Mendez Principles being adopted in 2021, and consequently, one would not expect police officers to have been aware of this particular piece of guidance. However, the Mendez Principles have been influenced by the principles of

investigative interviewing and the PEACE framework, and propose many of the same safeguards set out in PACE and Code C. Therefore, the Mendez Principles may act as a valuable framework against which police practices can be evaluated.

Some of the findings from this research concerned breaches of the law and the PACE Codes of Practice. On occasion, practices were observed during suspect interviews which did not appear consistent with best practice, especially in Case 14 (see sections 8.2.1 and 8.4.2), where the AA told the suspect they could not go home until they had answered the officers' questions and the suspect did not appear to understand the caution. These interviews were subsequently ruled inadmissible at trial. It was not possible to ascertain the motivations for the third parties' interventions as neither were interviewed. Therefore, these practices will not be explored further in this chapter. However, it is important to acknowledge their existence as one of the more significant examples of poor practice identified in this research.

Another key finding concerned the identification of vulnerability by the police and the implementation of the AA safeguard. The importance of suspect safeguards is set out in PACE, the accompanying Codes of Practice, and the Mendez Principles. It was established that AAs were not always obtained for vulnerable adult suspects, a breach of Code C, and in total, one-third of suspects in the sample did not receive an AA, something broadly identified across all forces sampled for this research. This was despite seven of nine custody records making reference to a mental health condition which may have rendered the suspect vulnerable. This indicates that vulnerability is often able to be identified, however, this is not always acted upon, a finding consistent with the research of (Dehaghani, 2019).

There were also a range of practices identified during this research where guidance was not adhered to. For example, while all vulnerable suspect interviews were audio recorded (as mandated by Section 60 PACE and Code E), the majority were not visually recorded in Alameda, which contrasted with practices observed in Bluesville and Sunnyside. However, in accordance with guidance in Code F, a senior officer in Alameda suggested that where suspects were vulnerable, interviews should be visually recorded where there were the facilities to enable this (estimated to be in 50 per cent of interview rooms at the time the research was conducted). This is a recommendation echoed by the Mendez Principles (APT, 2021) which suggests interviews should be audio-visually recorded. Additionally, some AAs disclosed during semi-structured interviews that they attended the legal consultation between the suspect and legal advisor, despite not being subject to legal privilege. This was

despite some AAs receiving training which explicitly recommended they did not attend the legal consultation.

Practices were also observed during this research which, did not breach law and guidance, due to the absence of any specific regulation governing these practices. One of the key findings in this area concerned the way in which the AA was obtained, which was undertaken differently in Alameda compared to Bluesville and Sunnyside. In Alameda, detectives were able to directly choose the individual AA they wished to attend their interviews and there was a tendency by some to repeatedly use one volunteer. While AAs were members of the relevant AA scheme and received training to perform the role, these practices raised questions as to the nature of the relationship between the AA and detectives, and the independence and neutrality of the AA role. Therefore, one may argue that these practices are not consistent with the role of the AA as originally intended by the Royal Commission on Criminal Procedure (1981) and the 'spirit of the law', which sought to have the AA as an independent safeguard to ensure interviews with vulnerable suspects were undertaken fairly.

Additionally, other practices were identified during the observations of suspect interviews which did not appear to be consistent with the ethos and spirit of investigative interviewing, which promotes a fair and ethical approach (see APT (2021) and College of Policing (2022)). This was most notable where vulnerable suspects were questioned during the interview in a manner which attempted, and in some cases succeeded, to circumnavigate no comment interviews. The example referred to in this chapter concerns the use of questions to elicit nonverbal responses from suspects. However, this is, arguably, not consistent with the Mendez Principles which advocates for the obtaining of voluntary information from suspects (APT, 2021). Vulnerable suspects may make gestures involuntarily, without forethought, which may then be used by the prosecution to their disadvantage. One may argue that such tactics are unfair and disproportionately impact vulnerable suspects.

The other key finding examined in this chapter details the adjustments made by detectives to account for suspects' vulnerabilities prior to interview. That adjustments are made is not a new finding (see Geijsen et al. (2018a) who identified that these were undertaken by 45 per cent of detectives). Many of the adjustments discussed or observed in my research appeared to be tailored to individual suspects' needs, yet, the motivations for implementing these measures appeared varied. Some detectives appeared to be genuinely concerned for the welfare of the suspect. However, one

alternative explanation was that measures were considered and implemented to ensure that any evidence obtained from the suspect during interview was admissible. These findings will now be explored further with reference to relevant theory and academic research.

9.2. Police Culture and The Development of Working Rules

There are a plethora of laws, rules and guidance which govern the practices of the police. Many of these concerning the detention and interviewing of suspects have been explored in Chapters Three and Four. In particular, PACE and Codes C relate to police practices in this area but there is also international guidance (e.g., the Mendez Principles). Although PACE introduced safeguards for suspects following high-profile miscarriages of justice, some argued that PACE extended and legitimised the powers of the police (Choongh, 1997; Sanders and Young, 2000). While suspect safeguards have, on occasion, been strengthened, these changes have not always been popular with the police, who believe they restrict the way in which they undertake their roles (Reiner, 2010, p.97).

This research has identified that the working practices of the police did not always adhere to rules and guidance which governs their roles. One potential explanation for this is the impact of police culture (see Chapter Two). Police culture has been associated with traits of masculinity, a sense of mission, solidarity, suspicion, and conservatism (Reiner, 2010; Cockcroft, 2020). While acknowledged that this is not a monolithic phenomenon (Foster, 2003), research has consistently identified that police culture can result in a failure to adhere to rules, exercising discretion and consequently, disparate treatment (Wilson, 1968; Quinton et al., 2000; Westmarland, 2016; Pearson and Rowe, 2020).

One aspect of police culture relates to a sense of mission, which seeks to protect citizens from those who break the law, especially those who are dangerous (Cockcroft, 2020). On homicide investigations, there may be a desire to apprehend those responsible for a reprehensible crime, and to bring them to justice. Additionally, there may be internal and external pressures to solve cases (Corsianos, 2003; Innes, 2003). The concept of noble cause corruption (see Chapter Two) identifies that the police have historically broken the rules, sometimes in a manner which is criminal, in the pursuit of what they perceive to be justice. This is consistent with crime control principles, which seek to apprehend and convict those who are guilty and may influence the behaviours of detectives when investigating homicide offences. This can be observed when a victim is deemed worthy, and the police may go above and

beyond during a homicide investigation (Hawk and Dabney, 2014). The following section will explore the development of working rules which aids our understanding of why the police do not always adhere to the law and guidance.

9.2.1 The Development of Working Rules

It was identified during this research that vulnerable suspects were not always afforded an AA. One third of suspects did not receive an AA, despite the fact that there was reference (in seven of nine cases) in the custody record to a mental health condition. This section will explore how police culture and the development of working rules may have influenced these practices.

Where rules are clear, the police, generally, follow the mechanistic legalities in PACE surrounding the suspect interview, such as mandatory audio recording and providing the caution (Cape and Young, 2008, p.3). However, where guidance is not clear, this provides an opportunity for the police to exercise their discretion. As explored in Chapter Two, police discretion may involve the police choosing whether to implement a rule or law within a particular context (O'Neill, 2018). Discretion can be problematic and has been associated with unconscious bias and discriminatory behaviour (Skolnick and Bayley, 1986; Brogden et al., 1988; Carswell, 2006) in addition to deviance and rule breaking (Carrabine et al., 2004). Therefore, where poorly defined and ambiguous legal rules or guidance exists, it may invite a greater use of discretion (Foster, 2003; Nickels, 2007).

Detectives' decision-making may be influenced by police culture, as the "values, norms and craft rules...shape the working rules that police officers internalise, which in turn become the effective principles that guide their decision-making and use of discretion" (Carrabine et al., 2004, p.278). McConville et al. (1991, p.22) identified that in the absence of clear rules and guidance, the police developed working rules which allowed them to structure their discretion (see Chapter Two). Working rules have been identified in police decision-making relating to obtaining an AA, such as obtaining an AA where the case is serious, where the HCP recommends one is required, or if the suspect has had one previously (Dehaghani, 2019). Dehaghani (2016) also identified that custody officers developed their own working conceptualisations of vulnerability, often based on a suspect's ability to understand. This impacted whether an AA was obtained. Suspects who understood what was going on around them and appeared 'normal' may be perceived as not needing an AA, and those that did not were more likely to receive one (Dehaghani 2016). If those

making decisions regarding vulnerability rely upon such an assumption repeatedly, this may become reinforced, internalised and habitual.

The decision to obtain an AA has been explored previously and it has been identified that the police have wide discretion in this area (Dehaghani, 2019). Codes C states that an AA should be obtained if a suspect is vulnerable, and therefore if a vulnerability is identified, an AA should be obtained. However, vulnerability is poorly defined in the Codes of Practice (Gudjonsson, 2003) and confusion may arise as vulnerability is defined differently across a range of contexts within policing (see Chapter Three). Where guidance is unclear, detectives may interpret this in line with personal beliefs or crime control goals. This can lead to the development of working rules which are shaped by police culture and influence police decision-making (Sanders and Young, 2003, p.237).

This research confirms the findings of Dehaghani (2016; 2019) concerning the way in which vulnerability provisions are applied, and that not all suspects are afforded an AA. Only two-thirds of vulnerable suspects in this research received an AA, despite seven of the remaining nine having custody records which contained some reference to a mental disorder, most commonly depression. Therefore, a potential vulnerability is often identified, but the decision to obtain an AA does not always follow. This is an example where there is a gap between legal rules and the working rules the police have developed (Sanders and Young, 2003). However, this research also extends the findings of Dehaghani (2016; 2019) to the working practices of detectives, some of whom took a more active role in deciding upon and obtaining an AA for vulnerable suspects (which is in line with the Mendez Principles (APT, 2021, p.24)). A number of detectives, including DC9, felt that the interview was their responsibility, and therefore they should be involved in deciding whether an AA was required, and the wider processes associated with that. Additionally, one detective justified their involvement in deciding upon an AA as he felt custody officers may not have adequate time to make a determination of vulnerability and obtain the AA during the booking in procedure. It is not possible to determine from this study the frequency with which detectives were involved with these decisions, how custody officers perceive this involvement, or whether detectives are involved in these decisions across other forces within England and Wales. However, these practices may be an example of 'role creep' discussed previously by Pierpoint (2011), where over time the involvement of detectives has increased, and become accepted and legitimised in serious crime offences.

Detectives had a generally good understanding of the concept of vulnerability and some acknowledged both personal but also situational factors which may render one vulnerable, including context-specific processes such as bereavement. Additionally, a couple of officers considered that all suspects (or all suspects arrested for homicide offences) may be vulnerable, an indication of some detectives adopting a broad interpretation of vulnerability and one consistent with the wide approach taken by the Mendez Principles. However, some detectives distinguished between suspects who appeared to have difficulties understanding what was being said to them or the processes in custody (e.g., the caution), and this may influence whether an AA should be obtained. Such a distinction creates perceived 'levels' of vulnerability, whereby some suspects were thought to need an AA more than others (Dehaghani, 2019). For instance, DS4 noted levels of vulnerability, distinguishing between who may be vulnerable by default of being in the police station, and those who require an AA. This is an example where working rules may influence the interpretation of Code C, based on detectives' perceptions of whether the suspect understands what is being said to them during their detention, and this may impact whether a suspect is considered vulnerable.

Where working rules are shaped by police culture, it is possible that policing priorities will be reflected in these rules. These are often influenced by crime control and include the repression of criminal conduct and the conviction of the guilty (Packer, 1964). Even though there appears to be little benefit of not obtaining an AA on such serious investigations, especially where vulnerability has been identified and noted on the custody record, internalised practices adopted over years of experience may become reinforced (Smith and Gray, 1985) and may result in a failure to implement the AA safeguard. Where suspect safeguards are not implemented, this may indicate a lack of respect for human rights and reduces the likelihood of achieving legally sound outcomes (APT, 2021, p.16). One may argue that this does not facilitate 'equality of arms' or fair treatment, as a failure to adhere to due process may further enhance the power the police have over a suspect in custody. However, it was hard to identify exactly why an AA was not obtained, when interviews undertaken with detectives suggested they erred on the side of caution and obtained an AA when there was any suggestion that the suspect may be vulnerable. This may, in part, be explained by the fact that the detectives interviewed were predominantly involved in interviews where an AA was present and they may have been more cognisant of vulnerability.

9.2.2 The Impact of Supervision and Visibility on Working Practices

It has been suggested that police culture exists, in part, due to the organisational structures within which police officers operate, where there can be a lack of direct supervision of staff and policing activities are of low visibility (Wilson, 1968; Sanders and Young, 2003; Carrabine et al., 2004). Although police custody has become more open to 'outsiders' in recent years (Skinns, 2009b, Kendall, 2022; Skinns, 2022), it is still very much the domain of the police and visibility is relatively low. Previous research has associated the failure to follow rules contained within Code C (to obtain an AA for vulnerable suspects), with this lack of supervision and low visibility of the custody environment (Dehaghani, 2019). It has previously been suggested that where a case is serious, an AA would most likely be obtained, often due to a higher level of scrutiny which may result from the case going to trial (Palmer and Hart, 1996; Dehaghani, 2019). Many of the detectives interviewed during this research did appear to be mindful of ensuring that rules and procedures were adhered to. In section 6.2.3, one detective noted that the reason he often obtained an AA was to 'cover him procedurally and help to get the interview into court later on'. These interviews highlighted some contradictions within the findings, where detectives appeared risk adverse and mindful of the requirement to adhere to laws and guidance. This is consistent with the findings of Pike (2018) who identified that detectives were generally risk adverse, especially on high profile homicide investigations, yet there were several examples of rules and/or best practice not being followed observed during the research⁸⁸.

Homicide investigations may involve some internal scrutiny. Detectives noted during interviews that the interview advisor and SIO may have direct oversight of a suspect interview and additionally, the progress of an investigation may be closely followed by senior management. Therefore, detectives' working practices concerning the suspect interview are likely, even if retrospectively, to be subject to some internal scrutiny. However, one characteristic of police culture is solidarity (Reiner, 2010), and there is a tendency for colleagues to stick together and cover for one another where rules are not adhered to, as long as they are not gross breaches, involving illegal conduct (e.g., theft) (Westmarland, 2016). As a result, internal scrutiny as a means to regulate police conduct may not always be effective.

⁸⁸ It is possible that self-selection sampling bias, in part, may account for this finding, see section 10.1.

Detectives may be more likely to adhere to relevant law and guidance where cases may result in a charge and a trial, as this opens case material up to scrutiny by a defence team of barristers (Dehaghani, 2019). As such, there is a higher possibility that poor interview practices may be identified in these investigations. If the conditions within which rule-breaking is often said to be found (low visibility and supervision) were less prevalent in this study, this may, in theory, reduce the opportunity for discretion to be exercised and increase the likelihood that rules were followed (Corsianos, 2003). However, these arguments are problematic within the context of this research, as although homicide offences attract higher visibility and supervision (Corsianos, 2003; Innes, 2003), this research has identified that rules were not always followed. Most notably, an AA was not obtained, despite vulnerability being identified in seven of nine suspects' custody records.

Furthermore, even when a failure to adhere to rules and guidance has been identified (e.g., to obtain an AA, see Chapter Three), the police are not always held accountable. Where personal sanctions in response to rule breaking are unlikely to be instigated, there may be little to deter potential rule breaking (Pogarsky and Piquero, 2004). Similar principles also applied to AAs. When asked about their attendance in the legal consultation during this research, one AA said that the police never asked them about it. The AA did not appear to foresee the possibility of disadvantageous consequences arising from their participation in the legal consultation, which appeared to legitimise and reinforce their decision to attend.

However, as noted earlier in the section, detectives were concerned about adhering to the rules to ensure evidence was admissible at court. That said, Dehaghani, (2022) identified inconsistencies in the interpretation of the courts to the failure of the police to obtain an AA. She suggests that if a legal advisor was present, evidence was often deemed to be admissible, despite the fact that the roles of the AA and legal advisor are separate (Dehaghani, 2019).

This subsection acknowledges the importance of supervision and visibility as a means of informal internal regulation of the practices of detectives and third parties. While it has been suggested that the visibility and seriousness of serious offences may increase adherence to rules concerning obtaining an AA (Dehaghani, 2019), there were still examples in this research where breaches of rules and guidance were observed. The following sections propose additional explanations which may explain these practices.

9.3 Compliance Drift

Another explanation for rule breaking observed during this research concerns compliance drift (see Chapter Two). This occurs when practices are adopted during investigations to maintain case efficiencies, such as cutting corners, relieving pressure and circumventing procedures, which over time become habitual and normalised practice (Innes, 2003). Compliance drift may be influenced by a desire to obtain a 'result' and does not require a conscious intention to break the rules, however, similar to the creation of working rules, these may be driven by crime control ideology (e.g., for efficiency) (Innes, 2003). The concept of compliance drift may explain several of the practices observed during this research, including attempts to circumnavigate no comment suspect interviews.

One example of practices that may be explained by compliance drift took place during the suspect interview. These related to questioning tactics used by detectives which appeared to try and circumnavigate a no comment interview (see section 8.3.1.2). During the challenge stage of the PEACE framework, detectives asked questions of suspects which encouraged a nonverbal response. On occasion, gestures were made by suspects in response to these questions which were repeated by detectives for the benefit of the interview recording. At this point it was not uncommon for legal advisors to interject in response to such practices. Some of the nonverbal responses observed related to the knife action used during a stabbing, and another to the wrist (e.g., left or right) in which the suspect had a weakness. Furthermore, when nonverbal responses were elicited, suspects occasionally then provided a short verbal response.

The principles of investigative interviewing state that detectives can ask a wide range of questions, even if a suspect exercises their right to silence (College of Policing, 2022). There are no rules or guidance which prohibit detectives from asking suspects relevant questions, as long as this is not done in a manner which renders the interview oppressive or unfair (in accordance with sections 76 and 78 of PACE). That said, there is guidance in PEACE and the Mendez Principles concerning appropriate question types to use during the suspect interview (e.g., open questions) (APT, 2021; College of Policing, 2022). Suspects have a legally recognised right to silence (albeit adverse inferences can be drawn in certain circumstances in accordance with sections 34 to 38 of the Criminal Justice and Public Order Act 1994). However, to try and elicit responses from vulnerable suspects, some of whom may experience cognitive impairment, arguably does not respect the suspect's decision to exercise

their right to silence. It is also possible that those who are vulnerable may not fully understand the implications of providing a nonverbal response or may be unable to exercise the same level of restraint in responding to a question. Therefore, these practices arguably do not appear to be within the spirit of the PEACE framework, which promotes a fair and ethical method of interviewing (College of Policing, 2022).

These interview tactics may be used by detectives as they may increase the likelihood of obtaining some form of account and evidence which could be used as part of the case for the prosecution. It is noteworthy that these practices tended to be used during no comment interviews, in the latter stages, where it was clear that suspect would continue to exercise their right to silence. This is consistent with the findings of Soukara et al. (2009) and Verhoeven (2018) who noted that the use of tactics increased in no comment interviews.

Compliance drift may develop in order to relieve investigative pressures (Innes, 2003). The police will likely face scrutiny on any homicide investigation (Corsianos, 2003), and there may be pressure on detectives to make a prompt arrest and obtain a charge, which may be viewed as a 'result' (Brookman and Innes, 2013, p.298). This pressure may encourage detectives to employ tactics during an interview that may maximise the likelihood of obtaining an account, which may expedite the investigation (potentially resulting in a charge or eliminating the suspect from the enquiry). In this context, interview questioning may deviate from best practice to try and obtain an account from a suspect, and where this is achieved, not only is investigative pressure alleviated, but crime control objectives may also be facilitated. The next section explores another example where practices were observed which were not within the spirit of the law, the way in which the AA was obtained on homicide investigations.

9.4 Detectives' Influence over Appropriate Adults' Attendance at the Police Station and 'Interview Room Lore'

As noted within Chapter Two, the role of the AA was incorporated within Code C of PACE following the Royal Commission on Criminal Procedure (RCCP) (1981), which intended to strike a balance between the rights of suspects and the powers of the police, or as stated by Pierpoint (2011) crime control versus due process. The RCCP was influenced by high profile miscarriages of justice, some of which involved false confessions made by vulnerable suspects (Gudjonsson, 2003). In order to protect suspects, an AA, independent of the police, should attend the police station to safeguard the rights of those who were vulnerable (Medford et al., 2003).

This research found that detectives had varying levels of influence over who would act as the AA on their homicide investigations. In Alameda, detectives were able to specifically request the AA they wished to attend their suspect interview and regularly used a small handful of AAs, and one individual in particular. While Code C, para 1.7 specifies who can act as an AA (this is a wide definition and includes responsible adults over the age of 18 years), there is no guidance as to how AAs should be obtained by the police. While choosing a specific AA from an appointed scheme is not in contravention of any rules, if the same individual is frequently used, concerns may arise about the nature of this working relationship and the implications for the independence of the AA. As a result, one may interpret these practices as being inconsistent with the spirit of the AA safeguard, which should be independent of the police and the legal advisor.

While AAs and legal advisors were generally spoken about positively by detectives, on occasion, detectives indicated they found AAs a hindrance. For example, DC2 said that some AAs could be ‘moccasin-wearing’ and intervene when they did not need to. Therefore, detectives may prefer to use AAs who were more passive during interview, offering fewer obstacles to the police in their role as a due process safeguard. As a result, it may be easier for detectives to achieve their crime control goals. This was alluded to by one detective (DC1) in Alameda who suggested that the AA they frequently used “understands the police perspective and what they need to get from the interview”. However, if an AA is chosen on this basis, one may question how well they are able to safeguard the rights of a vulnerable suspect. In such circumstances, third parties may effectively become an agent of the police and may benefit detectives and wider investigations because their presence may legitimise any poor practice (for example, failure to intervene during interview) (Medford et al., 2003). Consequently, a vulnerable suspect may be at a greater disadvantage with an ineffective safeguard which does not facilitate ‘equality of arms’, than they would be to not have one at all, as this may impact the likelihood of a successful legal challenge.

Detectives’ decisions over who acts as an AA may also be influenced by other factors. When asked about their reliance on a small number of volunteers, and one in particular, detectives in Alameda said that this individual was often available, willing to attend the police station and that he was trained and performed the role well. When working on homicide investigations, having an AA who is experienced and familiar with these types of offences is an important consideration, especially as issues can arise concerning a duty of care to the AA, where an AA is impacted by the content of

the cases they participate in (Leech v Gloucester Constabulary [1999]). Some detectives were mindful of the AAs welfare and commented on having a duty of care to all within the interview room. Therefore, an AA with experience of participating in homicide investigations may be preferable for investigators. However, this is not always possible as at least two AAs in this research were allocated to a homicide investigation for their first deployment to the police station. As a result, they may not have possessed the experience or confidence to undertake the role to its potential.

Where third parties work closely and regularly with the police and wish to maintain cordial relations, they may seek to avoid conflict with the police, which may occur if the third parties strictly uphold the suspect's rights or frequently intervene during the interview. This is an example of 'interview room lore' (Pierpoint, (2000) (see Chapter Three), which is a concept used to describe the close working relationships between professionals. It is possible that AAs may be influenced by 'interview room lore', especially in forces where detectives can personally select the AA who attends the police station. If one wishes to be called to attend high-profile investigations, one needs to keep the police 'on side'. Third parties may not wish to damage their relationships with those they work alongside closely, as this will make the future working environment more challenging (Pierpoint, 2000). However, this may impact the way in which third parties undertake their role and they may be more passive during an interview in order to maintain positive working relationships. In such circumstances, there is a risk that third parties fail to intervene when required, rendering the AA safeguard somewhat ineffective.

It is also possible that detectives may have expectations about how third parties should undertake their role, and these expectations may be conformed to by third parties in order to avoid conflict. One such perspective about the legal advisor's role was shared with me during interviews with detectives:

"The solicitors that I really thought were very, very good, are solicitors that say very, very little...because they don't need to." (DC8)

This detective suggested that good legal advisors do not intervene during the suspect interview, because they do not need to. He went on to say that he thought it was rare and unheard of for an interview by the police of a vulnerable person to be conducted unfairly, and that it would not happen on a homicide investigation. DC8 saw himself as a professional interviewer, and that he and legal advisors had a mutual understanding that each other had a job to do. While DC8 may believe that he

undertook interviews in a fair manner, and this may predominantly be the case, this perception is dependent, in part, on his interpretation of what fairness is, which may be different to that of third parties and the suspect. If detectives believe they undertake interviews fairly, they may perceive third parties interventions as unnecessary. If this is communicated (verbally or non-verbally), it may influence the working practices of third parties, who may wish to maintain good working relationships with the police. While DC8 reflected on his own conduct when considering the fairness with which an interview was conducted, this may overlook the involvement of third parties, but also the power imbalance a suspect may experience during detention which may, in part, affect the fairness of a suspect interview.

Close working relationships with the police may undermine the neutrality of third parties (Taggart, 2022). This may negate the intention behind the AA safeguard, which was envisaged by RCCP (1981) as being independent to the police. Where there is a close relationship between the police and third parties, this may be of some concern, especially to a suspect (see Chapter Three for further discussion). If the relationship between the police and third parties is too familiar, a suspect may lack confidence and trust in the AA, perceiving the AA as being on the same side as the police (Pierpoint, 2008). Therefore, if the AA is not independent of the police or is perceived as such, it is possible that this may impact their ability to perform their role. This was recognised by DC2 (in Chapter Six) as potentially problematic, and something a defence team could question at trial where detectives frequently used the same AA.

However, there are some benefits of close working relationships, which can be especially important to the police when reliant on the goodwill of volunteers who give up their time to attend the police station, and some AAs felt having positive relationships with the police enabled them to raise concerns or issues when acting on behalf of a vulnerable suspect. AA8 felt that the positive relationships with police officers made him feel more comfortable raising issues because he believed he would be taken seriously. While this appears to be one benefit of a positive working relationship with the police, caution may need to be exercised over 'interview room lore', especially where detectives personally choose their AA, as this may impact the ability of third parties to perform their role independently and in the suspect's best interests.

9.5 Pro-Social Rule-Breaking

It is possible that one motivation for breaching rules and guidance is to do so for the benefit of another. This research explored interactions between the vulnerable suspect and third parties prior to the interview. AAs and legal advisors stressed the importance of having a consultation with the suspect prior to the interview for several reasons, including building rapport, providing support, establishing an account from the suspect, and ensuring the suspect understands what may take place during detention. However, some AAs also attended the legal consultation between the legal advisor and the suspect. As discussed in Chapter Three, AAs, unlike legal advisors, are not subject to legal privilege (Code C, Notes for guidance 1E) and therefore, some AA schemes provide training and guidance which recommends that AAs should not attend a legal consultation between the suspect and legal advisor. Alternative guidance suggests that if the AA does attend, they excuse themselves at relevant parts of the consultation (NAAN, 2018, p.81). If a suspect divulges incriminating information in front of the AA, the police *could* request the AA provide an account of that conversation and the AA would then effectively become a witness.

During interviews with AAs, some respondents reported attending legal consultation (n=8), indicating that the guidance and training provided to AAs was not always followed. It appeared that most AAs attended the legal consultation if requested by either the legal advisor or the suspect themselves. Reasons for attendance included providing support to the suspect or ensuring they understood the legal advice provided (see Chapter Seven, section 7.1.2). Pierpoint (2011) identified AAs undertaking tasks beyond the remit of their role and associated these with the concept of 'role creep', where practices not originally part of the role become established and legitimised over time through their repeated use. One similarity between the practices discussed in Pierpoint's (2011) research and the willingness of some AAs to attend the legal consultation identified in this research, is that both adopt a welfare-based approach, focusing on the suspect's wellbeing. However, a potential consequence is that a suspect's due process rights *may* become compromised (Pierpoint, 2011), in this case, the suspect's right to legal privilege with their legal advisor.

As explored in Chapter Two, PSRB is defined as the constructive deviance of rule-breaking, in the interests of the organisation or its stakeholders (Dahling et al., 2012, p.21). When attending the police station, the AA should act in the best interests of the suspect, (who may be perceived as a 'customer', a term used in this context and influenced by rising trends of managerialism and consumerism in policing

(Westmarland, 2016)). PSRB can be distinguished from 'typical' rule-breaking which is associated with deviance and unethical or dishonest intentions, or is undertaken for personal gain (Morrison, 2006). Morrison (2006) identified three types of PSRB⁸⁹: to achieve job efficiency, to help a colleague, or to provide good customer service, and this could explain what takes place within the context of the detention and interviewing of vulnerable suspects.

Some AAs attended the legal consultation if requested by the legal advisor. Although not a colleague in the traditional sense, AAs and legal advisors both attend the police station to protect the rights of the suspect and act in their best interests. Therefore, AAs may feel obligated to attend the legal consultation if requested. That some AAs also suggested their attendance in the legal consultation was for the benefit of the suspect, to ensure they understood the legal advice, supports Morrison's (2006) research that rules are often broken for the benefit of the 'customer'. While the suspect is not a customer per se, they are entitled to a safeguard and as such, may expect a level of 'service'. One aspect of the AA's role is to support the suspect through the process and therefore, they may feel that attendance in the legal consultation fulfils this duty.

As explored in Chapter Two, PSRB involves a decision whether to follow a rule or not (Spreitzer and Sonnenshein, 2004; Morrison, 2006, p.15) and Morrison (2006) noted that PSRB was associated with job autonomy, co-worker behaviour and a propensity for risk-taking. AAs do have a degree of job autonomy, as they perform their role at the police station, away from their supervisors and scheme coordinators. As a result, those managing AA schemes may be unaware of these practices taking place and that guidance is not adhered to (see Chapter Three for further discussion of AA schemes). Parallels can be drawn here with the literature on police culture discussed earlier in the chapter which identified that discretion may take place where there is less visibility and supervision (Carrabine et al., 2004). However, other factors may contribute to the decision of AAs to attend the legal consultation, including the perceived consequences of their actions and whether they may be punished (Morisson, 2006; Ghosh and Schum, 2019; Fleming, 2020).

During semi-structured interviews with AAs, AA13 noted that the police never asked about his attendance in the legal consultation. There appeared to be a perceived lack

⁸⁹ Within the context of hospitality. See Chapter Two for further discussion of PSRB, which has seldom been used to explain rule-breaking within the context of the CJS. One exception is the research of Fleming (2020) which concerned child social workers.

of accountability and subsequent consequences for attending, which may serve to encourage and reinforce this behaviour. Additionally, AA18 justified the risk she took in attending the legal consultation by stating that if the police were to ask about their attendance, she would not disclose anything, as it would not be fair to the suspect. This could place the AA in a position of conflict or tension with the police were this situation to arise, although some AAs felt it was unlikely that they would be asked, as this had not happened in the past. Therefore, where the AA assesses there to be an overall benefit of attending the legal consultation, with little risk of negative consequences, attendance may be perceived as justifiable.

One should be open to the possibility that AAs may attend the legal consultation for other reasons, and that these may be of some benefit to the suspect and legal advisor. For instance, attendance could be beneficial to the suspect's welfare, especially if they built a rapport with the AA. The AA could also assist the legal advisor with communication and ensure that the suspect understands the legal advice they have received. It is also possible that AAs attend the legal consultation because they wish to learn more about the case and the approach which may be taken in the interview. Indeed, AA13 said that he often spoke with the legal advisor in custody to establish what the 'plan' was for the interview. That said, this can be done outside of the legal consultation.

Furthermore, while an AA may have positive intentions, it is not known how their actions impact those who also partake in these consultations. While none of the legal advisors interviewed spoke of involving the AA in the consultation (and one expressly forbade this), one may assume that some legal advisors were content to have the AA attend, otherwise, they would not have allowed them to participate. However, whether vulnerable suspects derive benefit from the AAs attendance in the legal consultation is harder to ascertain.

Additionally, little is known about detectives' views on AAs attending the legal consultation. Detectives may turn a blind eye to this practice because they believe that the AA should be allowed to participate. Therefore, there may be a situation where the AA exercises their discretion in attending the legal consultation, and the police choose not to ask the AA to divulge the contents of the meeting. Another potential reason involves the police having to obtain another AA if the current AA becomes a witness. DS4 noted in his interview (generally) that obtaining an AA could be difficult, so he would not seek to replace one unless they were 'really bad', indicating this is not something detectives are keen to do. Therefore, the difficulties in

obtaining AAs (especially if constrained by the custody clock – see Chapter Three) may act as a deterrent to the police acting upon these rule breaches by AAs.

Morrisson (2006) notes that where a rule is broken on repeated occasions, one should consider whether the rule is appropriate in the first place. There are proposals for AAs to be afforded legal privilege (Dehaghani, 2019; Dent and O’Beirne, 2022), and similar to Pierpoint’s (2011) identification of ‘role creep’, it is possible that continued or increased attendance of the AA in the legal consultation may prompt an extension to the principle of legal privilege to cover the AA.

This section has explored PSRB as an explanation for why rules and guidance are not always adhered to by AAs, specifically in the context of legal privilege. However, when exploring the fairness of this practice and the implication for ‘equality of arms’, there are competing arguments. One may argue that to jeopardise the legal privilege between a suspect and legal advisor would be unfair and would increase the power of the state as due process safeguards put in place to protect the suspect from the right to self-incrimination may be rendered ineffective. That said, if a suspect attending a legal consultation requires support or the presence of an AA to better understand their legal advice, this may in fact further enable ‘equality of arms’ as they may be in a better position to make informed decisions about any account they may provide to the police. The next section will explore adjustments that are considered by detectives for the interviewing of vulnerable suspects.

9.6 Adjustments Considered for Vulnerable Suspects

The seven principles of investigative interview suggest that vulnerable suspects are interviewed with due consideration (College of Policing, 2022). While there is no further explanation as to what this entails, Tudor-Owen et al. (2022) provide an overview of adjustments that can be considered during vulnerable suspect interviews. These include allowing suspects to sleep off the effects of intoxication, obtaining an AA and changing the style of the interview (e.g., consistent with the cognitive interview).

This research identified that during the planning and preparation stage of the interview detectives considered a range of adjustments for vulnerable suspects. This is consistent with the research of Geijsen et al. (2018a) who found that 45 per cent of officers made adjustments for the interviewing of those who were vulnerable. These adjustments are detailed in Chapter Seven, section 7.2 and included more frequent breaks, and adaptation of the questions asked and language used during interview.

A couple of detectives also deliberated over whether to challenge the suspect at all for fear of leading them, indicating an awareness of how the vulnerability of suspects may influence their ability to provide a reliable account. Several factors may influence whether detectives considered adjustments for vulnerable suspects, including their training, experience (some detectives may have used methods in the past successfully, or not), and the nature of the suspect's vulnerability.

Some detectives did genuinely appear to take into consideration the wellbeing and welfare of the suspect during interviews, and there were a number of examples observed of detectives offering regular breaks and ensuring that suspects were warm and hydrated. However, it is also possible that detectives had other motivations for implementing adjustments for vulnerable suspects. As noted earlier in the chapter, some detectives were mindful of obtaining admissible evidence, and one noted that he obtained an AA to facilitate this, rather than due to underlying concerns about the suspect's welfare.

It is possible that adjustments were implemented by other detectives for similar reasons. For instance, DS4 was mindful in his planning of interviews in Case 14 that he could be accused of 'leading the suspect up the garden path' had she been challenged during her interviews. While this may be best practice for vulnerable suspect and is advocated by O'Mahony et al. (2012), this detective's concern appeared to be how the interview was perceived by a court, rather than the experience of the suspect during that interview. Therefore, securing admissible evidence at trial may be the primary consideration for detectives.

That said, regardless of the intention behind adjustments made for interviews with vulnerable suspects, their implementation may benefit suspects and facilitate 'equality of arms', especially as detectives could tailor adjustments according to the needs of the suspect. On this basis, this may enable fairer treatment, provided that adjustments are made based on need and are in the best interests of the suspect. Where adjustments are made, this may mean that a suspect is better able to concentrate, understand the process and provide an accurate and reliable account (if they wish), so these may arguably be in the best interests of the suspect. However, whether these are ultimately done for the benefit of the suspect, or to safeguard evidence is another matter entirely.

9.7 Are Vulnerable Suspects Treated Fairly?

This section will now explore the implications of these findings for the fairness with which vulnerable suspects are treated. As discussed in Chapter Two, fairness can be

conceptualised in different ways, but it is often equated with justice (Rawls, 1985; Irwin-Rogers and Shuter, 2017). One of the concepts explored in this thesis is that of 'equality of arms' which is provided for in Article 6 of the European Convention on Human Rights. The principle which underpins equality of arms is equity and measures should be put in place to ensure parity of both parties and that suspects are not placed at a disadvantage during a criminal investigation (Toney, 2001; Cape et al., 2010).

Suspect safeguards have a vital role in ensuring equality of arms as they seek to reduce the power imbalance between the police and the suspect, and in theory aim to place the suspect on a more equal footing with the police during the investigative process. It was the power imbalance between the police and suspects (and miscarriages of justice which arose from this power being exercised unfairly), which influenced the RCCP in 1981 to recommend the AA safeguard. The RCCP (1981) sought to strike a balance between the rights of crime control and due process, and throughout this research evidence of this conflict was observed in the working practices of detectives and third parties.

The principle of 'equality of arms' acknowledges that some suspects may require more assistance than others to be placed on an equal footing with the police, and some parallels may be drawn with the welfare approach noted by Pierpoint (2005), which was adopted by some third parties whilst undertaking their roles. However, the due process and welfare approaches, on occasion, may conflict with one another (Pierpoint, 2005), which raises the question as to how one best ensures vulnerable suspects are treated fairly.

There were a number of practices observed during this research where detectives and third parties undertook working practices which did not adhere to the law and guidance, or the principles which underpin this. Importantly, vulnerable suspects were not always afforded an AA. The identification of vulnerability in suspects detained at the police station can be difficult for a plethora of reasons (see Gudjonsson, 2003; Dehaghani, 2019). That said, in this research seven of nine suspect custody records made reference to a mental health condition. Therefore, it appears that in the majority of cases, the presence of the AA is determined by whether the police decide to implement relevant safeguards, a finding which supports the research of Dehaghani (2019). Where effective safeguards are not applied to those who need them, one may argue that this renders their treatment unfair and there is a higher risk of legally unsound outcomes (APT, 2021, p.16), which may include miscarriages of justice. If these safeguards were to adopt a wider and clearly defined remit, this may reduce

the opportunity for unfairness in the application of suspect safeguards, although, as noted in Chapter Ten, this does not come without its respective challenges.

This research has highlighted that suspect safeguards are important as they help to protect the rights of suspects, provide an opportunity to challenge unfair practice and limit the power of the police. However, merely obtaining a suspect safeguard does not guarantee the fair treatment of vulnerable suspects. As identified in this research, there were occasions where third parties did not intervene, when arguably required, and on other occasions intervened in a manner which may have been harmful to suspects' interests. The Mendez Principles make reference to the "effective implementation of safeguards" (APT, 2021, p.16), and therefore, it is not only important that safeguards are implemented where required, but that these safeguards also "protect the human rights of the interviewee and guarantee the integrity of information obtained during interviews" (APT, 2021, p.14). While the Principles provide important guidance concerning suspect safeguards, further guidance as to how 'effective safeguards' can be achieved is required, especially concerning third parties such as the AA, to ensure that vulnerable suspects are treated fairly.

This thesis has explored the working practices of detectives and third parties during the police interviewing of vulnerable suspects. These findings highlight the complexity of this area and have identified instances of rule breaking or practices which are not in the spirit of the rules, both of which sometimes resulted (often unintentionally) in the unfair treatment of vulnerable suspects. Many of these practices appeared to be influenced by crime control, which was often seen to conflict with due process. It is imperative that suspect safeguards are afforded to suspects, but also that they act in a manner which facilitates 'equality of arms'. Furthermore, the police have a responsibility to respect due process safeguards in the interests of fairness and justice.

Chapter Ten: Conclusion

The aim of this research was to explore the working practices of detectives and third parties involved in the detention and interviewing of vulnerable suspects who had been arrested on suspicion of committing homicide (and attempted murder) offences. An important aspect of this research was the predominantly qualitative approach, which is seldom found in the forensic psychology literature within which investigative interviewing predominately sits. It was also salient that this research involved the analysis of real-life vulnerable suspect interviews as the experience of police interviewing is difficult to replicate using mock experiments. As such, this research provides a unique methodological contribution and also adds to the existing knowledge in this area.

This thesis has demonstrated that the working practices of detectives and third parties involve occasions where rules and guidance, or the spirit of the rules, are not always adhered to. This may place vulnerable suspects at a disadvantage and result in unfair treatment. That rules were able to be circumvented, often without consequence, highlights the discretion which both the police and third parties have when exercising their respective roles. On occasion, this created a discrepancy amongst how suspects were treated, especially in relation to obtaining an appropriate adult (AA). The findings highlight that the practices of the police were largely consistent with crime control objectives, which prioritised obtaining an account from a suspect during the interview, and ensuring any evidence obtained is admissible at trial. In contrast, the working practices of third parties were often influenced by either due process or welfare objectives. In order to facilitate actors' respective aims, police culture and pro-social rule breaking provide some explanations as to why detectives and third parties may not always adhere to rules and guidance. Furthermore, police culture and the control which the police have over those detained in custody, enabled the working practices identified in this research to be undertaken largely unchallenged, which may further reinforce and legitimise these working practices.

Where discretion is exercised in relation to the provision of safeguards set out in the Police and Criminal Evidence Act 1984 (PACE) or Code C, I argue that this is unfair, and that vulnerable suspects should be afforded an AA whenever vulnerability is identified. When one considers how suspect safeguards operate once they have been implemented, or how detectives' working practices are undertaken, an approach which is tailored to the needs of the suspect may best facilitate 'equality of arms' and account for the fact that vulnerability is not a single monolithic phenomenon which

impacts people in the same way. Adjustments made by the police which aim to level the playing field for suspects may vary depending on individual need, and therefore a degree of flexibility in this area may result in fairer treatment. That said, such an approach is reliant on detectives and third parties acting in the best interests of the suspect, which may be difficult if this conflicts with competing objectives of crime control or due process. This chapter explores the limitations of the research and makes recommendations for future research and practice. These will now be considered in turn.

10.1 Limitations of the Research

As with most research studies, there were some limitations with this study. Many of these were methodological in nature or arose due to the constraints of conducting small-scale PhD research. I will now reflect on some of these limitations before proposing ways in which this research could be further developed in future.

As noted in the methodology chapter, one major limitation of this research is that the voices of vulnerable suspects were not included. While this was part of the original research concept, constraints with time, obtaining ethical approval and gaining access to the prison estate meant that involving vulnerable suspects was not possible. This is something I would like the opportunity to explore in the future, to establish the perspectives of vulnerable suspects, their experiences of investigative interviews and also how they perceive the involvement of third parties.

Other methodological limitations concern the relatively small sample sizes involved in this research and the sampling methods, both relating to the number of police forces sampled, and the number of cases sampled within each. While the findings have limited generalisability, a common critique of qualitative research (Hall, 2018), it is worth noting that generalisability was not an aim of this research, which instead sought to obtain a detailed and exploratory insight into the working practices of detectives and third parties.

It is also possible that the use of purposive sampling methods may have resulted in some selection bias. In particular, there is a possibility of self-selection bias concerning the respondents that volunteered to be interviewed. It may be the case that those who were more cognisant of vulnerability or those more likely to follow role-specific rules and guidance, were those who volunteered to take part. There may be some indication of this, as most of the detectives who took part in the semi-structured interviews were involved in police suspect interviews with an AA present. Therefore, the voices and opinions of those who are less likely to follow procedures may be, to

an extent, unrepresented in this piece of research. That said, the semi-structured interviews with AAs highlighted that several respondents attended the legal consultation, which is not protected by legal privilege. While this is not consistent with some of the training AAs received, respondents discussed this rule-breaking with me quite openly. It is possible that the nature of the rule-breaking, which was pro-social, was a factor in participants' willingness to talk about these practices.

This research explores the detention and interviewing of vulnerable suspects on homicide investigations, an area in which it is suggested that investigations are conducted to the 'gold standard' (Brookman and Innes, 2013). Little research is undertaken in this area (especially concerning police interviewing) using qualitative methods. While this research addresses a knowledge and methodological gap in the literature, it is also acknowledged that the investigation of homicide does not represent the majority of arrests and interviews that the police undertake (ONS, 2022). While there may be some applicability to other serious offences investigated by detectives, interviews for volume crimes (e.g., theft, burglary) may be different as these interviews may be shorter, may involve officers with less training and experience, and may be less likely to have third parties present. That said, the PEACE framework has applicability to all suspect interviews (College of Policing, 2022), and therefore some working practices may remain similar.

10.2 Directions for Future Research

The findings from this thesis provide an insight into the working practices of detectives and third parties, and shed light on how vulnerable suspects are treated during their detention and interviewing. There are several areas in which future research could address the methodological limitations noted in the earlier section, most notably undertaking research with vulnerable suspects to establish their experiences of their detention and suspect interview. There is a danger that, at present, suspect safeguards are geared toward securing admissible evidence for a potential trial (Dehaghani, 2019). Therefore, it may be beneficial to explore with vulnerable suspects what they want from suspect safeguards and how these could facilitate effective participation and protect their best interests.

Additionally, in light of the finding that some detectives are more involved in the decision-making process for obtaining an AA, it would be beneficial for observational research to take place with detectives, to better understand how these decisions are made and to explore the interactions which take place with the custody officer, who traditionally is responsible for making this decision. This may help to establish why

there is some discrepancy between the interview data which indicated that detectives err on the side of caution and want an AA present in their homicide interviews, yet only two-thirds of the interviews sampled with vulnerable suspects involved an AA.

This research focuses on vulnerable suspects, who are over-represented within all stages of the CJS (Loucks, 2007; Bradley, 2009). Yet, despite their prevalence, there is a dearth of research which explores how vulnerable suspects are interviewed by the police and the impact of third parties during the interview. While previous studies have explored interventions by third parties, often utilising quantitative methods (e.g., Pierpoint, 2001; Medford et al., 2003; Farrugia and Gabbert, 2019), further qualitative research is required in this area to explore the reasons *why* third parties intervene, or not. This may provide further insight into the working practices of third parties, and how their respective roles are interpreted by those undertaking them. In doing so, one may be able to explore the complex working relationships between detectives, third parties and suspects, and explore how third parties can best undertake their role to support vulnerable suspects.

10.3 Recommendations for Practice

This section will set out some recommendations based on my research findings. It became evident during this research that AAs could be asked to attend a homicide investigation with relatively little experience in their role, and in fact two AAs first deployments were for suspected homicide cases. This could be a daunting prospect for some AAs, who may be ill-prepared for such interviews. Therefore, it may be beneficial to have AAs present who are experienced and know what to expect from investigations of this nature. Detectives who interview on serious investigations, including homicide, are trained to a higher standard than officers who investigate less serious, volume crimes (see Chapter Four). Therefore, it is recommended that AAs attending serious crime interviews have received additional training and are sufficiently experienced. This training could provide AAs with an understanding of the complexity of some of these interviews and how they are undertaken, and ensure that AAs are aware of the impact of longer periods of detention and interviewing on a suspect's wellbeing. Training may also enable AAs to be better equipped to deal with the potentially distressing content of an interview and to have the confidence to intervene during an interview, if necessary.

This research found that vulnerable suspects are not always afforded the safeguards to which they are entitled, even for serious offences such as homicide. The police are able to exercise discretion, in part, because of the nature of the Codes of Practice,

which do not render officers criminally or civilly liable (section 67(10) PACE), but also because the wording of the provisions within Code C allow for officers to interpret these as they see fit (Dehaghani, 2019). If provisions were incorporated into legislation and their wording made clearer, this may reduce the opportunity for discretion to be exercised. An example where wording could be further clarified is in para 1.13(d) where the functional test for vulnerability is defined. This appears to currently equate vulnerability with understanding, which could cause confusion, if one believes that someone with a mental health disorder is not vulnerable because they understand what is being said to them. The proposals contained within the Mendez Principles are important as they try to elevate standards of investigative interviewing globally and work is ongoing by academics to raise awareness of these Principles (Walsh, 2023). They also contain a wider interpretation of vulnerability and adoption of the principles in this context may be beneficial because, at present, the criteria in para 1.13(d)(iii) notes suggestibility and compliance, yet there is no guidance available to assist officers to identify this. Additionally, it is also important that officers are held accountable for failures to obtain an AA (Dehaghani, 2019), especially if conditions indicative of vulnerability have been identified.

It has been considered that all suspects detained at the police station may be vulnerable and should have an AA present (Dehaghani, 2019). In light of the resource implications which would arise with such proposals, I take a modified position and recommend that where the offence being investigated is serious, and indictable (to be tried in the Crown Court), an AA should be obtained for all suspects. The requirement for vulnerable suspects to receive an AA for less serious offences would still exist, but this would not be the blanket approach I propose for serious offences.

Additionally, it has been suggested by Pierpoint (2020) that all young and vulnerable suspects should receive mandatory legal advice, and the Mendez Principles (APT, 2021, p.16) make the same recommendation for young suspects. I concur with these recommendations, although it is important to be cognisant of the resource, training and financial implications. It is also possible that such an approach could be perceived as undermining the autonomy of a vulnerable suspect (Pierpoint, 2020), who at present can choose whether they wish to obtain legal advice or not. However, there is no guarantee that the mandatory presence of an AA or a legal advisor would ensure the fairness of an interview, as was highlighted by a minority of cases in this sample, most notably Case 14, where the interventions of third parties appeared detrimental to the suspect. Pierpoint (2006) acknowledges that although the previous research of Brown et al. (1992) and McConville et al. (1994) identified limitations with the quality

of legal advice, this appears to have improved since those studies were undertaken (see Bridges and Choongh, 1998, and Cape, 2002). Additionally, research has found the attendance of third parties may be beneficial to vulnerable suspects (Medford et al., 2003), which supports arguments for the mandatory attendance of third parties for suspects who are vulnerable.

This thesis explored how the police interviewed vulnerable suspects and found that while procedural aspects of suspect interviewing (such as issuing the caution, introducing parties at the start of the interview, reminding the suspect of their right to legal advice) were generally adhered to (which is consistent with findings by Minhas et al., 2017), on occasion, practices were observed which may not be consistent with the principles of fairness advocated for suspect interviewing. Examples included repeated questioning and attempts to circumnavigate a 'no comment' interview. Therefore, it may benefit detectives to undertake regular refresher interviewing training.

Additionally, the proposals of Bull and Milne (2022) who advocate for the interviewing of vulnerable suspects in line with ABE interviewing are further echoed. There are benefits to such an approach as the guidance for ABE interviews is more comprehensive, with an aim to ensure a less confrontational process where an accurate account is obtained. However, a difficulty arises with the concept of vulnerability, and who should be entitled to such an interview. While there may be relatively little debate concerning suspects as vulnerable as the lady in Case 14, should all vulnerable suspects (argued by some to be potentially all suspects) be entitled to an ABE interview? Some may advocate for the requirement to challenge suspects who have been arrested upon suspicion of committing some of the most heinous crimes in our society. One could trial the use of ABE interviews with those who fit the definition of vulnerable and assess whether these interviews generate more investigative relevant information and higher suspect satisfaction (which may be associated with greater compliance and likelihood of obtaining an account (Goodman-Delahunty et al., 2013; Bull, 2019).

Another recommendation to arise from this research concerns the involvement of detectives in obtaining the AA, where they are able to select the specific AA they want to participate in their interviews. As noted in Chapter Six, this close working relationship may impact the neutrality and independence of the AA, and this could potentially be open to challenge at trial. Therefore, all AA schemes should have rotas in place to ensure that there is less opportunity for the police to select specific AAs.

Some of the recommendations to arise from the research concern the law and guidance which govern how the AA undertakes their role. Adding to the previous commentary of White (2002), Dehaghani (2019), and Dent and O'Beirne (2021) it is recommended that the principles of legal privilege are extended to AAs. It may be beneficial for the AA to attend this consultation to ensure that the suspect can understand the legal advice provided. Therefore, to avoid the conflict of interest which may arise if an AA attends the legal consultation this principle should be extended to cover both parties.

10.4 Final Thoughts

This research explored how vulnerable suspects were interviewed on homicide investigations, and the working practices of detectives and third parties. The findings demonstrate that the working practices of third parties and detectives are complex and multi-faceted, and can involve instances where rules and guidance are not adhered to. The influences of police culture and pro-social motives in this area are now better understood, although further research is still required.

Homicide investigations are often said to be undertaken to the gold standard (Brookman and Innes, 2013) and while this research has identified examples where detectives and third parties do not always adhere to rules and guidance, this is not intended in any way to detract from the important work of detectives and third parties, and the dedication of all the respondents who took part in this research. It is hoped that the findings from this research can contribute to discussions about how vulnerable suspects are able to participate in the CJS, how effective suspect safeguards are, and how the police can best balance competing objectives of solving crime and achieving justice for victims, with ensuring *all* suspects receive fair treatment which enables 'equality of arms' to be achieved. After all, "we need to defend the interests of those whom we've never met and never will." (Sachs, 2011, p.36).

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Appendices

Appendix A: Letter Sent to Chief Constables Requesting Research Access

Centre for Criminology

Faculty of Business and Society

University of South Wales

Pontypridd

Wales

CF37 1DL

13th September 2017

Dear Chief Constable [Name]

Re: Research request

I am a criminology PhD student based at the University of South Wales. My area of research concerns vulnerable suspects who have been arrested upon suspicion of committing homicide offences. My supervisors for the project are Dr Harriet Pierpoint and Professor Fiona Brookman. I am writing to you to request access to [Force] Constabulary for my research.

The aim of my research is to gain a greater understanding of the detention and interviewing of vulnerable suspects, in major crime investigations. In particular, I am interested in the interactions which take place between the police, the suspect and third parties present, such as the legal advisor and/or the appropriate adult.

My interest in this area of policing arose during seven years that I spent working for Avon and Somerset Constabulary as a Major Crime Investigation Officer. During this time, I worked on high profile homicide investigations in a variety of roles. As a result, I am aware of the varied challenges that major crime investigations face.

I have previous experience of using HOLMES and other force systems, which I hope will reduce the impact of my presence. I am also security cleared within the civil service (where I am currently employed).

The proposed research aims to contribute to the knowledge base of two under-researched areas, namely homicide investigation and vulnerability. The Bradley Report (2009) and 'There to Help' (NAAN, 2015) highlighted concerns regarding vulnerable individuals within the criminal justice system. The identification and risk management of vulnerability, especially those with mental health issues, is a particularly pertinent issue within criminal justice at present and is reflected in the National Strategy for Police Custody. Moreover, in line with this document the research considers wider issues such as police legitimacy and effective investigation.

Proposals have been made recommending that the allocation of appropriate adults for vulnerable adults becomes a statutory duty (NAAN, 2015). Third parties play a key role in ensuring suspects' rights are protected, but also enable suspects to provide truthful and reliable accounts. This study will provide valuable insight into the role and impact of third parties taking part in the interview process and may result in policy and practice lessons, which may be of some interest to both police forces and third parties.

In order to meet the aims of the project I would like to adopt the following methodologies:

- Analysis of digitally recorded police interviews in concluded homicide investigations.
- Semi structured interviews with police officers, and third parties (appropriate adults, legal advisors and interpreters). Where possible, interviews would take place with those who took part in the survey of recorded interviews. This will involve 10 interviews of police staff, lasting around 45 minutes each.
- Non-participant observation of police interviewers within major crime teams.
- Non-participant observation within custody units.
- Documentary review of case material.

I would like to analyse suspect interviews from ten cases. This would be supplemented by conducting interviews with officers who were involved in such interviews to gain a broader understanding of the processes and issues that arise in preparation, and during the interviews. The documentary review would consider three cases in more detail, to gain a broader picture of the role of the interview in the wider investigative

context. Observations would ideally take place upon the commencement of a homicide investigation. In particular, I would be interested to learn more about the planning and preparation for interviews, engagement with third parties, and the role of the tier 5 interview advisor.

I have obtained ethical approval from the Universities research committee and, should my request to you for access be successful, I would look to commence research in November 2017. Research will be conducted in accordance with the BSC Code of Ethics, and adhere to principles of confidentiality, anonymity and informed consent. The research will be conducted in accordance with the Data Protection Act 1998 and all data will be securely stored. Ideally data collection would take place two days a week, and it is envisaged it will take two months to complete the research, although I am flexible regarding the proposed methodology and time frames.

It is difficult to convey all aspects of the aims of the project, proposed methodology, and my previous experiences within one letter. I would be delighted to meet in person, or speak over the telephone should you have any questions. My supervisors are also happy to field any further queries you may have.

Thank you for taking the time to consider this request and I look forward to hearing from you.

Kind regards

Jennifer Holmes

Jennifer.holmes@southwales.ac.uk

Appendix B: Information Sheet



Information Sheet

Version 1: 9th July 2018

The detention and interviewing of vulnerable suspects arrested upon suspicion of committing homicide offences.

I am a Criminology PhD student at the University of South Wales. I would like to invite you to participate in my research project which concerns the detention and interviewing of vulnerable suspects arrested upon suspicion of committing homicide offences. This document will explain why the research is being done and what it will involve. Please read the following information and please ask if anything is unclear.

The objective of the research is to gain a greater understanding of the interviewing of vulnerable suspects in major crime investigations. In particular, the research seeks to identify what impact third parties have upon the vulnerable suspect interview. Little is known about such interviews and this research will add to the knowledge base in this area. This may result in policy and practice lessons which influence how major crime teams conduct interviews with vulnerable suspects, and how they work alongside third parties.

I have been granted access to police forces as part of the research. I have already reviewed a sample of suspect interviews and I am now seeking to interview third parties (appropriate adults, legal advisors and interpreters), such as yourself, who participate in suspect interviews. This is to explore your experiences of participating in interviews with vulnerable suspects. It is intended that discussion will focus on the most recent homicide interview (in a concluded investigation) you have participated in. In addition, some general questions around vulnerability and training will also be asked. Participation in the research is of course entirely voluntary.

Please note that if you decide to take part in the research your identity will remain confidential and you will not be identified in any report or publications. A pseudonym

(discussed with yourself) will be used instead of your name to maintain confidentiality. As well as concealing your identity, key information which may result in the identification of other individuals and police forces will be anonymised (omitted or disguised). This includes specific details regarding colleagues, suspects, victims and investigations. The only limit on confidentiality is that should an intention be disclosed during interview to either commit a criminal offence, or to harm oneself, the researcher will be obligated to pass this information on to the relevant authorities.

With your permission, I would like to record the interview on a digital audio recorder. During the interview you will be welcome to request that the recording is paused or terminated at any time. The audio recording will be transferred to a password protected computer, encrypted, and deleted from the recorder. I will transcribe all audio files myself. The transcription will be encrypted and stored securely upon a password protected device. Consent forms and transcripts of interviews will be kept for no longer than two years after the completion of the PhD and all data will be handled in accordance with the General Data Protection Regulations 2018 (GDPR).

The results of the research will be written up into a PhD thesis, submitted to and examined at the University of South Wales. The thesis will **not** contain the interview transcripts, although small sections (quotes) may be reproduced in addition to the discussion of themes which arise. Hard copies of the thesis will be made available to those organisations that assisted with the research. I hope to write journal articles based on the research and present key findings at conferences and events.

Thank you for taking the time to read this information sheet. If you are willing to take part in the research, you will be asked to sign a consent form. Should you have any questions about anything connected with the research, please feel free to contact me on [number] or at jennifer.holmes@southwales.ac.uk If you are unhappy with any aspect of the research and would like to discuss this, please contact myself, or Dr Harriet Pierpoint, Director of Studies at the University of South Wales at harriet.pierpoint@southwales.ac.uk

Jennifer Holmes

Appendix C: Consent Form

Interview of Vulnerable Suspects Arrested upon Suspicion of Homicide Offences.

Consent Form

Researcher: Jennifer Holmes (USW)

Supervisors: Dr Harriet Pierpoint & Professor Fiona Brookman (USW)

I, the undersigned, confirm that (please initial each box as appropriate):

1.	I have read and understood the project <i>Information Sheet</i> , dated _____	<input type="checkbox"/>
2.	I have been given the opportunity to consider the information, ask questions about the project, and my participation in it.	<input type="checkbox"/>
3.	I voluntarily agree to participate in the project.	<input type="checkbox"/>
4.	I understand that I can withdraw from the interview at any time without giving any reason, without any consequence to myself.	<input type="checkbox"/>
5.	The procedures regarding confidentiality have been clearly explained to me. Personal and identifying information will be omitted, or replaced by a pseudonym.	<input type="checkbox"/>
6.	I consent for the interview to be audio recorded.	<input type="checkbox"/>
7.	I agree to my anonymised data being used in research reports and subsequent publications such as journal articles.	<input type="checkbox"/>
8.	I understand that the data will only be accessible by members of the research team (Ms Holmes, Dr Pierpoint and Professor Brookman).	<input type="checkbox"/>

Name of participant Signature Date

Name of researcher Signature Date

Appendix D: Observation Schedule for Police Interviews

Observation Schedule

General Information

Date	Month / year
Start and finish time of interview ⁹⁰	Hours / minutes
Police interviewer 1: Reference Rank? Gender?	 PC / DC / DS / DI / Civilian Male / Female
Police interviewer 2: Reference Rank? Gender?	 PC / DC / DS / DI / Civilian Male / Female
Suspect ⁹¹ : Reference Gender? Age, if given	 Male / Female (10-17), (18-25), (26-35), (35-50), (50-60), (60+)
Legal advisor present? Reference Gender?	 Present / Not present Male / Female

⁹⁰ Length of the interview can be calculated afterwards from this information.

Duty or known client?	Duty / Known client
Appropriate adult present?	Present / Not present
Reference	
Gender?	Male / Female
AA scheme, if applicable?	
Type of AA, if identified?	Volunteer trained / volunteer untrained / Paid / etc.
Relationship to Suspect?	Parent / Guardian / Social Worker / Friend / Not known / etc.
Interpreter present?	Present / Not present
Reference	
Gender?	Male / Female
Language spoken in interview?	Arabic / Polish / Romanian / Lithuanian / Spanish / French / German / Dutch / Russian / Chinese / etc.
Topic Notes	

Layout in the Interview Room

What furniture is present?	Table / Chair (fixed / not fixed) ⁹²
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⁹² Tally the number of chairs.

What is the position of the furniture?	
Where do the parties sit?	
How many cameras cover the interview room?	
Positioning of camera(s)?	On suspect / On officers / Whole room / On third parties / other
Other factors of note	Background noise / interruption by someone outside the interview room / temperature (indicated by wanting a blanket, wearing a coat, removing clothing, shivering)/ etc
Topic Notes	
Consider sketch plan	

Interview Opening

Is the suspect cautioned?	Yes, in full / Yes, but incomplete / No
Is the suspect's understanding of the caution checked with clarification questions by the interviewer?	Yes / No
Is the suspect notified of the right to legal advice?	Yes, in full / Yes, in part / No

If no legal advisor present, is the reason for this explored?	Yes / No
Is suspect notified of rights regarding the interview recording?	Yes / No
Does the police officer clarify that no questions have been put to the suspect outside of interview?	Yes / No
Offence(s) under investigation?	Murder Manslaughter Infanticide Attempt Murder Corporate Manslaughter Gross Negligence Manslaughter Other
Is this part of a series of interviews? If yes, what number in a series of interviews is this?	Yes/No
Is a suspect prepared statement read in the interview?	Yes / No
Who reads aloud the prepared statement?	Legal Advisor / Suspect / Appropriate Adult / Interpreter / Other
Relationship of suspect to victim?	Parent / Sibling / Child / Spouse / Former partner / Friend / Neighbour / Acquaintance / Colleague / Stranger / etc.
Topic Notes	

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Interview Interactions

How many times does the legal advisor contribute to the interview?	Tally
Can this be attributed to any of the following? Select all that apply.	Disclosure / Minimisation / Maximisation / Emphasise Contradictions in Account / Concern / Gentle Prod / Situational Futility / Use of Silence / Interruptions / Intimidation / Challenging Suspects' Account / Focus on Victim (or their family) / Other
How many times does the AA contribute to the interview?	
Can this be attributed to any of the following? Select all that apply.	Disclosure / Minimisation / Maximisation / Emphasise Contradictions in Account / Concern / Gentle Prod / Situational Futility / Use of Silence / Interruptions / Intimidation / Challenging Suspects' Account / Focus on Victim (or their family) / Other
How many times does the interpreter contribute to the interview?	
Can this be attributed to any of the following? Select all that apply.	Disclosure / Minimisation / Maximisation / Emphasise Contradictions in Account / Concern / Gentle Prod / Situational Futility / Use of Silence / Interruptions /

	Intimidation / Challenging Suspects' Account / Focus on Victim (or their family) / Other
<p>Topic Notes</p> <p>What are the nature of third parties' contributions to the interview?</p>	

Disclosure

Is intelligence/evidence raised in this interview which has not been raised previously?	Yes / No / Not applicable as first interview
As a result, is there a change in the way in which the suspect answers questions in this interview?	Yes, suspect now provides an account / Yes, suspect now exercised right to silence / Yes, although this is not consistent / No
Topic Notes	

The Suspect

What is the vulnerability(ies) of the suspect, if ascertainable?	Age / Learning difficulty / Does not speak English fluently / Mentally Disordered / Mentally vulnerable / Substance withdrawal / SCLN / Elderly / Other (specify)
Who raises this?	Police / Legal advisor / Appropriate adult / Interpreter / Suspect / Other
Suspect responses in interview Select all that apply.	Silence throughout / No comment throughout / Answers questions then withdraws / Is withdrawn then answers questions / Answers questions.
If the suspect answers 'no comment' can this be attributed to legal advice?	Yes / No / On occasion / Not ascertainable
Does the suspect make a confession, or partial admission of guilt?	Full confession / Partial admission / No admission.
Does the suspect's position change during interview?	Yes / No
Does the suspect's position change between interviews?	Yes / No / Not applicable
Did the suspect made a witness statement prior to the interview?	Yes / No / Not ascertainable.
Is there any indication of comments made by the suspect outside the interview?	Yes / No
If yes; a) when were these allegedly said?	At time of offence / After offence, but prior to arrest / At time of arrest / During

<p>b) To whom were these said?</p>	<p>booking in procedure / Whilst detained in custody / Other</p> <p>Arresting officer / Custody officer / Other police / Witness / Appropriate adult / FME / Other</p>
<p>Topic Notes</p> <p>What are the nature of any interactions between the suspect and the third parties?</p> <p>How do third parties treat the suspect, in regard to any vulnerability?</p> <p>How is the suspect's vulnerability ascertainable?</p>	

Demeanor

<p>What is the demeanour of suspect?</p>	<p>Cooperative / Calm / Neutral / Distressed / Hostile⁹³</p>
<p>Does this change over the course of the interview?</p>	<p>Yes / No</p>

⁹³ These are not mutually exclusive.

	List Changes
What is the demeanour of Interviewer 1?	Cooperative / Calm / Neutral / Distressed / Hostile
Does this change over the course of the interview?	Yes / No List Changes
What is the demeanour of Interviewer 2?	Cooperative / Calm / Neutral / Distressed / Hostile
Does this change over the course of the interview?	Yes / No List Changes
What is the demeanour of the legal advisor?	Cooperative / Calm / Neutral / Distressed / Hostile
Does this change over the course of the interview?	Yes / No List Changes
What is the demeanour of the appropriate adult?	Cooperative / Calm / Neutral / Distressed / Hostile
Does this change over the course of the interview?	Yes / No List Changes
What is the demeanour of interpreter?	Cooperative / Calm / Neutral / Distressed / Hostile
Does this change over the course of the interview?	Yes / No List Changes
Topic notes	

<p>Note the role of emotions, how they are expressed, and the context where these can be clearly identified e.g. laughter, frustration, anger, upset.⁹⁴</p>	
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Interview Closure

<p>Why is the interview being brought to a close?</p>	<p>Suspect requests a break / solicitor requests a break / AA requests a break / police suggest a break.</p>
<p>Is the interview summarised by interviewer?</p>	<p>Yes / No</p>
<p>Is the suspect invited to add anything that may be relevant?</p>	<p>Yes / No</p>
<p>Is the suspect told what will happen next?</p>	<p>Yes / No</p>
<p>Topic Notes</p>	

⁹⁴ Note context, as laughter can be used in a sarcastic manner, or to express amusement.

Appendix E: Interview Schedule for Police Detectives

Semi Structured Interview Plan – Police Officer

Introduction

Hello. I am Jen, a PhD student at the University of South Wales. I am conducting research into the interviewing of vulnerable suspects. For the purposes of this interview, I am going to ask you to think back on your experiences of interviewing vulnerable suspects for homicide offences. Initially I will ask you about your background, training and what vulnerability means to you. Then I would like you to think about the most recent interview you have conducted with a vulnerable suspect (where the case has concluded) as I will ask you a series of questions about this case. At the end, I will ask you to talk about the issues of interviewing vulnerable suspects generally, in case there are any issues that we have missed.

As explained in the information sheet, please be assured that the principles of confidentiality will apply to the interview. The interview should not take more than an hour, and if you agree will be audio recorded. The tape can be paused or turned off at any time, and you can withdraw from the interview at any time. Does that sound OK and do you have any questions before we start?

Officer History

1. Please can you introduce yourself and tell me, briefly, about your role?

Training

2. Can you tell me about any interviewing training that have you received?

Probes: Did this cover vulnerable suspects? If so, how?

Vulnerability

3. What does vulnerability mean to you?

Probes: What may make a suspect vulnerable? Do you feel the concept of vulnerability is evolving? How?

4. What types of vulnerabilities have you encountered in the suspects who you have interviewed?

Probe: Are certain types of vulnerability more common than others?

5. What are your thoughts about the safeguards to which vulnerable suspects are entitled?

Probes: Too many/Too few? Are they clearly defined? Are they effective? Are they a hindrance? Do they have a benefit? In terms of the 3rd parties that can be present in the IV, what are your thoughts about the legal advisor, appropriate adult and the interpreter (delve into experiences with different types of legal advisor, appropriate adult etc). How do you believe the roles of the appropriate adult and the legal advisor are similar/differ? What do you think the benefits are of adherence to safeguards?

Specific Case Study

I am interested in learning about your experiences of interviewing vulnerable suspects.

6. I would like to discuss the most recent occasion where you have interviewed a vulnerable suspect (where the case has concluded). Starting with your involvement with the suspect, can you chronologically cover your involvement during the interview process through to disposal (where suspect is charged, bailed or NFA'd)?

Probes: What was the vulnerability? How was this identified? When was this identified? Were there any challenges you needed to overcome? How did you do this? Is this case example typical or untypical of your experiences with vulnerable suspects?

7. How did you plan for these vulnerable suspect interviews?

Probes: What things do you consider and why (e.g. layout of room, questioning style and how the questions were phrased, people present in interview, duration of the interview, assessment of suspect need/understanding)? Was there any guidance you used to assist with this? Does anyone assist with the planning? Does the planning differ depending on the nature of the suspects' vulnerability? How do vulnerable homicide suspect interviews compare with other interviews that you undertake?

Third Parties

One of the main aims of my research is to learn more about the way third parties may impact upon the suspect interview.

8. Thinking back to the case we were previously discussing; Who was present in the interview?

Probes: What was the effect of the third parties on the interview, and the participants? How did they handle the suspect's vulnerability? Did parties intervene during the interview? If so, what was the reason for this? Do interventions vary between professionals (e.g. different legal advisors)? Can interventions also be beneficial/problematic? What was the demeanor of the third parties? How did you deal with this? Is this typical or untypical of third party involvement?

9. Did you have any contact with third parties (legal advisor/appropriate adult/interpreter) prior to/between/after the interview(s)?

Probes: What were the reasons for this? Is this usual/unusual?

10. Does the presence of a legal advisor affect when or how disclosure is given?

Probe: Do you find that the disclosure given affects the advice of the legal advisor?

Concluding Questions

11. Are you aware of the recent changes to PACE, regarding the role of the Appropriate Adult, and the definition of 'mental disorder'? If the interviewee is not aware of the recent changes highlight these.

Probe: What are your thoughts on these changes? How do you think they will affect current practice?

12. Do you have any suggestions for how the interviewing of vulnerable suspects could be improved?

13. I would like to conclude this interview by checking whether there is anything else you think is important that you have not already mentioned?

Thank you for your time. If there is something you would like to add I am happy for you contact me in future. My details are on the information sheet provided.

Appendix F: Interview Schedule for Third Parties

Semi Structured Interview Plan – Third Parties

Introduction

Hello. I am Jen, a PhD student at the University of South Wales. I am conducting research into the interviewing of vulnerable suspects who have been arrested upon suspicion of committing homicide offences. Initially I will ask you about your background, training and what vulnerability means to you. Then I would like you to think about the most recent interview you have participated in with a vulnerable suspect (where the case has concluded) as I will ask you a series of questions about this. I will conclude the interview by asking you if there is anything else you wish to add, or expand upon.

As explained in the information sheet, please be assured that the principles of confidentiality will apply to the interview. The interview should not take more than an hour, and if you agree will be audio recorded. The tape can be paused or turned off at any time, and you can withdraw from the interview at any time. Does that sound OK and do you have any questions before we start?

Participant History

1. Please can you introduce yourself and tell me, briefly, about your role?
2. Are you a member of any organisation(s) which may be relevant to your role (e.g NAAN, Advocates Gateway)?

Training

2. Can you tell me about any training that have you received which covers vulnerability?

Vulnerability

3. What does the word vulnerability mean to you?
4. What types of vulnerabilities have you encountered in suspects who you have represented?

5. What are your thoughts about the safeguards to which vulnerable suspects are entitled?

Specific Case Study

I am interested in learning about your experiences of interviews involving vulnerable suspects.

6. I would like to discuss the most recent occasion where you have participated in a vulnerable suspect interview (where the case has concluded). Starting with your involvement with the suspect, can you chronologically cover your involvement through the interview process up to disposal (where suspect was charged, bailed or NFA'd)?

Probes: What was the vulnerability? How was this identified? Did you have much contact with the suspect prior to/between interviews? What do you talk about? What is the purpose of this (e.g. gather account, build rapport, ascertain vulnerability)? Is this level of contact prior to/between interviews typical or untypical? What was the demeanor of the suspect? How did you deal with this? Were there any challenges you, or others needed to overcome? How did you/they do this? What worked well, and why? Did you intervene during the interview(s)? Why? What happened as a result? Did anyone challenge your intervention? Is this example typical or untypical of your experiences with vulnerable suspects?

7. How did you prepare for these vulnerable suspect interviews?

Probes: What things do you consider and why (e.g. access to records, people present in interview, assessment of suspect need/understanding)? Was there any guidance you use to assist with this? Does the preparation differ depending on the nature of the suspects' vulnerability? Did you discuss the suspects' vulnerability with the police in advance of the interview? If so, why? What happened as a result?

Third Parties

One of the aims of my research is to learn more about the role of third parties in the suspect interview.

8. Thinking back to the case we were previously discussing; can you tell me if any other third parties were involved?

Probes: Did you have conversations with other third parties prior to/between/after the interview? What was the reasons for this? Is this typical/untypical? What was the impact of the third parties on the interview, and the participants? How did they handle the suspect's vulnerability? Did any of these parties intervene during the interview? If so, what was the reason for this? What was the demeanor of the other third parties? How did you deal with this? Is this typical or untypical of third party involvement? If no other third party was present, do you know why?

The Police

Another aim of my research is to learn more about the role of police in the suspect interview.

9. What was the impact of the police on the interview, and its participants?

Probes: How many officers were present? Did they appear to have clearly defined roles? What were these? How did they handle the suspects' vulnerability? Is this typical or untypical? What did the police do well? How could the police have improved? What was the demeanor of the police officers present? How did you deal with this?

10. What are your thoughts about the way in which the police perform disclosure before/during interviews? ***question for legal advisors***

Concluding Questions

11. Are you aware of the recent changes to PACE, concerning the detention of vulnerable suspects and the role of the Appropriate Adult? If the interviewee is not aware of the recent changes describe these as listed in appendix A.

Probes: What are your thoughts on these changes? How do you think they will affect current practice?

12. Do you have any suggestions for how the interviewing of vulnerable suspects could be improved?

13. I would like to conclude this interview by checking whether there is anything else you think is important that you have not already mentioned?

Thank you for your time. If there is something you would like to add I am happy for you contact me in future. My details are on the information sheet provided.

Appendix G: Observation Schedule for Custody Records

Custody Record Notes

INTERVIEWS:

TOPIC	NOTES
Date	
Comments re: Welfare	
Comments re: Legal Advisor	
Comments re: AA	
Comments re: Police personnel/Medical staff	
Other	

Appendix H: Screenshot of Email Confirmation of Ethical Approval

From: Alison Crudgington <alison.crudgington@southwales.ac.uk>
Sent: 16 August 2017 12:34
To: Jennifer Holmes <jennifer_holmes@hotmail.co.uk>; Jennifer Holmes <jennifer.holmes@southwales.ac.uk>
Cc: Harriet Pierpoint <harriet.pierpoint@southwales.ac.uk>; Fiona Brookman <fiona.brookman@southwales.ac.uk>
Subject: Ethics

Dear Jennifer

I am pleased to confirm that your ethics form and statement have now been approved by the Chair of Faculty Research Programmes Committee.

Kind regards

Alison

Alison Crudgington
Graduate Research Administrator
Room 8FG021, Graduate Research Office
8 Forest Grove
Research and Business Engagement / Datblygu Busnes ac Ymchwil
University of South Wales | Prifysgol De Cymru
Pontypridd
CF37 1DL
Tel/Ffôn: 01443 654269



Appendix I: Debrief Sheet



The detention and interviewing of vulnerable suspects arrested upon suspicion of committing homicide offences.

Participant Debrief Sheet

Thank you for participating in my research. We hope that you have found it interesting and have not been upset by any of the topics discussed. However, if you have found any part of this experience to be distressing and you wish to speak to me, please contact myself, Jennifer Holmes, email: jennifer.holmes@southwales.ac.uk.

There are also a number of organisations listed below that you can contact.

Organisations	Contact Details
Samaritans (24 hour service)	Tel: 116 123 https://www.samaritans.org/how-we-can-help/contact-samaritan/
NHS Counselling	https://www.nhs.uk/service-search/find-a-psychological-therapies-service/
Mind	https://www.mind.org.uk/information-support/guides-to-support-and-services/crisis-services/helplines-listening-services/

Alternatively, if you do not feel any of the above are suitable, please contact your GP. Further organisation can also be found at the Counselling Directory - <http://www.counselling-directory.org.uk/charity.html>

Best wishes

Jennifer Holmes

Appendix J: Indicators of Vulnerability

Recognised* vulnerability	Indicators of vulnerability	Parameters of vulnerability	How can this be established?	Justification
Juvenile	Age	Aged 17 and under, or appears to be. A genuine belief if there is an absence of evidence is sufficient.	Custody record D.O.B. Presence of AA (which <i>should</i> be mandatory). Can be searched for on force systems.	This is already a recognised category of vulnerability within Code C, para 1.5.
Mental disorder	A recognised mental health condition Self-harm Appear visibly afraid/distressed	Those with mental disorder, regardless of whether suspect is medicated for this. To include conditions within ICD-10	Self-disclosure and/or recorded by Custody Sgt on custody record, use of AA, HCP assessment. Mental health marker on police national computer (PNC) if have prior convictions.	This is already a recognised category of vulnerability, referred to in Codes C para 1.4, defined within Mental Health Act 1983, section 1(2). Includes conditions such as Depression, Schizophrenia, Anxiety, Bipolar Disorder, Anorexia and Autism. Learning disability though is <i>not</i> included. Inclusion of self-harm as can be indicative of a mental health condition, Haw et al., 2001 notes the correlation between the two.

			Contained within HOLMES suspect profile.	
Mentally handicapped	Those with a learning disability Cannot read and/or write	Those suffering a state of arrested or incomplete development of mind which includes a significant impairment of intelligence and social functioning	Self-disclosure and/or recorded by Custody Sgt on custody record, use of AA, HCP assessment. Contained within HOLMES suspect profile. Observed by officers during dealings with suspect.	This is already a recognized category of vulnerability, S.77 PACE 1984. Noted by Gudjonsson and Mackeith (1994) low intellect may have been a factor in false confessions, including the Confait case.
Mentally vulnerable	Learning disability Learning difficulty Cannot read and/or write	Those who because of their mental capacity, may not understand the significant of what is said, of questions or of their replies.	Self-disclosure and/or recorded by Custody Sgt on custody record, use of AA, HCP assessment.	This is already a recognised category of vulnerability, referred to in the Code C para 1.4, defined in Notes for Guidance 1G. Skinns (2009) notes that custody must be scary for those inexperienced in such matters.

	<p>Close relationship to victim (if arrest soon after offence)</p> <p>Never previously arrested</p> <p>Appear visibly afraid/distressed</p> <p>Under pressure to leave custody quickly</p> <p>Homeless</p> <p>Sex workers</p> <p>Migrants</p> <p>Prior MISPER</p> <p>LGBT detainee</p> <p>BAME detainee</p>	<p>Those with low intellect, IQ above 70, but under 90.</p> <p>May be in shock</p> <p>Those who appear afraid/distressed (nervous, crying, shaking, faint, withdrawn etc).</p> <p>Those who have travelled from another country to the UK.</p> <p>Previously reported to the police as a missing person.</p>	<p>Contained within HOLMES suspect profile or PNC.</p> <p>Observed by officers during dealings with suspect.</p>	<p>Close personal relationship to victim may have been a factor in false confession (Gudjonsson and Mackeith, 1994)</p> <p>Young people in particular, have a desire to leave custody which may impact upon their decision making (Evans, 1993), as well as those who have substance addictions (Pearse et al., 1998). Could possibly occur when detainee is a carer, or has a family member in hospital etc.</p> <p>Those who are homeless may be victims of crime (Tyler and Johnson, 2004) and experience mental health issues and poor physical health (Homeless Link, 2014).</p> <p>Sanders (2004) notes many sex workers are involved in drug use, suffer higher rates of victimisation especially violence, and experience mental health issues.</p> <p>MISPERs are regarded as vulnerable by the police (College of Policing, 2021b).</p>
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	<p>Prior victim of crime, in particular DV, torture, trafficking</p> <p>Female detainee</p>			<p>Javaid (2018) suggests that homosexuals may be considered vulnerable in regard to risk of victimisation. Quinn et al. (2005) note the vulnerability of the LGBT females in the U.S. CJS.</p> <p>Skinns (2009) notes that those from BAME backgrounds are less likely to have requests for legal advice met. Therefore, may be vulnerable as not adequately protected during interview.</p> <p>Scott et al (2009) note the high prevalence of women in custody with mental health issues. Echoes research of Quinn et al. (2005). Some may experience systemic discrimination based on race and/or gender, and therefore could be argued vulnerable on this basis.</p> <p>Government advice to immigration advisors regarding vulnerable clients identify those who have been a victim of DV, torture and trafficking as potentially vulnerable (United Kingdom Government, 2017a).</p>
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Physical impairment	<p>Disability</p> <p>Those suffering illness/injury</p> <p>Suffering from substance withdrawal (alcohol and/or drugs)</p>	Those who have a physical disability, or a physical disorder.	Self-disclosure and police observation on custody record, HCP assessment.	<p>Recognised by S.16 YJCEA 1999 as a vulnerable category of witness.</p> <p>United Nations rights of persons with disabilities suggests those with physical disability are more vulnerable to various forms of abuse (Hawking, 2014). Hawking (2014) also suggests people with disabilities are vulnerable because of the many barriers they face: attitudinal, physical, and financial. Environmental reasons, poor access and inadequate facilities may cause distress because the process may be more difficult for those with physical disabilities.</p> <p>Research shows that those suffering substance withdrawal may be prone to false confessions (Pearse et al., 1998).</p>
Those who do not speak English as a first language, or have a hearing or	<p>Do not speak English fluently</p> <p>May be a migrant or illegal immigrant</p>	Those who do not speak English as a first language, and English is not fluent.	Custody record, presence of interpreter.	<p>Considered a special group within Code C, para 3.12 and para 13.</p> <p>Government advice to immigration advisors regarding vulnerable clients identify this group as potentially vulnerable (UK Government, 2017).</p>

speech impediment	Deaf/hearing/speech impairment	Require hearing aid, use sign language, are mute or have speech impediment e.g. stammer.		
Elderly	Age	Aged 65 and over, or appear to be.	Custody record D.O.B.	S.17 YJCEA 1999 include the elderly within the category of intimidated witness. Defined as vulnerable in other settings (social care/healthcare). Also considered vulnerable within criminological literature (Schroder-Butterfill and Marianti, 2005; Mann, 2012)
Prior complainants concerning police treatment	Suspects who have raised complaints/ allegations of malpractice against the police	Those who have previously raised (or made known their intention to raise) complaints against the police in relation to their treatment. Can be made direct to the police or to the IPCC.	Police records, examination of case file.	Those who have previously made complaints may be treated differently as a result of previous police contact.

* Recognised vulnerability refers to recognition of that vulnerability within the CJS

Indicators of vulnerability do not necessarily render an individual vulnerable, but there may be evidence to support such a link.

Many of the above characteristics may appear together, and several may be indicative of specific mental health conditions. Consideration of vulnerability in wider terms than is expressly specified within PACE may result in detection of vulnerability which may have otherwise been overlooked by the police, as although the police are able to identify mental disorder when in the more extreme; research has suggested that detection can be poorer when disorder is mild (Nemitz and Bean, 1994), or allocation of safeguards poor, if medication appears to have the condition under control (Dehaghani, 2016). Furthermore, consideration of vulnerability in widest terms may enable comparison of interviews with suspects suffering traditionally defined vulnerability to establish if the definition, safeguards and therefore treatment of vulnerable suspects is adequate/fair.

Appendix K: Law Society Magazine Poster

PhD Research Study

University of South Wales
Prifysgol De Cymru

Police Interviewing of Vulnerable Suspects

Are you an accredited police station representative?

Are you willing to be interviewed confidentially to share your experiences and beliefs?

Participants will be fully informed about the study prior to any interview taking place.

All responses will be anonymised fully.

* This research is conducted in accordance with University of South Wales Ethical Procedures

* All data will be handled in accordance with GDPR

Please contact Jennifer Holmes if you wish to participate, or if you wish to discuss any aspect of the research

Email: Jennifer.Holmes@Southwales.ac.uk

[Redacted contact information]

Appendix L: Thematic Analysis Coding Table

Main Themes	Sub-Themes
Adherence to rules and guidance or spirit of rules and guidance	Importance of suspect welfare
	Blame avoidance / Risk (e.g., err on the side of caution)
	Concern about inadmissibility of evidence at trial and achieving policing objectives (e.g., obtaining an account)
	Professionalism
	For benefit of others (e.g., other third parties/ actors at the police station)
	Control/power (and taking responsibility)
	For benefit of self and working relationships (e.g., courtroom lore)
Vulnerability	Personal factors
	Situational factors
	'Anyone can be vulnerable'
	Graduations of vulnerability
	Police are vulnerable
	Rejecting the idea of vulnerability
	Adjustments made for vulnerable suspects