

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

Executive Summary : May 2023



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



University of
Nottingham

UK | CHINA | MALAYSIA

Nuffield
Foundation

Executive Summary

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

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

Methodology

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

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

Summary of key findings

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

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

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

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

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

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

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

A Child First approach would have the aim of reducing the number of children brought into police custody and would instead require the adoption of diversion, minimum intervention and problem-solving and restorative approaches. For those children who must be detained, a child-focused and

rights-based approach needs to be adopted in custody that differentiates children from adult suspects. Changes are also required to tackle disproportionality at this early stage, particularly with Black, Asian and minority ethnic children and looked after children, groups that are overrepresented in the youth justice system.

Summary of recommendations

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

Detention should only be used as a last resort.

There should be a shorter PACE clock for children.

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

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

There should be a different model for interviewing child suspects.

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

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

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

Restricting the number of children being brought into police custody

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

Adopting a Child First approach in police custody

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

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

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

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

Collating and reporting nationally on electronic custody-record data

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

Next steps

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

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

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

Acknowledgements:

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

We also want to thank and acknowledge these participating forces for taking the time and effort not only to collect and deliver this electronic data but also to bring together the data-sharing agreements required before sharing this information with academics. This administrative data offers a wealth of information from which to provide strategic oversight of PACE safeguards.

In overseeing this project, we want to express our grateful thanks to members of our Research Advisory Group, chaired by Professor Loraine Gelsthorpe. Their academic and practical expertise was invaluable in providing guidance throughout this project, particularly when dealing with the complex ethical issues arising when seeking to engage with children held in police custody. We also want to thank policymakers and practitioners involved in our Steering Group. Chaired by Lord Carlile of Berriew CBE KC, members have provided guidance, expertise and advice throughout this project.

Most importantly, our heartfelt thanks go to the children and young people who agreed to participate in this study, particularly as this was at such a difficult and anxious time for them, while they were waiting in a cell to be dealt with by the police.

Finally, we want to say thank you to the Nuffield Foundation for funding this research study.

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

Front cover design by Reality Art @RealityArtLDN

<https://reality-art.co.uk/>



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

Copyright © 2023 The University of Nottingham. Published May 2023.
