

REPORT: RECLAIMING CUSTODY AS THE FIRST LINE OF JUSTICE

**All-Party Parliamentary Group on Miscarriages of Justice
Committee on the Legal Profession**



8th October 2025

Report: Reclaiming Custody as the First Line of Justice

Background

This Committee was established to investigate issues relating to legal representation in police stations, including how legal and systemic issues might affect advice given, and how those factors may contribute to miscarriages of justice. Issues that the Committee set out to address included:

- systemic issues related to police station representation (by reference to, for example, police practices (including representatives' interactions with the police), funding, accreditation, and the ongoing impact of the Covid-19 pandemic.
- the willingness of the courts to recognise ineffectual police station representation as a contributory factor in miscarriages of justice.
- the perceived quality of legal advice in police stations, and the ways in which that advice, or the absence of legal advice, might contribute to miscarriages of justice or else mitigate against the risk of miscarriages of justice; and
- the risk to suspects - and in particular the risk to young, neurodiverse and otherwise especially vulnerable suspects – of both a failure to recognise heightened vulnerability and of inadequate representation.

In order to determine which of the above issues might be most pertinent to the role that advice given in police stations might contribute to miscarriages of justice, the Committee – via the APPG Secretariat - held four oral evidence-gathering sessions during 2023 and 2024, reviewed the results of a public survey, and reviewed responses to a call for written evidence.

The introductory evidence session suggested that the most pressing issues with regard to legal representation at police stations and its relationship with miscarriages of justice included:

- Systemic demands on legal advisers at police stations, such as issues with delay and the Defence Solicitor Call Centre (DSCC)
- Funding for legal advisers at police stations, and consequent effects in terms of time spent with clients, the seniority of staff deployed to police station matters, asserting detainee rights, and possible over-reliance on accredited representatives.
- Recognition of, and appropriate responses to, neurodiversity, and other forms of vulnerability by both suspects' representatives and police officers and civilian detention staff, and
- Police cultures and practices that impact on the provision of legal advice and assistance at the investigative stage.

These themes were used to develop and frame the subsequent evidence gathering process.

Framing of this report

There is no singular definition of a miscarriage of justice. When considering this phenomenon, some focus on innocent people convicted of crime, while others focus on systemic failings in the system that produce injustice.¹ We take a broad view of what amounts to a miscarriage of justice, suggesting that it can encompass a range of systemic failings, from a wrongful arrest and detention – even without subsequent charge – to high profile cases such as those of Andrew Malkinson and Oliver Campbell. We are concerned

¹ For discussion, see, e.g., Poyser, S and Grieve, J.D. (2018) 'Miscarriages of justice: what can we learn.' In: Griffiths, A. and Milne, R., (eds.) *The Psychology of Criminal Investigation: from theory to practice*. Routledge

with the broad spectrum of miscarriages of justice, and especially with issues relating to ‘low level’ or ‘everyday’ allegations of offending – for example a criminal damage valued under £500 - which might never come to the attention of appellate courts. We are of the view that what occurs in the police station is often the backdrop to a high profile miscarriages of justice, but can also be a site of injustice in itself. As Walker highlighted,² the process of justice occurs not only in courts; injustice can result from unlawful detention regardless of charge. For example, an inability to make representations about bail can mean that someone’s liberty is unnecessarily restricted, which can be considered a system failure resulting in injustice, and - therefore – a miscarriage of justice. Additionally, releasing a suspect under investigation can create emotional pressure to accept an Out of Court Resolution (OoCR), sometimes inappropriately. Further, as Poyser and Milne highlighted “the root of the problem of most miscarriages is the police investigation into the case” [original emphasis].³ They went on to state “[c]auses of miscarriages linked to investigative and interview processes include: (i) non-disclosure of evidence; (ii) reliance on circumstantial evidence; (iii) fabrication of evidence; (iv) unreliable cell confessions; (v) unreliable victim and eyewitness identification and testimony, and (vi) unreliable confessions due to external factors such as police pressure and/or internal factors, such as suspect vulnerabilities.”⁴ Prof. McGourlay, in her written evidence, indicated that people who contact Manchester Innocence Project often raise concerns about what happened in the police station in the reasons why they have been wrongfully convicted, while the Committee heard, from Matt Foot, that detained suspects are liable to plead guilty or accept cautions under pressure, citing the Post Office Horizon scandal as an example of where such situations can arise. Matthew Hardcastle, in the final evidence session, agreed that suspects confess to minor offences to leave custody quickly, unaware of long-term consequences in terms of a criminal record.

One reason that we highlight our understanding of this issue is the lack of recent appellate jurisprudence about police station matters post implementation of the Police and Criminal Evidence Act 1984 (PACE). Although PACE undoubtedly drastically improved the investigative stage of the criminal process, evidence received by the Committee confirms that there is much more that could be done to avoid or limit injustice stemming from what occurs when suspects are detained for questioning. We observe that, for example, complaints were made about the conduct of the identification procedure conducted in Andrew Malkinson’s case (post PACE) but that the Court of Appeal, in quashing the conviction, focused largely on the DNA evidence. A similar situation occurred in the post PACE case of Victor Nealon, while Peter Sullivan’s defence team had raised concerns about a lack of Appropriate Adult (AA) and initial denial of legal advice in his 1986 arrest, which also were not the focus of the Court of Appeal’s decision to overturn the conviction. Indeed, one survey respondent noted that the Court of Appeal has “stayed away from intervening” in police decision-making since PACE. Matt Foot explained to the Committee that PACE breaches often go unremedied and civil claims offer little redress in such situations.

The Law Commission has noted evidence suggesting that the Court of Appeal tends to take a narrow approach when considering fresh evidence appeals in its ongoing consultation on

² Walker, C. (1999). Miscarriages of justice in principle and practice. In C. Walker and K. Starmer (eds). *Miscarriages of justice: A review of justice in error*. London: Blackstone Press, pp. 31-62.

³ Poyser, S., & Milne, R. (2015). ‘No grounds for complacency and plenty for continued vigilance: Miscarriages of justice as drivers for research on reforming the investigative interviewing process’. *The Police Journal*, 88(4), 265-280; 266. See also Poyser, S., & Milne, R. (2018). ‘The role of police investigative processes in causing miscarriages of justice.’ *The Psychology and Sociology of Wrongful Convictions: Forensic Science Reform*, 319.

⁴ Ibid, 269

Criminal Appeals.⁵ While we recognise that the Court of Appeal will only hear arguments based on the permitted grounds, we speculate that the lack of jurisprudence in relation to issues arising at police stations is painting a more favourable picture of that part of the process than is representative of everyday experience. Indeed, John Curtis from the CCRC told the Committee that at trial and appeal level, where relevant, criticism of police station representation can be made but is rarely done. Furthermore, if such criticism is made, it might not – from the CCRC’s point of view - be made with sufficient force. In the CCRC’s experience, judges are prepared to recognise that sometimes issues are not properly identified at police stations and overturn convictions in consequence. It should be noted, though, that criticism of police station representation is not a common ground of application for CCRC review and/or an application is more likely to cite criticisms of trial lawyers

Structure of the report

Across the evidence sessions, survey data, and written evidence submissions, a clear and urgent picture emerged of a legal advice system in police custody that is structurally fragile, often procedurally undermined, and particularly ill-equipped to protect the most vulnerable. In the survey, 12 of 17 responses regarded funding for legal representatives⁶ as a key constraint to receiving good quality advice at police stations, a further 12 responses cited the logistical issues created by the way police manage cases as a barrier to good quality legal advice, six responses were concerned about the use of an accredited legal representative rather than lawyers, and three respondents were concerned about police resources. These issues, alone or in concert, risk miscarriages of justice occurring at later stages of the criminal justice system, especially for suspects and detainees who encounter vulnerability beyond the experience of custodial detention and questioning itself.

Collating the evidence gathered, we have structured the rest of the report around four areas of concern, followed by recommendations for reform. The four areas of concern are:

1. Structural Weaknesses in Legal Advice at Police Stations.
2. Invisibility of Vulnerability
3. Impaired Access to Meaningful Legal Advice
4. Disclosure Failures and Police Cultural Issues

I. Structural Weaknesses in Legal Advice at Police Stations

The most consistently raised concern surrounding legal advice provided at police stations was that it is underfunded, and that this has significant implications for a) coverage, b) the extent and quality of advice provided and c) the ability of defence representatives to uphold their clients’ legal rights. In the survey, funding and case management practices were the most frequently identified barriers to obtaining good quality legal advice in police stations, suggesting systemic challenges around resourcing and operational procedures.

Payment by hourly rate was replaced with a fixed-fee payment system for the provision of legal advice in police stations in January 2008. The system aimed to standardise payments,

⁵ Law Commission (2025) *Criminal Appeals* <https://lawcom.gov.uk/publication/criminal-appeals-consultation-paper/>

⁶ Throughout this report, the term ‘legal representative’ is used to refer to advice and assistance received by either an accredited police station representative who is not a lawyer with rights of audience, or a lawyer – usually a solicitor – with such rights. Where there is a need to distinguish between different types of representative, they are referred to as accredited representative, solicitor, or duty solicitors as relevant. A detainee might request their own solicitor to advise during detention or – if they do not have one – an on call duty solicitor. Either solicitor might delegate the case to a colleague who is either a lawyer or an accredited representative, or to a self-employed/agency employed accredited representative.

with each area being allocated a fee payment per attendance based on averaging the claims for travel, waiting, and attendance on clients. This meant that the fixed fee payment varied according to geographical area, though 2024 announcements have suggested a move to harmonise fee payments nationally.⁷ If work required for a case exceeds the hours allocated via the fixed fee system (usually three times the fixed fee amount) an escape fee is claimable at hourly rates.

Following his Criminal Legal Aid Independent Review (CLAIR), Lord Bellamy recommended restructuring fee payments for police station advice and assistance to better reflect the work conducted there. This recommendation resulted from evidence that that indicated advice providers were not incentivised to perform more work on complex cases, nor to send their most experienced lawyers to deal with the most complex cases. Given fee stagnation in criminal legal aid, profitable fixed fee payments could no longer subsidise more complex (i.e. less profitable) matters. CLAIR recommended restructuring fee payments into a system of lower standard, higher standard, and non-standard fees, akin to payment in Magistrates' court cases. While the Government indicated that its long term intention is to develop a standardised payment scheme for police station work, it has also indicated that the data set is not currently reliable enough for the fee structure to actually be developed.⁸

Echoing the evidence reported by Lord Bellamy, the evidence before the Committee suggests that the fixed fee payment regime incentivises haste and minimal effort when representing detainees at the police station, and discourages experienced lawyers from staying in the field. There is general recognition among those interested in the criminal justice system that the defence profession is collapsing due to sustained funding cuts (in real and actual terms), increased unremunerated bureaucracy and regulation, and an ageing population of criminal defence lawyers. Richard Atkinson and Jodie Blackstock felt that the system is sliding backwards in the exercise of rights because of poor remuneration for legal advisers. This is, of course, supported by the Law Society's study which highlights the ageing population of duty solicitors.⁹ These issues increase the risk that attending police stations to provide legal advice might be reduced to purely financial terms, leading representatives to take on many cases (to maximise fixed fee income) while being unable to properly advise in all these cases. In the first evidence session, Kim Evans provided an example of one representative taking on 10 cases in one day, providing advice only on the basis of custody record information as they were not able to obtain disclosure in all cases, and only actually being present for two interviews under caution. While this is, hopefully, an extreme example, it illustrates the perverse incentives that can be caused by inadequate funding. In the third evidence session, Ian O'Rourke opined that fixed fees created a "race to the bottom" and disincentivise follow up work post interview. The CCRC also expressed the view that better funding of initial representation at police stations is key to maximising avoidance of miscarriages of justice

The Committee heard evidence that the fee structure contributes to the shrinking pool of duty solicitors, an ageing workforce, and deters new entrants into the profession. In the third evidence session, Richard Atkinson raised concerns about the creation of advice deserts. He explained that there are 27 schemes across the country which have less than seven members, which is considered the number of lawyers needed to make a scheme viable (i.e.

⁷ Crime Lower Consultation: Criminal Legal Aid (2024) <https://www.gov.uk/government/consultations/crime-lower-consultation/crime-lower-consultation-criminal-legal-aid>

⁸ Crime Lower Consultation: Criminal Legal Aid (2024) <https://www.gov.uk/government/consultations/crime-lower-consultation/crime-lower-consultation-criminal-legal-aid>

⁹ In its written evidence submission, the Law Society pointed to a 15% drop in the number of duty solicitors between 2020 and 2024.

one solicitor per day of the week). About a third of criminal defence lawyers are aged under 35, so provision of advice is in a precarious position going forward, and that – to Richard Atkinson – arises unquestionably from remuneration. Written evidence reinforced such concerns, indicating that fixed fees discourage detailed, early-stage engagement and reduce incentives to send experienced solicitors to advise in serious cases. One AA who completed the survey indicated that they experienced disappointment about the passivity of some legal representatives, while – in written evidence – Sophie Hanson describes how low fixed fees limit the scope of work that can be done in budget, particularly in complex matters and potentially affecting quality of advice and representation. Roxanna Dehaghani suggested that legal representatives were not scrutinising decisions made by the police enough, or with sufficient detail, and that this may be connected to their overstretched role. These issues result from poor pay, long hours, and a loss-making model for complex cases which lawyers find demoralising. In the third evidence session, Jodie Blackstock recounted her experience of cases in which legal representatives rarely challenge the limited disclosure that is provided in the vast majority of cases (see Section IV), and noted that legal representatives do not often challenge oppressive questioning in interview.¹⁰

In written evidence, the Law Society said that “it is more economical to send an experienced solicitor to do several shop-lifting offences and to send a more junior fee-earner to do a murder case.” Kerry Hudson also spoke – in the second evidence session – of the “pot luck” of the duty solicitor scheme, meaning someone might be advised by a highly qualified and experienced defence representative, or could find themselves advised by someone very junior with limited experience and/or with limited experience of how matters that occur at the police station might impact a later trial. The current funding situation disincentivises experienced people from attending the police station, and especially for cases that might involve additional complexities, such as neurodiverse clients. The Law Society also told the Committee that funding and case volumes affect the amount of time that solicitors have to consider suspect vulnerability, while Prof McGourlay highlighted that inconsistent standards of representation that flow from these issues can lead to miscarriages of justice. Kerry Hudson explained: “You want to make the right decision, not a financial decision. That’s the hardest part of my job, sitting where I sit, because I’ve got too many things to juggle in that, I want to do my job properly, but I need to keep my firm solvent, and I need to make sure that the right person goes to the right job, but I’ve only got X number of bodies because everybody’s leaving”. Richard Atkinson described the situation as “perilous”.

The funding structures also result in concern about potential overreliance on accredited representatives (as opposed to lawyers) attending police stations to provide advice to detainees. Ian O’Rourke told the Committee that one of the things that undermines representation in criminal investigations is the move to centralisation across police stations and courts. This means that people have to travel long distances to provide advice, which disincentivises solicitors from travelling, and incentivises them to deploy agency accredited representatives. Concerns were expressed to the Committee that use of freelance, and often junior, or retired police officers, as accredited representatives could lead to inconsistent advice provision. Kim Evans explained that suspects may find it discomforting to know that former police officers can very quickly qualify as police station representatives and attend police stations to provide legal advice. In the first evidence session, John Curtis explained that “[n]o other advisory role would be randomly assigned to individuals irrespective of the

¹⁰ Jodie Blackstock explained that these issues are far more subtle than they used to be; obvious, oppressive questioning is a rarity but questions can still be hard to follow, based on material that hasn’t been disclosed, misleading, and/or based on inaccurate assertions.

situation or the skills and experience required.” Concerns were also expressed that suspects may not be clearly informed of who is advising them (which undermines informed choice).

One issue that was reported to the Committee was that accredited representatives may lack courtroom context or long-term risk perspective, and so may not fully appreciate the consequences of advice given at police interview stage. In the first evidence session, Kim Evans told us that that nuances of language around disclosure exist and only an experienced representative might be able to identify them (e.g. an ‘account’ from a witness rather than a formal statement, carrying different evidential weight and implications). Ian O’Rourke noted that while many accredited representatives are good at their jobs, in his experience they do not question officers about, or push for full, disclosure. Jodie Blackstock agreed with these perspectives, noting that although accredited representatives have specific training and expertise, they may not fully appreciate the consequences of the advice given or questions that are asked during interview unless/until they see how cases play out at court. In written evidence, Prof Daly highlighted the value in solicitors who attend court attending police station as they can foresee better how things might play out at trial, including the result of remaining silent when questioned. In light of the comparatively limited training that accredited legal representatives undertake, evidence suggested that there was variability in their motivation and skill. While peer review standards exist, their effectiveness is undermined by constraints on time, resourcing, and financial viability. Freelance representatives are subject to oversight by an in-house supervisory solicitor, but Kim Evans told us that this might often be “simply somewhere for the [Solicitors Regulation Authority] to have a postal address.”

Another effect of changes to the funding scheme appeared to be reduced solicitor engagement at key decision points, such as in relation to the decision to detain – often described as conducted in a perfunctory manner – and the decision to release on bail pending further investigation or charge. Prof Hucklesby indicated that legal advisers were almost completely absent during her 18 days of observation in custody suites when suspects being released on pre-charge bail or released under investigation, and explained that interaction about cases between custody officers and legal advisers was very limited. Communication about cases took place between investigating officers and legal advisers away from scrutiny of custody officers. Ian O’Rourke also raised the issue of release under investigation, indicating that when people have been left in limbo for a long period of time, they can become keen on having case resolution, which might encourage the acceptance of OoCRs in inappropriate circumstances.¹¹ Jodie Blackstock explained that she is currently involved in two cases in which individuals have taken their lives while awaiting case resolution. Evidence therefore suggests that these important decision-making conversations often bypass legal representatives entirely, with significant consequences for suspects.

There is evidence to suggest that reduced engagement by legal advisers at these stages of the process is caused by the fee structure for advice and assistance at police stations. Prof Skinns explained that

Fixed fees discourage solicitors from attending the police station until the point of interview, with them preferring to conduct earlier consultation work with their client by telephone/cell intercoms to minimise the impact on their

¹¹ We note also Sir Brian Leveson KC comments on banning the use of release under investigation, but for different reasons and in a different context. See Leveson, B. Sir (2025) Independent Review of the Criminal Courts. Part 1.
https://assets.publishing.service.gov.uk/media/686be85d81dd8f70f5de3c1f/35.49_MOJ_Ind_Review_Criminal_Courts_v8b_FINAL_WEB.pdf

time spent on the case, even though this may inhibit the quality of this interaction.¹²

In written evidence, Prof Hucklesby described a culture of cooperation rather than challenge around bail conditions. Nine survey respondents felt it would be at least somewhat useful to involve legal representatives earlier in the process of detaining suspects, such as at the time a decision to detain is made, with one respondent pointing to the fact that such involvement “[c]ould avoid the need to detain a suspect as some grounds for detention are very weak based on very loose evidence, if indeed any at all.”

Ultimately, evidence suggested that lawyers’ roles should be preventive, supportive, and protective in relation to suspects detained at the police station. Prof Daly described the indicators developed with the late Dr Conway about the legal representative role as advise, actively defend, prevent miscarriages of justice, protect rights, ensure equity of arms, provide support, protect the right to silence. Evidence indicates that limited resources undermine legal advisers’ ability to fulfil this role properly, especially in the context of working in a high pressure role with long hours (compared to shift pattern working performed by the police).

II. Invisibility of Vulnerability

From the first evidence session, it became apparent that inadequate identification and management of suspect vulnerabilities is perceived to be a significant risk factor in relation to whether detainees receive legal advice at the police station. While children’s vulnerability is visible in relation to their age, there is a lack of scrutiny and response to wider vulnerabilities. In the first evidence session, Roxanna Dehaghani told the Committee that identification of risk might be insufficiently inclusive of a broad spectrum of vulnerabilities that people might exhibit (where psychological literature reveals that those vulnerabilities might lead to wrongful admissions or other evidential difficulties).

The second evidence session was focused on issue of vulnerability. During that session, Kerry Hudson explained to Committee members that, in her experience, issues surrounding neurodiversity and other similar enhanced vulnerabilities were insufficiently recognised during the process of detention and interview at police stations. Chris Bath described the identification of vulnerability as “really poor”. In his view, the current risk assessments are mainly concerned with identifying physical risk, which does not cover all the risks a Custody Sergeant is in fact responsible for. When more detailed assessments (including tools designed by forensic psychologists and psychiatrists) were used, the Met. Police identified a figure of 39% of detainees managing a mental health disorder, learning disability, and/or neurodivergence, while another police service identified an incidence rate of 69% among its detainee population.

While there is significant variation across police forces, Chris Bath told the Committee that data collected on behalf of the National Appropriate Adult network suggests that the police are recording only 18% of adults as vulnerable, and only 48% (of the 18%; i.e. 8.64% of vulnerable adults) are recorded as needing an AA. According to his calculations, Chris Bath’s view is that AAs are only actually being provided for between 13- 21% of people who would be entitled to such support, despite decades of evidence about people experiencing such vulnerabilities being especially susceptible to suggestibility, confusion, and memory distrust. Kerry Hudson explained that by the time everyone necessary is present in the custody area,

¹² Arguably, the provisions regarding telephone consultation are contrary to PACE itself, and also contrary to the ECHR. In *S v Switzerland* (1992) 14 EHRR 670 it was held that the right to private consultation with a lawyer is ‘one of the basic requirement of a fair trial in a democratic society’. In *Brennan v UK* (2002) 34 EHRR 18 the ECtHR held that although the right to private consultation could be restricted for good cause, in the absence of good cause it would amount to breach of Art 6 without the need to demonstrate an actual adverse effect.

a suspect could have been in custody for 8-10 hours. The research evidence supports the existence of this delay - with adults on average being held for almost 14 hours, vulnerable adults for 16 hours and 48 minutes and children 11 hours and 36 minutes (based on custody record data provided by 8 police forces for 2019-2021).¹³ During that period, significant harm might already have been caused to the suspect, undermining their ability to engage meaningfully, and/or for the lawyer to provide the most useful service to their client. This problem continued and worsened when custody records did not follow to court those clients who were charged with an offence, in which case lawyers might – according to Kerry Hudson - be walking into court “completely blind” about their client’s needs. Prof. Skinns summed up the position as follows:

there are significant issues with custody officers, detention officers and others in identifying and responding to suspect vulnerability, for example, due to: a lack of training/understanding of neurodiversity and other vulnerabilities; decisions being filtered through the police’s commonsense understandings of PACE vulnerability i.e. through police culture and informal rules, which do not necessarily conform to how this concept is intended to be interpreted; expectations by staff that suspects must ‘perform’ their vulnerabilities for them to be taken account of, which may be more difficult for neurodivergent suspects whose vulnerabilities may be hidden.

None of the survey respondents believed that the police adequately record information about vulnerability and neurodivergence among suspects, and similar concerns were raised in relation to legal representatives. All survey respondents felt that the police are not adequately trained in relation to suspect vulnerabilities and/or neurodivergence. In its written evidence submission, the Law Society recognised that the police have undertaken a lot of training to identify and support neurodivergent suspects, and that police are more likely to encourage a vulnerable suspect to seek legal representation, but there remains inconsistency dependent on individual officer. The submission indicates that standardised processes would be welcome.

Additionally, survey responses suggest that risk assessments were widely seen as inadequate, with concerns they are rushed and – as Prof McGourlay described - superficial and over-reliant on self-disclosure by the detainee. Thirteen survey respondents believed that risk assessment performed on detained suspects could be improved, especially with a view to testing detainee understanding of their rights and legal provisions. Written evidence responses similarly highlighted inconsistent identification of vulnerability as an issue, especially where its impact is not obvious. Evidence suggested that these issues often result in police screening missing neurodivergence, mental distress, or communication difficulties among suspect detainees, with risk assessments described as ‘tick-box’, focused on physical risk, and failing to adequately reflect and cater to PACE safeguards. Some survey respondents, and oral evidence accounts, suggested that mishandling of vulnerability was sometimes deliberate to avoid triggering legal safeguards and because of difficulty locating an AA when required.

Additionally, Chris Bath indicated that where police services have more difficulty accessing AAs, they appear to be less likely to report a detainee as vulnerable. Written and survey evidence suggested that the police sometimes misinterpret neurodivergence or distress as disruptive behaviour, and that this may be a particular issue among inexperienced police

¹³ Kemp, V., Kent, H., & Farrall, S. (2023). “Analysis of electronic custody record data in England and Wales.” University of Nottingham.

officers (see further section IV). In the fourth evidence session, Sashy Nathan shared information about a case of a mentally ill suspect whose conviction was quashed due to systemic police failures to act on visible signs of distress, and expressed concern that young people in particular receive inadequate information about their rights.

Nathan Neville explained - in the first evidence session - that the National Police Chiefs' Council (NPCC) has introduced detailed vulnerability training, and is stressing the need for Continuing Professional Development on suspect vulnerability issues in an effort to improve recognition and approaches to these issues across forces. Although he went on to explain there should be particular operational provisions relating to the way vulnerable people are detained, Roxanna Dehaghani pointed out that any isolation of suspects in police custody (i.e. in a cell) might have a particularly detrimental effect on people who experience enhanced vulnerabilities. Those effects might increase the risk of people making false confessions, highlighting the need to properly identify (and avoid custodial interviewing for) people who are especially vulnerable.

Even where vulnerability was identified, evidence indicated that provision of AA support is inconsistent. Written evidence indicated that late or absent AAs negatively affect vulnerable suspects, especially when legal advice is waived under pressure or misunderstood. Sarah Hemingway raised concerns that the late arrival of an AA can increase detainee distress, which can have implications for understanding the importance of legal advice, resulting in opportunities to challenge detention being missed.¹⁴

These issues might be exacerbated by lack of access to vulnerability data for legal representatives, which was a concern raised as part of written evidence by Sophie Hanson and by one survey respondent, who said “[f]ront sheets do not record vulnerability information. I have to get vulnerability information from the custody sergeant, medical staff, custody staff, police officers, detainees, and/or legal professionals. Let’s say, memories differ. I have to pull these views together and after my consult with the detainee, try to form a quick impression of how these varying labels might match their presentation and influence vulnerability.” During the second evidence session, Kerry Hudson told committee members that information surrounding neurodiversity and other vulnerability was not, to the best of her knowledge, being incorporated into custody records and – even if it was – defence representatives were not seeing that information about clients. Chris Bath indicated that AAs have also reported issues surrounding access to custody records, and that this is something the National Appropriate Adult Network is contesting.¹⁵

Failure to properly understand the impact of vulnerability and neurodiversity can have serious implications, as Sarah Hemingway explained:

I have many cases where the suspect is identified as neurodiverse, but a significant lack of training around what that means and how that manifests leads to miscarriages. For example, I've had at least two clients recently who were arrested: the initial offences were not proceeded with, but they were prosecuted for assaulting / obstructing a police officer during the course of the arrest. That was a direct result of how the arresting police officers treated them at the scene. That was either as a result of failings in

¹⁴ Sarah Hemingway pointed the Committee to the case of *ST v Chief Constable of Nottinghamshire Police* [2022] EWHC 1280 (QB) in this regard. These issues are compounded by research which found that in most cases both AAs and lawyers wait until the police interview before seeing children, making the mandatory requirement to have an AA for children less effective. See Kemp, V., Carr, N., Kent, H., & Farrall, S. (2023). *Examining the impact of PACE on the detention and questioning of child suspects*. London: University of Nottingham

¹⁵ As Chris Bath said, if an AA is not “given the custody records when you get there first thing, you literally can't deliver.”

the arrest plan to make reasonable adjustments, or failing to properly consider the circumstances of the suspect.

Concern was expressed that the AA eligibility thresholds exclude many detainees with real need, and that AAs drawn from family members often lack impact or training. In the first evidence session, all witnesses were of the view that problems identifying and appropriately responding to heightened vulnerability were compounded by the wide variety in AAs who can range from family members and volunteers to qualified intermediaries.

Survey respondents called for greater involvement of external medical professionals and more rigorous assessment of fitness to be interviewed, while Sarah Hemingway pointed to the importance of adjusting cells or interview rooms (including interview questions), and the importance of legal representative awareness of ways in which questions and environment might make a person respond to interviewing in a prejudicial way. Evidence suggested that a lack of multi-agency safeguarding pathways result in missed opportunities for health/social care diversion and inconsistent integration between Liaison & Diversion teams, AAs, and legal representatives. Ultimately, trauma-informed and neurodiversity-aware practice is urgently needed across all sectors, including regarding the impact of lengthy detention on suspect vulnerability and on consequent adverse responses from vulnerable suspects.

III. Impaired Access to Meaningful Legal Advice

The right to free and independent legal advice has existed in police stations for decades, with PACE adding safeguards to the exercise of that right through provisions that allow for evidence to be excluded should the right to legal advice not be explained to detainees and implemented on request.¹⁶ Nonetheless, evidence – including from Ian O'Rourke – suggested that some detainees are steered away from requesting lawyers due to perceived delays, or promises of matters being quickly resolved in the absence of a legal representative. Multiple survey respondents – including three with lived experience of detention in police custody – detailed active discouragement from accessing legal advice (and AAs), including detainees being misled about eligibility for legal advice. Survey respondents also reported instances of deliberate misinformation and pressure tactics – such as poor information about interview timing, withholding refreshment, or feigned ignorance of medical issues – employed by the police to discourage detainees to draw on their right to legal advice. These concerns were echoed in the written evidence submissions, which explained that some police still discourage legal advice or treat solicitors as impediments rather than safeguards.¹⁷ It was noted that as custody is increasingly coercive due to custody conditions, encouraging waiver of rights for faster release from detention is riskier, especially for detainees who are especially distressed.

Fourteen survey respondents felt that the police should facilitate better understanding of the right to legal advice to help suspects receive better access to legal advice. While official figures are not routinely collected, data suggests that take up of the right to legal advice in police stations sits at around 80% of detained children, 60% of detained adults and 81% of detained vulnerable adults, though a portion of those who request legal advice do not

¹⁶ PACE Code C requires a custody officer to ask a suspect who says they do not want a lawyer why they decline legal advice, but it does not require the custody officer to explain to the suspect what the possible consequences of declining advice might be.

¹⁷ Such conduct has been found in many research projects over the decades since PACE was implemented, such as Kemp, V. (2018). "Effective police station legal advice—country report 2: England and Wales". University of Nottingham, and Cape, E., & Hodgson, J. (2014). The right to access to a lawyer at police stations: Making the European Union directive work in practice. *New Journal of European Criminal Law*, 5(4), 450-479.

actually receive it.¹⁸ For those subject to investigative interviewing, the risks identified in this report are heightened when a person has no legal advice and assistance, and lack of legal scrutiny of the police detention process could be worsened should a detainee go on to be unrepresented at court.

The Committee heard from lawyers in oral evidence, written evidence, and the survey data, that police communication is often unreliable, which influences - if not creates - issues which might ultimately dissuade suspects from asserting their right to advice. During the fourth evidence session, Matthew Hardcastle told the Committee that poor telephone systems, remote station locations, and lack of Wi-Fi hinder access to legal advice. Lawyers told us about calls from withheld numbers meaning there was no contact number available for follow up, poor email responses, and limited information sharing during shift handovers. Survey responses revealed broader frustration with the DSCC, including delays in case allocation, poor coordination, and miscommunication. These issues also have the potential to increase delays obtaining legal advice for detainees, resulting in decisions being made without the benefit of specialist input and/or increasing the likelihood that a detainee will not fully exercise their right to legal advice. Matthew Hardcastle explained that interviews can be delayed for hours without justification, exacerbating the already psychologically hostile custody conditions. Kerry Hudson was also concerned that the DSCC was failing to request information around neurodiversity and similar vulnerabilities, except where the detainee is a youth. This lack of knowledge, coupled with the failure of the police to (reliably) answer telephone calls and/or delays responding to calls, places defence representatives in a difficult position from the outset of initial client contact. Difficulties making contact with the police, and changes to fee structures discussed above, mean that lawyers are now more reluctant to begin substantive work on cases until they can attend the police station for interview. As such, earlier engagement by legal representatives need to be incentivised for legal representatives.

Given technological advances and changes in use of technology in the justice system accelerated by the COVID-19 pandemic, the Committee specifically sought evidence about remote advice provision as a possible means of increasing access to legal advice for detainees. The evidence was, however, overwhelmingly against remote assistance as a way of improving advice provision. Evidence suggested that advice provision and interviews conducted remotely undermine rapport – making it harder to assess risk or build trust - and risk masking signs of vulnerability. In the first evidence session, Kim Evans described her experience proving advice remotely during the pandemic as “exhausting” because “the brainpower involved in trying to recreate that in-person experience was so difficult.” The provision of advice remotely was not something she wanted to see normalised, reasoning that clients cannot be adequately supported and vulnerabilities cannot be appropriately identified through remote systems. These sentiments were supported by Roxanna Dehaghani and Nathan Neville, who described the use of the remote interviews as “worrying.” As a result, the NPCC take the view that in-person legal advice at police stations should be the “default position.” Roxanna Dehaghani was also concerned that remote provision of advice can further marginalise vulnerable suspects because of the greater difficulty in identifying heightened vulnerability remotely. No cases involving the provision of police station advice remotely had – at the time of the first evidence session - yet come to the CCRC’s attention, but the organisation’s representatives did express concerns about advice being given in this manner. Survey respondents additionally raised concerns about suspect

¹⁸ Kemp, V., Kent, H., & Farrall, S. (2023). “Analysis of electronic custody record data in England and Wales.” University of Nottingham; Kemp, V. (2020). Digital legal rights: Exploring detainees’ understanding of the right to a lawyer and potential barriers to accessing legal advice. *Criminal Law Review* (2), 129-147.

dehumanisation and poor technology infrastructure, though some acknowledged its potential to improve access in areas where advice deserts have been created by failures in recruitment and retention of duty solicitors resulting from the funding issues described above. In written evidence, remote legal advice was consistently opposed in light of concerns about detainee engagement and comprehension, especially for particularly vulnerable detainees.

While initial advice/client consultation via cell intercom and video consultation were regarded as inevitable by some written evidence respondents, these systems were also viewed as inadequate due to sound distortion and lack of privacy. PACE s.58 provides for the right to consult a solicitor 'in private', and Code C Notes for Guidance 6J describes the right to consult in private as 'fundamental'.¹⁹ Sashy Nathan – in the fourth evidence session – told the Committee that interviewing through cell wickets is degrading, lacks confidentiality safeguards, and should be banned.²⁰ Prof Skinns did, however, point to the 'Good' Police Custody Study²¹ and noted the potential for technology to be harnessed in a way that increases suspect knowledge about, and engagement with their rights while detained:

It is also worth noting that some police forces have either adopted (e.g. Norfolk and Suffolk Police) or are looking to adopt video technology in the cells (e.g. Thames Valley Police), which would enable video calls to be made to suspects in the cells. The intention is for this technology to be used to play videos/infomercials e.g. about rights and entitlements (which we have been piloting in Norfolk and Suffolk, as part of the latest stage of the 'good' police custody study) and services available, such as through L&D etc., and to facilitate remote detention reviews. It may be that in the future such technological tools could be used by solicitors too to have a more effective conversation with their clients, albeit that this does not resolve the issue of this conversation being overheard.

One area in which technology was regarded as offering potential assistance to detainees related to remote engagement with the police; video messaging and digital disclosures might help efficiency and create better points of contact between police officers and legal advisers, but still fall short of offering adequate protection for detainees' rights in early custody stages.

IV. Disclosure Failures and Police Cultural Issues

During the final evidence session, Andy Smith outlined the evolution of interviewing from confession-based to information-gathering. The PEACE model,²² introduced to reduce the

¹⁹ However, this is weakened in the case of telephone consultations in the same Note for Guidance, which provides that where a person speaks to a solicitor on the telephone, this should be in private unless impracticable because of the design and layout of the custody area or the location of the telephones. These provisions are varied to an extent in the case of suspects detained under terrorism legislation. See further Pattenden, R. and Skinns, L. (2010), *Choice, Privacy and Publicly Funded Legal Advice at Police Stations*. The Modern Law Review, 73: 349-370.

²⁰ A cell wicket is a hole in the locked door that can be opened for communication, providing refreshment etc.

²¹ See <https://sheffield.ac.uk/law/research/good-police-custody-influencing-police-custody-policy-and-practice>

²² The PEACE investigative interview framework consists of five stages: Planning and preparation, Engagement and explanation, Account clarification and challenge, Closure, and Evaluation. See <https://www.college.police.uk/app/investigation/investigative-interviewing/investigative-interviewing#peace-framework>. In their review of the evidence, Poyser and Milne found that "research has suggested that five-tier interview training results not only in improvements in interviewing skills, but also in transference of some of the best practice learnt to the workplace more generally (Scott, 2010), impacting to some extent upon police culture, whereby emphasis is placed on an open-minded search for the truth and the collection of accurate information in investigative work more generally. In addition, there is evidence that the principles of investigative interviewing may form some kind of 'soft law' which possibly have some regulatory impact in that solicitors attending interviews may remind officers of these principles in appropriate cases (Sanders et al., 2010). This said, there is, as Sanders et al. (2010: 308) suggest, '...little doubt that poor interviewing practices still persist' in some quarters, and as

risk of false confessions and promote ethical interviewing via an investigative mindset, is internationally recognised but vulnerable to 'skills fade' and cultural drift. Matt Foot warned that that bias and premature conclusions still shape interviews. Cuts to the number of police officers and cuts to police funding appear – according to Roxanna Dehaghani – to create incentives for the police to subvert suspect protections outlined in PACE, especially when the officer is aware that they will receive little pushback from an overstretched defence representative. This, coupled with the idea that the police want to have suspects on 'their territory' to have better management of suspects and investigations, can have significant negative impacts for the provision of good quality legal advice for detainees.

Evidence to the Committee indicated that it is common practice for the police to provide 'an account' of the allegations to legal representatives instead of full evidence available at the time. While PACE allows the police to provide a summary of the allegations and evidence supporting the decision to arrest and detain, lawyers told the Committee that provision of (extremely) limited information impairs meaningful interview preparation for all concerned, and Sophie Hanson described how the police over rely on the principle of no obligation to disclose information. CCRC representatives raised concerns about the lack of police disclosure defence representatives receive and, in particular, the lack of information provided to defence lawyers prior to attendance at a police station. Although, as Kim Evans said, lawyers might have time to research the offence itself prior to attendance at police station, defence representatives often 'have to think on their feet'. She told the Committee: "It seems that the evidence which would tend to undermine prosecution case seems to be actively withheld from you at that point. I don't understand what the incentive is for the police to, for want of a better phrase, try to trick you at that point into making admissions."

Written evidence highlighted great variation in pre-interview disclosure by the police, though it was described as often minimal unless challenged. Survey respondents – nine of whom felt the police should improve pre-interview disclosure to help suspects receive better access to legal advice - widely considered disclosure to legal representatives to be poor, withheld, or strategically manipulated, which undermines legal advice and due process. The Law Society indicated that while written pre interview disclosure can be helpful, it often does not contain enough information, so lawyers need to ask for more information when they arrive at the police station. Matthew Hardcastle told the Committee that limited disclosure leads to defensive advice and missed opportunities for effective and fair case progression. One survey respondent said that "withholding disclosure to ambush suspects in police interviews creates distrust between the police, the lawyers, and their clients." These respondents therefore called for clearer disclosure standards in PACE and more consistent police practices, particularly in serious cases or where vulnerability is suspected.

Issues with disclosure are – the Committee suggests - reflective of wider structural pressures on the police. The Committee invited several police officers to attend evidence sessions and provide written evidence, but there was unfortunately comparatively little engagement with the police during this work. From the evidence that was gathered, it seems that efficiency pressures might result in rubber-stamped detention authorisations and premature interviewing. In turn, poorly coordinated interviews (e.g. missing AAs or interpreters) lead to delays and might encourage shortcuts to be taken. A further disincentive for lawyers to travel long distances results from abortive interview attempts that occur following police failure to arrange AAs or interpreters when required. This also increases the risk that – while transporting detainees – the police will be tempted to encourage suspects to speak with them

Bearchell's (2010: 71) research found, whilst the introduction of PACE, PEACE and the five-tier training system has facilitated a change in the ethical conduct of interviews, a large number of officers continue to maintain the view that the facts of an incident are best secured in the form of a confession." Op cit. n3, 272

and gather evidence improperly, and conduct interviews in police cars without appropriate safeguards. Centralisation of police stations also means that suspects – in areas where solicitor coverage is poor – might have to wait longer to receive advice, which can act as a disincentive for detainees to pause for advice.

In her written evidence, Prof Skinns highlighted concern about the increased use of voluntary interviews (VIs), including those conducted outside custody via body-worn camera. Prof Skinns raised concerns that body-worn camera interviews are particularly at risk of lacking safeguards, but pointed to the existence of little data on how such interviews are conducted, for what offences, and with what outcomes. Prof Skinns also pointed to rising numbers of detention in police custody in recent years, with 901,758 detentions authorised in 2023-24.²³ She expressed concern about whether staffing levels had risen commensurately with this demand, noting that more detainees mean more demands on custody staff, so potentially more issues are missed and potentially more pressure to rely on interviews conducted away from custody.²⁴

There has been recruitment of greater numbers police officers in recent years, responding to the loss of (experienced) officers due to austerity cuts. Concerns have been raised nationally over the time needed for newly recruited officers to become effective in their roles,²⁵ and the efficacy of vetting processes in the rapid recruitment exercise.²⁶ Survey responses and written evidence suggested that large numbers of junior and inexperienced officers risked inconsistent approaches to decision-making and disclosure, and interviewing in ways that increase the risk of miscarriage of justice occurring.²⁷ For example, Sophie Hanson raised concerns that inexperienced officers can struggle with more complex matters and make errors in judgment which add delay.

As has been alluded to at various points during this report, evidence suggested that custody staff and investigating officers often prioritise expediency over legal rights, with legal advice sometimes viewed as a disruption, rather than a safeguard. Eleven survey respondents felt that the police should involve legal representatives in more stages of the decision making process – such as authorisation of detention, detention reviews, bail decision making - to help suspects receive better access to legal advice. In his oral evidence to the Committee, solicitor Ian O'Rourke expressed concern that interviewing officers may bypass solicitors or lean on unregulated informal processes, such as in-car interviews in the name of efficient case progression in areas where advice coverage was limited. Additionally, Ian O'Rourke had the impression that heavy workloads mean the police are keen to encourage the acceptance of OoCR, which require suspect 'co-operation' in the form of an admission of guilt. The offer of a 'quick' OoCR acts a further incentive for suspects to decline legal advice. One survey respondent explained that, after their solicitor had left the police station, the police had tried to take them out "of the station to conduct a 'mobile' interview - luckily my solicitor had forgotten something so returned to the station and discovered what was happening" and intervened.

²³ Prof Skinns also indicated that the reasons for this increase are unclear, though there are a number of outstanding arrests warrants that might partially account for the uptick.

²⁴ It is noted that voluntary interviews conducted via pre planned appointment are capable of offering PACE safeguards without some of the trauma connected to detention, but there needs to be consistent scrutiny of adherence to PACE and associated rights across the spectrum of investigative interviewing.

²⁵ Criminal Justice Joint Inspection (2023) "Meeting the needs of victims in the criminal justice system" <https://hmicfrs.justiceinspectorates.gov.uk/publications/meeting-the-needs-of-victims-in-the-criminal-justice-system/>

²⁶ Institute for Government (2023) "Performance Tracker 2023: Police" <https://www.instituteforgovernment.org.uk/publication/performance-tracker-2023/police>

²⁷ We note, too, Sir Brian Leveson KC's concerns about the impact of increased numbers of inexperienced and junior police officers involved in decision-making at the police station. Op cit. n 8.

Overall, the evidence painted a picture of fragmented processes which involved engagement with legal representatives to only a limited extent at particular points in investigations. Evidence indicated that the police are poor at communicating with legal representatives throughout the investigative process and that there is currently nothing that compels the police to engage more fully and consistently with legal representatives. For all detainees, but particularly for those who do not receive any legal advice, the custody officer's gatekeeping and scrutiny role should be emphasised and enforced.

VI. Conclusion and Areas for Reform

Jodie Blackstock reminded us that it is important to emphasize a suspect focused approach to ensure that the exercise of detainee rights is effective. Detainee rights exist to safeguard against ill treatment in police custody, but also as an essential part of the procedural safeguards afforded under Article 6 European Convention on Human Rights (ECHR), such as to the right to a proper and effective defence. Interpretation of the rights requires there should be no hindrance, intimidation, or significant interference with professional functions of the lawyer including provision of instructions by the accused, investigation of the facts and search for favourable evidence, preparation for interrogation, support of the suspect and control of the conditions under which the suspect is detained. There is a very broad range of requirements upon a lawyer in the context of police station advice. Giving effect to these rights requires that, firstly, police need to facilitate access to the right without delay. Secondly, suspects need to know that they can exercise the right and why they are exercising it in a language and way they can understand, irrespective of their age, nationality, disability or intellectual capacity. Thirdly, lawyers need to be available quickly enough to assist that person. Fourthly, contact with the lawyer by phone or in person in the police station needs to be prioritised. Fifthly, the lawyer needs to be given details of the allegations against the suspect in order to properly advise them. Sixthly, lawyers need to have the training and confidence to demand details from the police to stop an oppressive, misleading, or incorrect question, and to make representations as to charge or release.

The Committee heard a number of suggestions and recommendations to improve legal advice for police station detainees. In considering those suggestions, the Committee notes that decades of research up to "the second decade of the 21st century [have] demonstrated that the risk of certain forms of miscarriages can be minimised through: (a) the development of high-calibre investigation and interview processes, particularly good-quality, careful questioning of suspects (as this will reduce dependence on confessions evidence) and the development of enhanced processes that challenge investigative mindsets; (b) greater appreciation and awareness in relation to interviewing vulnerable suspects; and (c) a continued focus on, and commitment to, evidence-based policing, whereby knowledge rooted in robust research is utilised within the field."²⁸

A limited number of suggestion were made about greater awareness of immigration and travel consequences of criminal records, more information about legal privilege between the roles of AA and legal adviser, and mandatory psychological assessments for distressed detainees. We now set out the most frequently received suggestions with the Committee's own views. All recommendations made are designed to mitigate against the risk of miscarriages of justice occurring as a result of what happens in police detention for questioning.

²⁸ Poyser, S., & Milne, R. (2021). 'The time in between a case of 'wrongful' and 'rightful' conviction in the UK: Miscarriages of justice and the contribution of psychology to reforming the police investigative process.' *International Journal of Police Science & Management*, 23(1), 5-16; 14

Access to Legal Advice

One of the aims of the Committee was to examine the impact of systemic issues on access to, and quality of, legal advice in police stations by reference to funding. Amending how legal advice is sought, and how that advice is funded, were the most popular suggestions for change to improve access to, and quality of, legal advice in police stations.

The first recommendation is that, in light of low take up rates and difficulties securing access, an opt-out model for legal advice should be implemented.²⁹ This is especially important for particularly vulnerable detainees, including people with neurodivergence and other cognitive/developmental impairments, but the Committee was concerned that experiences are potentially much worse for people who do not seek representation at all. The case for an opt-out model is stronger once we also consider the reported difficulties identifying and responding to vulnerability. It is worth noting that the approach taken by the ECHR, and the European Court of Human Rights (ECtHR), is that the right to legal advice is a right that may be waived, rather than a right that may be opted into (which is the approach in PACE).³⁰ The suggestion of some form of opt-out model was made to the Committee as part of written evidence, survey responses, and during the evidence sessions. There is evidence to suggest that, no matter the wording of the right or how it is explained, people who experienced enhanced levels of vulnerability in police stations might be less willing or able to exercise their legal rights, and this might negatively impact their engagement with the criminal justice system in ways that could make them more vulnerable to miscarriages of justice.

The second recommendation is that fixed fees for police station attendance should be replaced with a tiered fee structure based on the complexity of the cases and/or client vulnerability, coupled with an assessment of the impact of geographic reach.³¹ This recommendation becomes more urgent and important in light of the committee's recommendation for an opt-out legal advice model. Though we note the Government's concerns about lack of data to implement such a structure, the Committee is of the view that the data needed to create the structure should be urgently gathered and acted upon. This is likely to go some way to address concerns about the deployment of more junior legal representatives in serious matters, and could mean that more of such work is conducted by lawyers with court experience. Deployment of more senior practitioners in more complex cases might also impact police behaviour in terms of greater due diligence and engagement at crucial stages of the decision making process. The fee structures should take into consideration travel and geographic reach allowances, out of hours uplifts, and should enshrine the principle that remote legal advice is discouraged in all but exceptional circumstances (with full justification for remote advice recorded on custody records). Additionally, new fee structures should make further provision for post-interview follow-up engagement with the police.³²

²⁹ This is an approach that was recommended in a recent project, and due to be reported imminently. See Children in police custody: piloting a 'Child First' approach: <https://www.nuffieldfoundation.org/project/child-first-children-in-police-custody#:~:text=It%20means%20treating%20children%20in,achieve%20positive%20outcomes%20for%20them>

³⁰ It has been held in a number of ECtHR cases that any waiver of the right must be voluntary, and that it constitutes a 'knowing and intelligent relinquishment' - the suspect must reasonably have foreseen the consequences of waiving the right.

³¹ This approach is designed to recognise that complex crime can occur anywhere, but that demands of travel and investigation may differ regionally, while suspect vulnerability can add another layer of complexity to legal advice and assistance.

³² Limited funding for pre-charge engagement is currently claimable via legal aid, but was initially limited to a small amount of work, and evidence suggested that participation with pre-charge engagement was very limited. See Johnston, E. (2022). Pre-charge (lack of) engagement: An empty gesture? *Criminal Law Review*, (9), 737–754.

The Committee also considered suggestions that it would be helpful to deploy a duty solicitor at police stations and fund them accordingly, but the weight of information suggested that concerns about buy-in to police culture meant this suggestion was considered to be unrealistic in the long term.

Detainees who are particularly vulnerable

Many recommendations overlap across categories, but concerns about people who are particularly vulnerable was a strong theme during the Committee's work. It was the Committee's intention to examine the risks of both a failure to recognise heightened vulnerability and of inadequate representation in relation to especially vulnerable detainees.

It follows that recommendation three is the implementation of mandatory neurodiversity awareness training for police. For legal representatives, such training could be made mandatory as part of the Police Station Accreditation Scheme courses, perhaps as part of the written examination and/or Critical Incident Test.³³ Periodic refresher courses should be undertaken and audited.

As evidence suggests that - for both the police and legal representatives – there is a need for clearer, trauma-informed frameworks beyond current PACE definitions, **recommendation four is for the introduction of mandatory, standardised vulnerability screening tools for use at booking-in and review stages.** Such tools should be co-designed with neurodivergent and trauma-informed experts.

Recommendation five is that custody records should include full documentation of vulnerability assessments and any decisions and/or representations made by Liaison and Diversion teams, legal representatives and/or AAs. Timely access to such records should be consistently upheld and monitored by Custody Officers.

Police practices and working culture

Another of the Committee's aims was to examine the impact of systemic issues on access to, and quality of, legal advice in police stations by reference legal representatives interaction with the police. It became apparent that there are a number of ways in which legal representative engagement with the police could assist detainees, and ensure that their rights are robustly upheld. The role of the legal representative as a safeguard of — not an obstruction to — justice should be promoted through internal police guidance. The Committee also queries the need for detention in relation to many 'low-level' offences, especially where the detainee is especially vulnerable, while recognising that VI's also need to be conducted with robust safeguards. In the interests of upholding interview safeguards, the Committee strongly discourages the use of interviewing via body worn video in any circumstances.

Both written recommendations and evidence session testimony encouraged the embedding of an investigative mindset and ethical interviewing in training. During the last evidence session, Andy Smith told the Committee that there is much more monitoring of interviewing in relation to complex and serious crime than there is in relation to what he called 'volume crime', which highlights the very real dangers of miscarriages of justice occurring in the majority of arrests and detention activities. Given the framing of this report, **the committee's sixth recommendation is that auditing of interview quality across all offence types, not just serious crime, should be embedded.**

³³ It might be that specialist lawyers are required, but this was not part of the evidence received, and – inferring from that which was received – resource pressures on legal representatives are the greater immediate concern.

The Committee also makes two recommendations designed to enhance efficient and meaningful information exchange between custody suites and lawyers. **The seventh recommendation is to create a national custody data dashboard to record and share information about detainees, disclosure, outcomes of interviews, detention and bail decisions, and waiver of legal rights.** That dashboard could be cloud accessible (aligning to the Common Platform used at later stages of the criminal justice system) and should allow for quick information sharing between legal representatives and custody suites, and ensure that the record is accessible by legal representatives attending later court proceedings as appropriate. The dashboard could also be used to record and share disclosure, and **the Committee's eighth recommendation is that standards for early, consistent, and accountable disclosure practices to legal representatives are designed and implemented at national level.** This could and should include protocols for police–solicitor communication (and the DSCC case allocation model and processes should be reviewed), including call-back timeliness, contact transparency, and engagement at key decision points.

Appendix 1: Evidence sessions and participants

Session 1, 26 June 2023 – Introductory Evidence Session

Witnesses:

- John Curtis (Head of Legal, Criminal Cases Review Commission), accompanied by Ian Comfort (Commissioner) and James Leeson (Senior Case Review Manager)
- Kim Evans (Paralegal and Police Station Representative, Tuckers Solicitors)
- Dr Roxanna Dehaghani (Cardiff University)
- PS Nathan Neville (National Police Chiefs' Council)

Session 2, 5 February 2024 – Neurodiversity and other forms of vulnerability in police stations

Witnesses:

- Kerry Hudson (Solicitor and Director, Bullivant Law)
- Chris Bath (CEO, National AA Network)

Session 3, 10 September 2024 – Remuneration and organisational factors affecting delivery of advice services

Witnesses:

- Ian O'Rourke (Ian O'Rourke & Co Solicitors, Berwick-Upon-Tweed)
- Richard Atkinson ((then Vice) President of the Law Society of England and Wales, senior partner at Tuckers Solicitors LLP)
- Jodie Blackstock (Barrister, Garden Court Chambers)

Session 4, 5 December 2024 – Police Culture and Practices

Witnesses:

- Matthew Foot (Co-Director, APPEAL)
- Matthew Hardcastle (Partner, Kingsley Napley LLP)
- Sashy Nathan (Co-Founder, Commons Law CIC)
- Andy Smith (National Interview Advisor, National Crime Agency)

Appendix 2: Survey respondents

Answer Choices	Responses	
I am a lawyer or legal representative	58.82%	10
I work for the police	0.00%	0
I have experience of being detained at the police station	23.53%	4
I am a member of the judiciary	11.76%	2
I am an AA	5.88%	1
I am an academic	0.00%	0
I have an interest that is not listed here	0.00%	0
Prefer not to say	0.00%	0
Answered: 17	Response Total:	17

Appendix 3: Written evidence submissions received

- Anthea Hucklesby, Professor of Criminal Justice at the University of Birmingham
- Claire McGourlay, Professor of Legal Education at the University of Manchester
- Layla Skinns, Professor of Criminology and Criminal Justice at the University of Sheffield
- Sarah Hemingway, Barrister at Garden Court Chambers
- Sophie Hanson, in partnership with StopWatch (a research and campaign coalition for fair and accountable policing), Barrister in waiting
- The Law Society
- Yvonne Daly, Professor of Criminal Law and Evidence at Dublin City University

Appendix 4: Committee Membership

- Lucy Welsh (Chair), Reader (Associate Professor) in Criminal Justice at the University of Sussex
- Rhona Friedman, Co-founder and Managing Director at Commons Law CIC
- Penelope Gibbs, Director of Transform Justice
- Mark Newby, Principal Member and Higher Court Advocate at Jordans Solicitors LLP
- Vicky Kemp, Principal Research Fellow at the University of Nottingham
- Ed Cape, Emeritus Professor of Criminal Law and Practice at the University of the West of England