

Technology and effective police station legal advice

*Criminal
Defence Service*



Dr Vicky Kemp
Principal Research Fellow
University of Nottingham



Outline of Presentation

- In 2013 the EU Directive on the right of access to a lawyer for suspects in police custody was implemented. There is also a proposed EU Directive on procedural safeguards for children suspected or accused in criminal proceedings - COM(2013) 822 final.
- Maastricht University coordinated an empirical study which examined procedural safeguards for juveniles in five jurisdictions (Action grant JUST/2011-2012/JPEN/AG).
- Examined here are models of legal aid and variations in providing police station legal advice in the five jurisdictions.
- Also explored are safeguards for juveniles – including police interview techniques and juveniles' experience of police interrogations.
- Looking to the future - can technology assist in providing effective police station legal advice?



Empirical Research into Safeguards for Juvenile Suspects

- The empirical study was undertaken in Belgium, England and Wales (E&W), Italy, the Netherlands and Poland. The findings are helping to inform the setting of minimum rules and guidelines for the proposed Directive on safeguards for juvenile suspects.
- Warwick University was responsible for conducting the empirical study in E&W – undertaken by Prof Jackie Hodgson and Dr Vicky Kemp.
- The methods included focus group interviews with young offenders, police interrogators, lawyers, prosecutors and appropriate adults. A small number of police interrogations were also examined in each jurisdiction.
- See Vanderhallen et al. (forthcoming) ‘Interrogating Young Suspects: Procedural Safeguards from an Empirical Perspective’.

Belgium

Police Station Legal Advice

- It is mandatory for lawyers to be involved in the interrogation of juveniles but in practice this is not always the case.
- In this study five out of 10 interrogations examined in Belgium did not involve a lawyer. There were two main reasons why:
 - a) There is an insufficient number of lawyers on duty to provide cover. Lawyers have two hours to attend in person or otherwise provide advice over the telephone and the prosecutor can decide to proceed without legal advice.
 - b) Not all police officers know that legal advice is mandatory.
- The Legal Aid Bureau is responsible for making decisions over legal aid assistance and this is controlled by the regional bar associations.
- There is no mandatory requirement for juveniles to have a lawyer when invited for an interview. It is assumed that the juvenile will have consulted with a lawyer prior to the interview.
- Some regions provide training for lawyers dealing with juveniles but there are no quality control mechanisms. Lawyers have concerns that the low rate of remuneration deters specialisation



England and Wales

Police Station Legal Advice

- The Police and Criminal Evidence Act 1984 (PACE) provides suspects with access to free and independent legal advice.
- Despite this important safeguard just under half of suspects request a lawyer and around one-third receive legal advice. 10 to 13 year olds are the least likely of all age groups to have a lawyer (39% v 45%).
- The Legal Aid Agency is responsible for providing criminal legal aid through contracts with criminal defence suppliers.
- Suspects can be discouraged from having legal advice because of concerns that this will cause a delay and extend their time in custody. However, in a survey the majority of suspects refusing a lawyer simply said, 'I don't need one'.
- Suspects can be invited by the police for an interview and PACE safeguards should apply but suspects' legal rights can be undermined.
- Both lawyers and non-lawyers have to be accredited in order to provide police station legal advice and this has helped to improve quality. There are no additional requirements for lawyers dealing with juveniles.



Italy

Police Station Legal Advice

- It is not mandatory in law for a juvenile to have a lawyer in the interrogation but in practice most are represented. A lawyer was involved in all the 25 cases examined in this study.
- Parents can choose their own lawyer but if no choice is made the prosecuting authority will require the bar association to appoint an *ex officio* lawyer. Legal aid is means tested and parents can often find themselves paying retrospectively for the lawyer.
- Italy's model of juvenile justice concentrates on education and rehabilitation of the juvenile. This leads to many juveniles making admissions as this is seen to be a positive step to take in changing their behaviour.
- The lawyers tend to support juveniles in making admissions as this assists in adopting a rehabilitative approach. It also helps the lawyer in adopting a collaborative approach to proceedings.
- There is training required for duty lawyers but not for those lawyers chosen by juveniles or their parents.



Netherlands

Police Station Legal Advice

- All juvenile suspects have a right to be assisted by publicly funded lawyer during the police interrogation. This right can be waived when dealing with juveniles aged 12 to 15 years when being dealt with for a minor offence (Category C). Juveniles aged 16 and 17 years cannot waive the right to legal advice when suspected of a serious offence (Category A).
- There is an expectation within the police that the lawyer will be passive during the interrogation. If not, and if the lawyer tries to support their client in remaining silent the police can apply to the prosecutor to have the lawyer excluded from the interrogation.
- If invited for an interview a juvenile can claim their '*Salduz* rights' prior to the interrogation but there is no formal obligation for authorities to provide these rights.
- The Dutch Legal Aid Board will arrange for the duty lawyer to attend if the juveniles do not have their own lawyer. Lawyers need to be registered with the Board and comply with a set of quality standards.

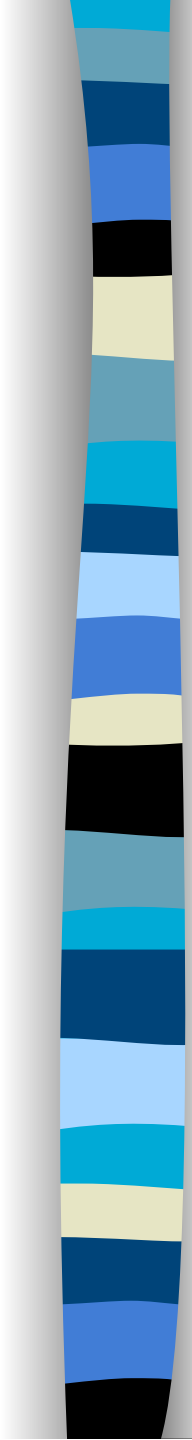


Poland

Police Station Legal Advice

- The police are required to tell juveniles and their parents that they have a right to free legal advice depending on their means but there are no mechanisms which provide access to lawyers. Accordingly, this right is seldom mentioned by the police.
- Not surprisingly, rarely are lawyers involved in juvenile interrogations. In only one out of 20 transcripts examined was a lawyer involved.
- If lawyers are involved in cases the police have discretion whether or not to allow them to have a private consultation with their client.
- Girls who were interviewed accepted that a lawyer was necessary when they were being dealt with for serious offences. However, from their experience of *ex officio* lawyers they felt these lawyers offered no additional protection.
- Lawyers do not have a tradition of acting for juveniles in the police station and there are no training requirements.

Police Interview Techniques

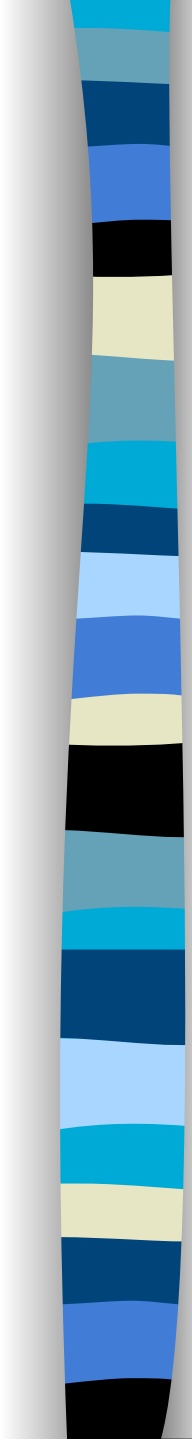
- 
- In Belgium, E&W and the Netherlands it was possible to listen/view audio and audio-visual recordings of the interrogation. Different styles of police interview techniques were noted. While some relied on 'active listening' others included 'persuasion', 'suggestion' and 'accusation' as a way of getting a response/confession.
 - Other tactics included either minimising or maximising the seriousness of the offence and/or penalty.
 - Police tactics observed during some of the interrogations in E&W included:
 - Using repetitive questions to encourage a response (case 2)
 - A softly, softly approach and then turning nasty (case 3)
 - Minimising the seriousness of the offence (case 5)
 - Using a number of ploys – including maximising the seriousness of the offence, giving their opinions and asking incriminating questions (case 7)In all these cases a lawyer was present in the interrogation.



The Experience of Juveniles in Interrogations

- Juveniles interviewed in four jurisdictions complained about the behaviour of the police when interrogated.
- The worst thing for juveniles when arrested and being interrogated by the police was being held in a cell for many hours. They complained of boredom and being very uncomfortable.
- In Poland juveniles want a third-person to be involved in the interrogation to protect them from ill-treatment by the police. The girls complained of the police using vulgar language and suggesting sexual favours. They also suggested that there should be cameras in the interrogation so that:
“The policeman would not shout, beat or force someone to confess”.
- In the Netherlands the boys interviewed were all repeat offenders. While all said that they would not speak during the interrogation they later contradicted themselves when saying they would do so if offered ‘chocolate milk’ as a treat.
- In Poland, Italy and the Netherlands the lawyers were criticised by the juveniles for ‘just sitting there’ and not doing anything.
- In E&W the juveniles did not trust the police and a number of comments they made over police tactics used were to be found in the interrogations.

Police Station Legal Advice: The Present

- 
- Police station legal advice in the five jurisdictions is predominantly provided by lawyers in person and they sit in on the interrogations.
 - There is the potential to provide legal advice over the telephone but this is seen as a second-rate service.
 - By not attending at the station lawyers are not in a position to examine the evidence disclosed by the police prior to the interrogation. Realistically the only advice they can give over the phone is to make ‘no comment’.
 - The lawyer being present in the interrogation is seen to be an important safeguard. Even if the lawyer is passive their presence can have a positive influence on police practices and help to support a client exercising their right to remain silent.
 - The lawyer/client relationship is important in helping to build trust and confidence not only in the lawyer but also in the criminal process – making it more likely that people will think justice has been achieved (see Tyler and Huo (2002) ‘Trust in the Law’).
 - There needs to be a sufficient level of remuneration if lawyers are to be present and effective in police investigations.



Technology and looking to the future: Police Station Legal Advice in 2030

- Horan and Maine (2014) argue that ‘strategic foresight’ is required when looking to the future in relation to ‘Criminal Jury Trials in 2030’.
- This means to ‘go forward into the future, imagine what it might look like, and then come back to the present ... with new insights ... and create a view that is unrestricted by the present’ (p. 554).
- With technology, digital working and video conferencing we need to look forward to see what police station legal advice might look like in the future.
- Police interrogations could be conducted through digital video connections which include a holographic link with the lawyer and ‘private rooms’ which allow confidential lawyer/client discussions.
- Technology would provide quick access to lawyers which could remove delay, seen to be one of the main obstacles to obtaining legal advice.
- The role of the lawyer in the interrogation could also be re-defined providing a more proactive role and ensuring that the rights of suspects are upheld.
- Lawyers would need to decide if their actual presence was required, particularly when dealing with vulnerable clients.



Technology and looking to the Future

- The evidence base highlights problems in the current system for providing effective police station legal advice. In particular, the police are too dominant which can lead to a passive role for the lawyer.
- In these times of austerity there is a danger of cutting back on the costs of the defence which could further undermine legal rights and lead to cases inappropriately being pushed through as 'guilty pleas'.
- Moving towards technological and digital solutions could provide the opportunity not only to re-define the role of lawyers within police interrogations but also to reflect on what the aims should be for the police when questioning suspects.
- Technological advances have the potential to provide an efficient and cost-effective way of delivering police station legal advice. However, there are also potential pitfalls which need to be examined when dealing with vulnerable people in a particularly complex and hazardous predicament.