



Inside Police Custody

Training Framework on the Provisions of
Suspects' Rights

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Ius Commune Europaeum

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PREFACE

This Training Framework is based on the empirical study of the procedural rights of suspects in four European Union (EU) jurisdictions – England and Wales, France, the Netherlands and Scotland – conducted in 2011-2013. The study focused on three of the procedural rights set out in the EU Roadmap for strengthening the procedural rights of suspected and accused persons in criminal proceedings: the right to interpretation and translation; the right to information and the letter of rights; and the right of access to a lawyer before and during police interrogation, as well as the right to silence. The results were published in the book, *Inside Police Custody: An Empirical Account of Suspects' Rights in Four Jurisdictions*.¹

The objective of the training framework is to enhance the knowledge, understanding and skills of criminal justice practitioners – police officers and defence lawyers – in respect of the procedural rights of suspects in police detention. It seeks to do this by orientating the framework around the requirements of EU law on procedural rights, as set out in the EU Directives referred to above, and by suggesting appropriate training strategies. The framework incorporates best-practice identified during the observational stage of the research study, and is designed to be applicable across EU Member States.

Since training courses for police officers and lawyers rarely focus exclusively on the procedural rights of suspects, the training framework is not intended to provide a model for stand-alone training. Building on the findings of the research, and the pilot training programme carried out as part of the research project, the training framework is designed as a tool to be used in the planning of training programmes on the procedural aspects of police custody, for both police officers and lawyers. In this regard, it highlights the procedural rights to be addressed through training, and the training methods that may be suitable for ensuring their delivery is effective in practice.

¹ Blackstock *et al.* 2014.

The research study and development of the training framework was carried out by the Universities of Maastricht, Warwick and the West of England, together with JUSTICE. Avon and Somerset Police and the Open Society Justice Initiative were also collaborators on the project.

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BIOGRAPHIES

Jodie Blackstock

Jodie Blackstock is an employed barrister at JUSTICE, in the role of Director of Criminal and EU Justice Policy. JUSTICE is a policy and law reform organisation focusing on human rights, access to justice and the rule of law. It is also the UK section of the International Commission of Jurists. Her position involves briefing on the impact of EU legislation in the criminal justice sphere, conducting research into the effectiveness of criminal justice procedures across the EU, as well as domestic law reform, training practitioners in legal developments and intervening in cases in the public interest. Recent projects include the European Commission funded, *European Arrest Warrants: Ensuring an Effective Defence*. Recent case interventions have included appeals to the UK Supreme Court in relation to the right of access to a lawyer (2010), positive obligations upon deaths in the control of the State (2011) and the rights of children of extraditees in preventing extradition (2012). She regularly gives or contributes to lectures and seminars on criminal and human rights law, most recently for the European Academy of Law, the European Criminal Bar Association and the European Parliament.

Ed Cape

Ed Cape is Professor of Criminal Law and Practice at the University of the West of England, Bristol, UK. A former criminal defence lawyer, he has a special interest in criminal justice, criminal procedure, police powers, defence lawyers and access to justice. He is the author of a leading practitioner text, *Defending Suspects at Police Stations* (6th edition, 2011), and is a contributing author of the leading practitioner text, *Blackstone's Criminal Practice* (2013, published annually). His research-based publications include *Demand Induced Supply? Identifying Cost Drivers in Criminal Defence Work* (2005), *Evaluation of the Public Defender Service in England and Wales* (2007), *Suspects in Europe: Procedural rights at the Investigative Stage of the Criminal Process in the European Union* (2007), *Effective Criminal Defence in Europe* (2010), and *Effective Criminal Defence in Eastern Europe* (2012). Ed is also the co-editor of

Regulating Policing: The Police and Criminal Evidence Act 1984 Past, Present and Future (2008), and author of *Improving Pretrial Justice: The Roles of Lawyers and Paralegals* (2012). He has recently completed, for the United Nations Office on Drugs and Crime, a handbook, *Early Access to Legal Aid in Criminal Investigations and Proceedings: A Handbook and Training Curriculum for Policymakers and Practitioners*, and is currently engaged in a research project on access to effective criminal defence in Latin America.

Jacqueline Hodgson

Jacqueline Hodgson is Professor of Law at the University of Warwick, UK. She has researched and written on issues within French, English/Welsh and comparative criminal justice, on the role of the criminal defence lawyer, the right to silence, the process of investigation and prosecution, terrorism, miscarriages of justice and suspects' rights. Much of her work draws upon her own externally funded empirical research and she held a British Academy/Leverhulme Senior Research Fellowship from 2009-2010. Key publications include *Custodial Legal Advice and The Right to Silence* (1993) *Standing Accused* (1994), *Criminal Injustice* (2000) *French Criminal Justice* (2005) *The Investigation and Prosecution of Terrorist Offences in France* (2006) *Suspects in Europe* (2007) *The Extent and Impact of Legal Representation on Applications to the Criminal Cases Review Commission* (2009). She has advised the Parliamentary Select Committees, EU impact assessment studies and her research has been relied on by the Special Immigration Appeals Commission and in European Arrest Warrant proceedings. She is currently involved in a comparative empirical study of the safeguards in place for juvenile suspects during police interrogation funded by a European Commission.

Anna Ogorodova

Anna Ogorodova is PhD researcher at the University of Maastricht, Faculty of Law. She also teaches courses related to criminal procedure and human rights. Her research interests include police custody, suspect interrogations, and the role of defence lawyers therein, studied from a comparative, legal and empirical perspective. She has presented and published internationally on these topics. Previously she worked as Associate Legal Officer at the Open Society Justice Initiative (of the Open Society Institute). In this capacity, she provided technical assistance governments and NGOs on the issues related to reforming their national criminal justice systems. She also served as international consultant on criminal justice and legal aid reforms.

Taru Spronken

Taru Spronken is Professor of Criminal Law and Criminal Procedure at Maastricht University, she has been a criminal defence lawyer for more than 30 years and substitute Judge in the Court of Appeal of Den Bosch. She is specialised in criminal procedure and human rights and has brought numerous cases to the European Court of Human rights. As from September 2013 she has been appointed Advocate

General at the Supreme Court in the Netherlands and has remained part time professor at Maastricht University.

In her research she focuses on the implications of EU cooperation in criminal matters for procedural rights and has acted on numerous occasions as expert for the European Commission. She has published extensively on criminal defence rights and human rights (i.a. with E. Cape, Z. Namoradze, R. Smith (Eds.) *Effective Criminal Defence in Europe* (2010); *EU-wide Letter of Rights in Criminal Proceedings: Towards Best Practice* (2010); with Chen Weidong (Eds.), *Three Approaches to Combating Torture in China* (2012)).

Miet Vanderhallen

In 2007 Miet Vanderhallen finished her PhD *The working alliance in police interviewing*. Currently, she works as an assistant professor psychology and law at Antwerp University and as an assistant professor criminology at Maastricht University. Besides, she is an affiliated senior researcher at KULeuven. She teaches psychology and law, criminology, and methods of empirical research at the faculty of law. Her main research interest concerns investigative interviewing. She is particularly interested in research regarding building rapport and research on the (evidential) value of suspects' statements. She is currently involved in various (international) studies on legal advice at the police station. In addition to her research activities, she takes part in investigative interview training programs at the national police academy on criminal investigation and regional police academies. Her latest projects address supervision of interviewers at police stations as well as joint training for interviewers and lawyers. Miet Vanderhallen published several (inter)national articles and book chapters on investigative interviewing.

INTRODUCTION TO THE TRAINING FRAMEWORK

The training framework, drawn from empirical evidence of best practice together with two pilot training workshops, complements training programmes for police officers and lawyers. It aims to equip them with the knowledge, understanding and skills necessary for the effective delivery of suspects' procedural rights during police detention.

The European Union (EU), in the Stockholm Programme,¹ prioritized the establishment of minimum standards regarding procedural safeguards for suspected and accused persons in criminal proceedings. The Resolution on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings was adopted in 2009.² Under the Roadmap, EU Institutions were tasked with adopting legislative measures for the protection of the right to interpretation and translation, the right to information, the right of access to a lawyer, third parties and consular assistance, the right to legal aid, and rights for vulnerable suspects, and also to consider how to deal with excessive pre-trial detention. The first three measures have been agreed between the Council and European Parliament in the form of Directives that must be implemented in each Member State of the EU no later than the transposition date set out in each Directive.³ The rights set out in the

¹ The Stockholm Programme, An Open and Secure Europe Serving and Protecting Citizens, O.J. 4.05.2010 (C 115), 1.

² Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings O.J. 4.12.2009 (C 295), 1.

³ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, O.J. 26.10.2010 (L 280); Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, O.J. 1.6.2012 (L142); Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, O.J. 6.11.2013 (L 294), transposition date 27 November 2016.

Directives are informed by existing standards under the European Convention on Human Rights (ECHR) and the jurisprudence of the European Court of Human Rights (ECtHR). However, they go further by including detailed provisions designed to ensure that the rights are implemented in practice and, to an extent in a uniform way across the EU. Furthermore, the enforcement mechanisms regarding EU Directives are stronger than those that apply in respect of the ECHR.⁴ Therefore, EU Member States must ensure that their laws and procedures give practical effect to the rights provided for in the Directives.

1. The Purpose of the Training Framework

Compliance with the provisions of the EU Directives requires not only the existence of an appropriate legislative and regulatory framework, but also that criminal justice officials and practitioners responsible for the delivery of procedural rights sufficiently understand and actively facilitate them. Whilst procedures and protocols are important mechanisms in ensuring respect for procedural rights, they need to be complemented by training which addresses not only the relevant legislation, regulations, procedures and protocols, but which also contributes to an understanding of the purpose of the rights, and helps to develop the skills necessary to effectively deliver and facilitate them. This is particularly important where, as with the EU Directives, the changes present challenges to existing practices and attitudes. For example, whilst a lecture may inform lawyers of the legislative provisions that have been introduced to give effect to the EU Directive on interpretation and translation, and may also provide them with contextual information regarding relevant ECtHR jurisprudence, it is not an effective mechanism for equipping lawyers with the understanding and skills necessary to ensure that their clients are able to benefit from the right in practice. Effective training would include the provision of information, but would also focus on enabling lawyers to put that knowledge into practice. Thus training would include exercises directed at raising awareness of the importance of, and developing the skills necessary for, identification of the need for interpretation, understanding the issues raised by communication via an interpreter, and liaising with the police and the interpreter.

The training framework was devised as part of the research study *Procedural rights of suspects in police detention in the EU: empirical investigation and promoting best practice*,⁵ which examined the procedural rights of suspects in police detention in four EU jurisdictions: England and Wales, France, the Netherlands and Scotland.⁶

⁴ See Art. 53 ECHR and the comparison between the binding nature of EU human rights provision and the ECHR by the ECJ, Case C-617/10 *Åklagaren v. Åkerberg Fransson*, not yet published.

⁵ Funded by the European Commission under agreement number JUST/2010/JPEN/AG/IS78 30-CE-0420S07/00-12, and published as Blackstock *et al.* 2014.

⁶ Note that although England and Wales, and Scotland, are both parts of the United Kingdom, they constitute two separate, and distinctive, criminal justice jurisdictions.

The procedural rights examined in the research study were the right to interpretation and translation, the right to information, the right of access to a lawyer, and the right to silence. The objectives of the research were, firstly, to provide empirical evidence of how suspects' rights were delivered in a range of EU jurisdictions and, secondly, to provide research-based best practice approaches to the provision of training designed to ensure the effective implementation of those rights. Under the Directives, Member States are required to request those responsible for training criminal justice officials to provide appropriate training,⁷ and this training framework is intended for dissemination amongst those organizations which provide relevant training courses, including bar associations. When conducting our research we did not find, in any of the four jurisdictions, training courses or modules that were specifically focused on procedural safeguards for suspects in police stations. This is understandable since training courses, both for the police and lawyers, normally have a wider focus. Based on our research, and on the pilot training that we conducted,⁸ we concluded that we could most usefully devise a training framework that could be used to inform the planning of, and be incorporated into, training programmes relating to the police detention stage of criminal proceedings. The training framework is not, therefore, intended as a model for stand-alone training courses in suspects' procedural rights.

The objective of the training framework is to enhance the knowledge, understanding and skills of criminal justice practitioners – police officers and defence lawyers – in respect of the procedural rights of suspects in police detention. It seeks to do this by orientating the framework around the requirements of EU law on procedural rights, as set out in the Directives referred to above, and by suggesting appropriate training strategies. The framework highlights best-practice identified during the observational stage of our research in the four jurisdictions that were the subject of the study, and is designed to be applicable across EU Member States. It may also be relevant beyond EU jurisdictions, particularly in the context of the UN Basic Principles on the Role of Lawyers⁹ and the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.¹⁰ The training framework focuses on the roles of police officers and criminal defence lawyers in the delivery of procedural safeguards at police stations, since these are the primary actors who control, and are therefore able to ensure, the effective delivery of these rights at this stage of criminal proceedings.

⁷ Art. 6 Directive on the right to interpretation and translation; Art. 9 Directive on the right to information. The Directive on the right of access to a lawyer does not include such a provision.

⁸ See section 2 below.

⁹ The 'Havana Principles', Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118.

¹⁰ Resolution adopted by the General Assembly of the United Nations, 20 December 2012, A/RES/67/187.

In essence, the primary objectives of the training framework are:

- i) to foster professional cultures based on respect for and active advancement of the procedural rights of suspects in police detention;
- ii) to address the practical challenges to the effective implementation of suspects' rights by suggesting training approaches designed to overcome those challenges;
- iii) to promote the use of best practices in safeguarding the rights of suspects in police detention.

By engaging practitioners through training in the development of appropriate professional cultures, and by the entrenchment of practices based on respect for the right of suspects to effective criminal defence, it will be possible to improve the delivery and protection of those rights.

2. Content of the Training Framework

The training framework was developed in the context of training needs that were identified in the *Procedural rights of suspects in police detention in the EU* research, and reference should be made to the findings of the research, published as *Inside Police Custody: An empirical account of suspects' rights in four jurisdictions*,¹¹ as appropriate.

Chapter 2 Developing the training framework sets out the process by which the framework was developed, which included pilot training programmes conducted in England and the Netherlands.

Chapter 3 Training approaches: indicators for successful training explores different approaches to training, making reference to other relevant research findings (some of which were used in the pilot training described in section 2), thus placing them in a more theoretical context, and provides guidance on how they may be used in practice.

Chapter 4 The training syllabus sets out a suggested syllabus for training on the rights of suspects in police detention, which is based on the issues identified for the purposes of the pilot training, and on the full analysis of the research data that was subsequently carried out. As indicated above, the training syllabus is not intended to provide a prescriptive structure for training dedicated to the four procedural rights which were the subject of the research study. Rather, it is designed as a resource for those responsible for police and lawyer training, which may be useful in the determination of training needs, planning training programmes, and in devising appropriate approaches to delivering that training.

The Annex to the training framework, *Pilot training materials*, includes the materials used in the pilot training, which may be adapted by training providers for their own courses. We have included these to demonstrate the value of involving

¹¹ Blackstock *et al.* 2014.

training delegates in practical exercises, and they show the detailed scenarios that we used to challenge and inform the delegates.

DEVELOPING THE TRAINING FRAMEWORK

1. Introduction

In developing the training framework two pilot training days were held, one in England and one in the Netherlands, which were designed to introduce the delegates to some of the research findings in relation to which a training need had been identified and to test out a range of approaches to addressing those training needs. The training day in England was held on 18 April 2013, and was attended by six police officers and five lawyers from England, and three lawyers from Scotland.¹ In addition, four experts were invited to observe and to provide feedback: a senior police officer, an academic with long experience in training and assessing lawyers in relation to advising and assisting suspects at police stations, a senior lawyer with long experience in acting for suspected and accused persons in criminal proceedings, and a global expert on legal aid and access to justice who works for an international NGO. The training day in the Netherlands was conducted the following week, on 23 April 2013, and was attended by four police officers and five lawyers from the Netherlands, and six police officers from Belgium. The group of experts consisted of an experienced judge, a professor from the Dutch police academy, a prosecutor-general involved in developing *Salduz* guidelines for the Belgian police, and a professor of psychology and law with expertise in interrogation training for police officers.

The programme for each training day was almost identical, but in England the session on the right to silence and interrogation involved a role-play exercise, whereas in the Netherlands this was replaced by an exercise using a video-recording of an interrogation. The role-play in the session on disclosure and consultation also differed slightly. In England, a police officer was required to play the role of a lawyer in a lawyer-client consultation in order to experience the lawyer's role, and in particular the impact of partial disclosure upon the lawyer's ability to advise the

¹ Police officers from Scotland were invited but, in the event, none were able to attend.

client. In the Netherlands, only lawyers played the part of the lawyer, having been given only partial disclosure.² Delegates were asked to provide feedback at the end of the training days, and in addition the expert observers contributed to an analysis and evaluation of the pilot training. See the Annex *Pilot training materials* for the training day programmes and the exercises used.

2. The Objectives of the Pilot Training

Bearing in mind the purpose and objectives of the training framework set out in section 1 above, the pilot training had a number of objectives.

Testing whether training is a relevant response – As explained in more detail in section 2.3 below, preliminary analysis of the research data identified a number of problems with effective implementation of the procedural rights of suspects arrested and detained by the police. For example, the research found that the approach of police officers to informing suspects of their rights differed significantly as between ‘experienced’ suspects and those who had little or no previous experience of arrest and detention. Whilst the research found that officers were often careful and thorough in informing inexperienced suspects of their procedural rights, experienced suspects were often not fully informed of them and/or were assumed to know (and understand) what they were. An objective of the pilot was to identify whether such procedural failures³ were amenable to training, and whether training could result in officers approaching their obligations in a different, more effective, way.

Testing different approaches to training – Training can have a variety of functions, including conveying relevant information, developing relevant skills that enable that information to be applied appropriately in a given situation, developing an understanding of the needs of others, and developing an understanding and appreciation of the roles of other criminal justice actors. For example, effective implementation of the right to interpretation requires both police officers and lawyers to know what the relevant legal provisions are, to be able to assess whether a particular suspect requires the services of an interpreter, to know how to secure access to an appropriate interpreter, to understand the needs of a suspect who does not have sufficient knowledge of the language of the proceedings, and to appreciate the role of the interpreter and to enable them to perform it. The purpose of the pilot training was to assess the different approaches to fulfilling some of the key training needs identified by the research.

Assessing the utility of joint training – Whilst police officers and lawyers perform important functions in relation to persons who are suspected of committing a criminal offence, those functions differ in significant ways, and may be perceived as

² See section 2.3.2 below.

³ The omission to inform ‘experienced’ suspects of their procedural rights is described as a failure since the EU Directive on the right to information makes not exceptions in respect of such suspects, and also because the fact that a suspect knows, or says they know, their rights does not mean that they understand them and their implications.

being in conflict. For example there is common agreement that the role of a lawyer in acting for a client in police detention is to advise and assist in the client's best interests. Although there are some differences between different jurisdictions, broadly the role of a police officer is to investigate an alleged offence and whether a particular suspect committed it, including by interrogating the suspect. Advice by a lawyer to a client to exercise their right to silence is likely to be regarded as inimical to the objectives of the police officer, but on the other hand, the failure of the police officer to disclose any information about the evidence to the lawyer may lead the lawyer to conclude that advising silence is the only appropriate advice that they can give to the client. One of the objectives of the pilot training was to assess whether joint training might result in a better appreciation of the role of the other, and lead to behavioural changes on the part of police officers and/or lawyers which, in turn, might result in more effective delivery of procedural rights.

Assessing the utility of cross-jurisdictional training – As noted above, the jurisdictions in the study are at different stages of development in respect of the procedural guarantees covered by the EU Directives. For example, in England and Wales, suspects have had a right to consult with a lawyer and to the presence of the lawyer during police interrogations since 1986, whereas in Scotland this right was not introduced until 2010. One consequence of this is that in England and Wales the role of the lawyer at the police station has been developed over more than two decades, and is incorporated into a police station accreditation scheme, whereas in Scotland the role of the lawyer at the investigative stage is relatively under-developed. Thus an objective of the pilot was to assess whether joint training for lawyers and police officers from different jurisdictions might assist in developing common understandings of procedural rights, and in communicating best practice.

3. Training Issues Arising from the Research

For the purposes of the pilot training, initial analysis of the research data was used to identify a number of issues that might usefully be addressed by training. The issues were grouped around activities which must occur during police detention in any jurisdiction, and were identified as follows:

- Arrival at the police station – police identification of the need for interpretation and/or translation; and notification to the suspect of their procedural rights.
- Disclosure of information and the lawyer-client consultation – police decision-making on what information to provide to the suspect and/or their lawyer, and the conduct of the lawyer-client consultation, including the consequences of the decision regarding disclosure and arrangements for police interrogation.
- The right to silence and the role of the lawyer in police interrogation – understanding the rationale for and meaning of the right to silence, and understanding the role of the lawyer in police interrogations.

3.1. *Arrival at the Police Station*

The EU Directive on the right to interpretation and translation requires Member States to ensure that a procedure or mechanism is in place to ascertain whether a suspect speaks and understands the language of the proceedings and whether they need the assistance of an interpreter.⁴ In none of the jurisdictions in the study was a formal procedure or mechanism in place in the research sites to determine whether a suspect requires an interpreter, and suspects were not orally informed of their right to an interpreter (although in England and Wales the Notice of Rights and Entitlements that is given to suspects states that if the suspect does not speak or understand English the police will arrange for someone who speaks their language to help them).⁵ The procedure adopted was reliant on the discretion exercised by the custody officer (or assistant prosecutor in the Netherlands), and in England and Wales, and Scotland, the process was aided by a language identification card or poster (and in the former, by the availability of the Notice of Rights and Entitlements in 54 languages on the Home Office website).⁶ The research found that officers in these three jurisdictions approached the identification of need for an interpreter in different ways, that the process was normally very informal and approximate and that, in the Netherlands in particular, the approach was often informed by what was convenient for the police rather than what the needs of the suspect were.⁷

In respect of notification to suspects of their procedural rights, the EU Directive on the right to information requires Member States to ensure that suspects are promptly informed, orally or in writing, of: the right of access to a lawyer; any entitlement to free legal advice; the right to be informed of the accusation; the right to interpretation and translation; and the right to remain silent.⁸ In addition, the Directive requires that suspects who are arrested or detained are promptly provided with a written Letter of Rights setting out these rights, and other rights such as the right of access to case materials.⁹ The laws and procedures regarding the right to information differed as between the jurisdictions. In particular, there were significant differences with regard to the complexity of the language used, the extent to which the rights were explained, and the procedures for and the extent to which police officers verified whether the suspect understood the notification. One common feature, however, was that the process of notifying rights to 'experienced'

⁴ Art. 2(4) Directive on the right to interpretation and translation.

⁵ The Notice of Rights and Entitlements is available at <www.gov.uk/notice-of-rights-and-entitlements-a-persons-rights-in-police-detention> (last visited 24 October 2013).

⁶ *Ibidem*. In addition, there is an audio file of the Notice for use if a suspect is blind or cannot read.

⁷ For further information on the research findings, see Blackstock *et al.* 2014, Chapter 4.

⁸ Art. 3(1) Directive on the right to information.

⁹ Art. 4 Directive on the right to information.

suspects was more perfunctory than in the case of suspects who had little or no previous experience of arrest and detention.¹⁰

In the pilot training, these issues were addressed using two different types of exercise.

The first exercise sought to address the problems identified by the research in relation to identification of the need for interpretation. It comprised a group discussion, involving both police officers and lawyers, which was designed: (a) to prompt participants to think about how they identify the need for interpretation and to share ideas about appropriate approaches to the task; and (b) to prompt consideration of interpretation as a right of the suspect rather than merely a convenience for the police.

The second exercise concerned the process of notification of rights to suspects, and for this purpose, participants were divided into groups of three or four, comprising both police officers and lawyers. The exercise consisted of two separate role plays, one involving notification of rights to a suspect who did not understand complex language, and a second involving an 'experienced' suspect who was not interested in being notified of their rights. In each case, the suspect was played by a person who was not participating in the pilot training, and who had been given instructions on how to play the part. Feedback on the role plays was provided by the other participants in each group, followed by a group feedback session involving all participants. The objectives of the exercise were: (a) to develop an awareness of the importance of the process of notification of rights; (b) to enable participants to identify and understand different approaches to notification of rights and how this may affect suspects' understanding of those rights; and (c) to prompt participants to consider how suspects may perceive their rights and, in particular, to consider what approaches are appropriate for different kinds of suspect (in particular, suspects who may lack intellectual capacity, and suspects who appear to know their rights).

3.2. Disclosure of Information and the Lawyer-Client Consultation

The EU Directive on the right to information requires Member States to ensure that suspects and accused persons who are arrested and detained are: (a) promptly informed of the reason for their arrest and detention, and provided with information about the criminal act of which they are suspected or accused; (b) given access to documents which are essential to effectively challenging the lawfulness of their arrest or detention; and (c) given access to all material evidence in the possession of the competent authorities no later than on submission of the merits of the accusation to the judgment of a court.¹¹ In respect of (a), Recital 28 of the Directive states that information about the suspected criminal act should be given promptly and at

¹⁰ For further information on the research findings, see Blackstock *et al.* 2014, Chapter 5.

¹¹ Arts. 6 and 7 Directive on the right to information.

the latest before the first official interview of the suspect by the police, and should include a description of the facts and, where known, the time and place of the alleged offence, and the possible legal classification of the alleged offence. The information should normally be given in sufficient detail to safeguard the fairness of the proceedings and to allow for an effective exercise of the rights of the defence.

Preliminary analysis of the research data found that while suspects were normally informed of the reasons for arrest and the criminal offence they were suspected of (although often in a perfunctory form), the amount of evidential information given to the suspect varied depending upon a number of factors, including whether the suspect was legally represented, and the perceived strength of existing incriminating evidence. Broadly, the police adopted a strategic approach to the disclosure of information about the evidence prior to the first interrogation, and extensive disclosure was only likely where the suspect was represented and the police thought that the evidence was strong. Often, the information provided was extremely limited. Lawyers felt that they could not adequately perform their function in the absence of disclosure from the police, and said that when faced with minimal disclosure they were more likely to advise their client to exercise their right to silence in interrogation. Despite this, lawyers often took little concerted action to obtain disclosure from the police prior to the interrogation, although in some jurisdictions they were inhibited in doing so by difficulties in speaking to the officer(s) dealing with the case. The major exception to this picture was England and Wales where, in the case of represented suspects, the officer in the case routinely provided some disclosure prior to the first interrogation (although the strategic approach to disclosure referred to above was still evident). With regard to lawyer-client consultations, the approach in Scotland differed from that in the other jurisdictions in that almost all consultations were by telephone rather than in person. In France and the Netherlands, lawyer-client consultations were limited to 30 minutes, but most consultations in all of the jurisdictions took significantly less time than this.¹²

In the pilot training, we therefore focussed on the issue of police disclosure and its impact upon legal advice, rather than how suspects are informed of the reasons for arrest. The issues were explored using two exercises, one concerned with disclosure and the other with the lawyer-client consultation.

In the first exercise, lawyers and police officers were divided into separate groups. Each was provided with the same case scenario. The police groups were asked to discuss what information they would disclose to the defence lawyer, and the lawyer groups were asked to discuss what information they would want from the police to enable them to advise the client. In a plenary session, the police and lawyer groups shared the outcomes of their discussions with the whole group, leading to a discussion of the different approaches taken by the police and lawyer groups. The objectives of this exercise were: (a) to prompt participants to consider the purpose of disclosure from their perspective (that is, police officers or lawyers);

¹² For further information on the research findings, see Blackstock *et al.* 2014, Chapters 6 and 7.

(b) to prompt participants to consider the relationship between disclosure and the role of the lawyer in advising a client prior to interrogation; and (c) to enable participants to understand the impact of minimal disclosure on the capacity of the lawyer to advise a client.

The second exercise entailed two role-plays. In the first, in England, a police officer participant was asked to play the role of a lawyer who was required to advise a suspect on the basis of the information that the police agreed to disclose in the first exercise (concerning disclosure). This was so that they could experience the lawyer's role, and in particular the impact of partial disclosure upon the lawyer's ability to advise the client. In the Netherlands, a lawyer participant conducted this role. In the second exercise, a lawyer advised the suspect, but this time on the basis of having had full disclosure from the police. The suspect was played by a non-participant who was given instructions on how to reveal information to their 'lawyer' according to the trust and confidence they felt in them. Following the role-plays, the whole group assessed the two consultations and, in particular, considered the impact of the level of disclosure on the advice given to the client. The objectives of the exercise were: (a) to identify differences in attitude to disclosure as between police and lawyer participants; (b) to promote understanding of the role of the lawyer in providing advice to a client prior to a police interrogation; and (c) to prompt participants to think about the impact of the level of police disclosure on the nature and scope of advice that could be given by the lawyer, in particular, with regard to advice regarding the right to silence.

3.3. The Right to Silence and the Role of the Lawyer in Police Interrogations

The EU Directive on the right to information requires that a suspect be notified of the right to silence promptly, but does not specifically require that the suspect be given notice, or be reminded, of the right to silence at the commencement of an interrogation. ECtHR case-law, on the other hand, requires that notification of the right to silence be given when the right arises. Whilst the EU Directive states that notification must be provided in 'simple and accessible' language, there is no requirement that the police take action to verify that a suspect understands the notification. With regard to the right of access to a lawyer, the EU Directive does provide that a suspect has a right to have their lawyer present during police interrogations, but does not articulate the role of the lawyer. The EU has not sought to regulate the conduct of police interrogations, and whilst the ECHR prohibits torture and inhuman or degrading treatment, the case-law of the ECtHR does not establish clear parameters for the application of pressure by the police during interrogations.

With regard to the right to silence, the law in England and Wales, the Netherlands and Scotland, requires notification of the right to silence to be given at the commencement of an interrogation, but regulation of the way in which notification is to be given varies between the jurisdictions. In France, notification of the right to silence must be given when a suspect is detained, but does not have to be

given during an interrogation. Preliminary analysis of the research data showed that in England and Wales, the interrogating officer routinely read out the caution (which briefly states the legal implications of silence) in a standard format and asked questions to check the suspect's understanding of the caution. However, it was commonly agreed that the law on inferences from silence is complex, and that it was beyond the understanding of many suspects. In the Netherlands, by contrast, there was no standard format for notification of the right to silence, officers normally gave 'minimal' notice of the right, and did not normally provide an explanation. In those exceptional cases where an explanation was provided, the officer normally emphasized the negative consequences of the suspect remaining silent. Furthermore, many instances were observed where the officer sought to undermine a suspect's decision to remain silent. In Scotland, an absolute right to silence exists, and a caution in a standard format was read from a template, but officers did seek to verify the suspect's understanding of the caution. In relation to the role of the lawyer during interrogation, the position in the four jurisdictions differed significantly. In England and Wales the circumstances in which the lawyer may intervene are set out in a Code of Practice, and lawyers were observed to be quite pro-active in interrogations. In France and the Netherlands, there are significant limitations on the ability of lawyers to intervene, and lawyers reported that the police tended to discourage intervention.¹³

Two exercises were devised to explore these issues. In the first, whole group, exercise participants were asked to respond to and discuss a number of questions about the right of access to a lawyer, the role of the lawyer, and the right to silence. The objectives of this exercise were to: (a) prompt participants to think about the meaning and implications of the right of access to a lawyer and the right to silence; (b) give the opportunity to participants to identify and explore the differences in perceptions of the two rights as between the police and lawyer participants; and (c) prompt participants to consider the extent to which it is legitimate, if at all, for the police to seek to undermine the two rights.

The second exercise took a different form in the pilot training in England and in the Netherlands. In England, the participants were first divided into the two professional groups, and asked to identify five reasons why a defence lawyer should be able to intervene in the course of a police interrogation, and to write these up on a wall poster so that they could be viewed by all participants. The participants were then provided with a transcript of an interrogation (taken from a case in respect of which the Court of Appeal of England and Wales determined the interrogation to have been oppressive), and were asked to identify whether and when they would have expected the lawyer to have intervened, the basis of any intervention, and how the interview should then have proceeded. The exercise in the Netherlands pilot was conducted along similar lines, but in this case participants were shown an audio-visual recording of an interrogation rather than being provided with a tran-

¹³ For further information on the research findings, see Blackstock *et al.* 2014, Chapter 8.

script. The objectives of this exercise were: (a) to prompt participants to consider in what circumstances a lawyer should be permitted to, and should, intervene in a police interrogation, and to compare the perceptions of the police and lawyers; (b) to explore participants' perceptions of the legitimacy of police interrogation tactics; and (c) using an example from a real case, to explore the acceptable parameters of police interrogation methods, and of the legitimacy of interventions by lawyers.

4. Developing the Training Framework Syllabus

The pilot training days were evaluated by the participants, and also by the expert observers, and their evaluations have been taken into account in developing both the training framework generally, and the training syllabus in particular. Whilst the participants in the pilot training programme were enthusiastic about the benefits of the pilot training programme, including the value of joint training and cross-jurisdictional training, they were acutely aware of the constraints of time and resources in their organizations and, particularly in the case of lawyers, the constraints resulting from the structure of the legal profession and the financing of legal aid work. They were also conscious of the fact that whilst the pilot training was specifically concerned with the four rights which were the subject of the research project, in practice suspects' procedural rights are likely to form part of training courses that have wider objectives.

The pilot training programme was, as noted earlier, based on preliminary analysis of the research data. Further analysis of the data has confirmed the importance of the issues covered in the pilot training, but it has also indicated a range of other training needs. The full training framework syllabus derived from the research is set out in section 4 below. The pilot training programme also enabled a number of different approaches to satisfying the training needs identified to be tested. The different training methods, together with feedback from the participants in the pilot training on those methods, are explored more fully in section 3 below, and are placed in the context of existing research evidence regarding training methodologies.

TRAINING APPROACHES: INDICATORS FOR SUCCESSFUL TRAINING

1. Introduction

The objectives of this section are to place the approaches used in the pilot training in a broader, more theoretical context, and to provide guidance on how they may be used in practice.

A systematic approach to understanding the effectiveness of different police training methods is still in its infancy. This is reflected in the American National Research Council's Report on Fairness and Effectiveness in Policing,¹ and in the call by the Campbell Collaboration for a systematic review of the impact of training programs in reducing the use of force by the police.² The literature referred to in this section focuses on suspects' rights and interrogation from a predominantly police perspective since research on the training of lawyers in this regard is almost non-existent. It also includes reference to wider literature since studies of police interrogation training are also relatively rare. Therefore, studies which offer an understanding of training approaches concerning the interviewing of children, and victims and witnesses, are included with a view to creating a baseline for developing a successful approach to training which is relevant to both police officers and lawyers.

The training methods used in the pilot training are described and analysed by reference to existing research evidence, and academic literature, on interrogation and to the feedback from participants and experts in the pilot training. Although the pilot training was not subjected to academically rigorous evaluation, it was possible to draw some broad conclusions from the feedback of participants and the expert observers.

It should be noted that, given the costs of training and follow-up, and resource constraints, a train-the-trainers strategy should be considered in respect of training

¹ Skogan & Frydl 2004.

² See <www.campbellcollaboration.org> (last visited 24 October 2013).

regarding the procedural rights of suspects. Although we did not pilot it in our study, research on the training of clinicians found a train-the-trainers strategy was found to significantly improve the competence levels of participants compared to a standard training strategy.³

2. The Importance of Training

The need for training on procedural rights in the context of interrogation has been considered in a number of previous studies. Walsh and Milne examined the impact of the PEACE model of training⁴ on private fraud investigators and found that it led to some improvement in interrogation skills.⁵ The improvement occurred, in particular, in relation to the notification of rights given to suspects, since following their training most investigators used a memory-aid which helped to ensure that they complied with relevant legal requirements.⁶ With regard to overall performance, following training there were fewer legal breaches by investigators and coercive tactics were not used.⁷ However, Walsh and Milne found that PEACE training did not improve the professionalism of investigators more generally. In particular, the 'explain and engage' phase of the training was shown not to be effective. For example, only in a minority of interrogations was the administering of a caution validated, and the investigator rarely established the suspect's understanding of the caution. This phase of the interrogation tended to be performed as a mechanical exercise rather than being a meaningful engagement with the suspect. The same was also found in respect of the decision of the suspect whether to seek legal assistance. In 30 per cent of cases where a suspect did not seek legal assistance, the investigator failed to explore the reasons why the suspect waived their right. Furthermore, the right to be informed about the accusation was also often violated, which followed from the failure of officers to adequately explain the purpose of the interrogation. These findings confirmed those in an earlier evaluation of PEACE training, which found that the performance of PEACE-trained officers did not significantly differ from that of police officers who had not received PEACE training.⁸

³ Martino *et al.* 2010.

⁴ The PEACE training model was developed in England and Wales following the implementation of the Police and Criminal Evidence Act 1984, in order to train police officers in a new ethical approach to investigative interviewing. PEACE stands for Planning and preparation, Engage and explain, Account, Closure, and Evaluation. See, for example, Williamson, Milne & Savage 2009, Chapter 2.

⁵ Walsh & Milne 2008.

⁶ The memory aid consisted of a laminated written document detailing the suspect's right. This supported earlier findings by Clarke & Milne 2001.

⁷ These findings were consistent with those reported in Bull & Soukara 2010.

⁸ Clarke, Milne & Bull 2011.

Walsh and Milne also found shortcomings in the planning of interrogations, which was directly related to the level of pre-interrogation disclosure provided by the police. Pre-interrogation disclosure has an impact on the ability of lawyers to communicate with and advise their client during the pre-interrogation consultation, yet the disclosure strategy adopted by police interrogators only took into account their own interrogation objectives. It is also worth noting that research has shown that the vast majority of police officers receive no training on how to interpret and use forensic evidence, which affects both interrogation planning and the conduct of interrogations.⁹

With regard to lawyers, research has found that the time taken by lawyers in consulting with their clients prior to interrogation is limited where they have not received specific training.¹⁰ Research has also shown that the approach by police officers to conducting interrogations does not differ according to whether or not a lawyer is present,¹¹ and has demonstrated the need for training in order that interventions by lawyers during police interrogation are effective.¹² The significance of the training needs of lawyers in protecting the procedural rights of their clients takes on added significance given the imbalance in the amount of training between police officers and lawyers. Whilst in many jurisdictions police officers receive training on the interrogation of suspects, training for lawyers on their role in police interrogations is relatively rare.

Therefore, training for police officers and lawyers is needed to improve standards in respect of: (a) the effective notification of rights to ensure suspects are aware of and understand their rights; (b) pre-interview disclosure; and (c) the interrogation of suspects by the police, and the role of lawyers in police interrogations. Despite the concerns raised regarding the quality of interrogations of suspects, relatively little research has been carried out in relation to the content, structure and efficacy of such training.¹³ Research findings emphasize the need for training that goes beyond general principles, and engages trainees in exercises that are designed to improve their practice.

Pilot training: participants' perspective

According to the participants, a rights-based approach, in which the focus is on the rights of the suspect and their experience of the arrest and detention process, provides an important counterweight to training that is directed at knowledge of the law and/or procedural compliance, and helps to develop an understanding and appreciation of the purpose of those rights. The participants informed us that whilst most receive training on the procedural aspects of police detention, and in particu-

⁹ Smith & Bull 2013.

¹⁰ Quinn & Jackson 2007; Stevens & Verhoeven 2010.

¹¹ Clarke, Milne & Bull 2011.

¹² Edwards & Stokoe 2011.

¹³ Powell 2002.

lar all police officers are trained in how to conduct interrogations, they receive very little guidance on the rights of suspects.

3. Training Effectiveness

As explained in section 2.2 above, the pilot training was set up to test whether training is a relevant response to the identified training needs, to test different approaches to training, and to assess the utility of joint and cross-jurisdictional training. Here, we consider the latter two objectives, and in doing so we take into account the literature on interrogation training, as well as the perspectives of the participants in the pilot training. The participants confirmed that in their view, if training is to be effective, attention must be paid to the objectives of training in respect of any particular issue, so that the training methods adopted, and the use of joint training or cross-jurisdictional training, are appropriately aligned to the purpose of the training.

The development of the pilot training was based on a number of basic training principles, some of which have previously been tested in the context of police interrogation. In the remainder of this section, the most important basic principles are dealt with by reference to four themes: participants, content of the training, format of the training, and structure of the training.

3.1. Participants

With regard to the number and type of participants in training courses, several issues need to be addressed: group size, joint training, and cross-jurisdictional training.

Group size

Given the use of role-plays within skills training and the necessity of providing feedback, group size must be addressed. Research on the effects of group size on training in interrogation is scarce.¹⁴ However, the limited number of studies in this field show that small groups (up to eight participants) allow for more interaction between the trainer and trainees, which enables higher levels of training performance.

Pilot training: participants' perspective

Participants preferred to conduct role-plays and to provide, and be given, feedback in a small group rather than a large group since this facilitated communication.

¹⁴ Callahan, Kiker & Cross 2003.

Joint training

Literature on joint training in interrogation, in terms of both training practice and research, is limited. This is surprising given the fact that various occupational groups such as police, lawyers, public prosecutors, interpreters, etc. are involved in the interrogation of suspects.

In training in negotiation skills, tasks are usually assigned to both sides of a negotiation dyad, and positive results on negotiation outcomes has been observed in integrative negotiations, where co-ordination and co-operation are, to a certain extent, required.¹⁵ Integrative negotiation refers to a negotiation strategy which is aimed at reaching the best possible deal for both sides. Hence, it can be called a win-win negotiation which, whilst both parties may have divergent interests and may be reluctant to co-operate, requires mutual information exchange. Both parties thus have incentives both to co-operate and to compete. This description of negotiation can also be applied to the interrogation of suspects, where the police on the one hand, and the suspect and their lawyer on the other hand, have competing interests but also need to co-operate.

One study of joint training concerned criminal justice and mental health professionals.¹⁶ Relations between these two groups can be problematic, but effective screening of mentally-ill defendants requires co-operation between them. The study found that both groups of professionals were in favour of joint training. The authors of the study suggested, as a starting point for joint training, that similarities in values between the two professional cultures, as well as common concerns, should be addressed.

In relation to police interrogation, both police officers and lawyers have responsibilities with regard to the notification and protection of suspect's procedural rights. Both studies suggest that joint training concerning the approach to interrogation could be productive.

Pilot training: participants' perspective

Participants agreed that joint training for police officers and lawyers could help to develop a mutual understanding of their respective roles and, whilst role-conflicts and professional tensions may be inherent, could enable such conflicts and tensions to be dealt with more constructively. One expert in Bristol observed that skills-based training of the kind offered in the pilot was very expensive to facilitate, but that the costs could be reduced through joint training. No participant had previously taken part in joint training and most found it a helpful exercise in developing greater familiarity with, and respect for, the professional role that the other had to undertake. Some suggested the value of an ice-breaker session to foster open communication between the two professions.

¹⁵ Zerres *et al.* 2013.

¹⁶ Hean *et al.* 2011.

If mutual understanding is to be improved, exploration of the respective roles of police officers and lawyers should be in-depth, and conducted in an environment where open discussion and analysis between the two groups is possible. This is particularly relevant in a period of transition, for example, following the introduction of the right of access to a lawyer in police interrogations in countries such as Scotland, Belgium, France and the Netherlands. Some participants considered it necessary to hold at least introductory knowledge-based training within each professional group prior to more skills-based joint training, since this would allow for initial exploration of the regulatory framework in a way that was directly relevant to those undergoing training. Participants suggested that other relevant criminal justice personnel, such as public prosecutors, should also be involved in joint training since currently their training focuses on the law rather than on, for example, the skills needed to effectively communicate rights to suspects.

Cross-jurisdictional training

Existing literature on interrogation does not address cross-jurisdictional training. Not only is there a variety of legislative frameworks across different jurisdictions, but the underlying legal traditions are also significantly different. In the context of the EU principle of mutual recognition, and the legislation under the Roadmap of procedural rights, cross-jurisdictional training is becoming increasingly important.

Pilot training: participants' perspective

Training that involves participants from different jurisdictions can be useful in developing mutual understanding, in enabling participants to reflect on their own practice and procedures, and in promoting best-practice. However, it is necessary to seek jurisdictions where there is some similarity in the procedure and professional culture, or to at least bear significant differences in mind in the development of training exercises, as otherwise the practical benefit of discussing the delivery of rights in widely differing contexts may be weakened. It was observed that cross-jurisdictional training on the implementation of the EU directives would enable an exchange of views on practical problems and best practice solutions, which are likely to be common to all Member States. This could then be followed up by more in-depth national training that focuses on national procedures.

3.2. Content

The provision of exemplars of good practice is considered to be a key factor in successful training.¹⁷ By means of a modelling process, one study found that even in the case of older police officers (defined in the study as those over 40 years), their

¹⁷ Powell & Steinberg 2012.

performance significantly improved when they were offered the opportunity to observe 'good' performances by others.¹⁸

Pilot training: participants' perspective

Participants thought that the use of different types of exercise was helpful in revealing the impact of procedures upon suspects. In particular they found the use of real transcript material in Bristol, and real or simulated video material in the Netherlands, in the session on police interrogations was an interesting and useful approach which highlighted how interrogation techniques affected the suspect. However, participants emphasized the importance of such material reflecting 'normal', commonly encountered, situations. Interestingly, in both pilot training days, police officers intervened before lawyers did to identify where undue pressure was being placed on the suspect. This demonstrated how lawyers receive far less training on how to assess the application of pressure and other interrogation techniques used by the police, as well as how to respond to them.

The police participants felt that the interview transcript used in Bristol involved circumstances that were too exceptional, and that a case involving a less obvious application of pressure would be preferable in order to enable participants to appreciate the impact on suspects of more subtle forms of pressure. They also felt that an audio or visual recording would have been easier to engage with, enabling them to see and/or hear the emotional responses of the suspect. It was also observed that the training material should reflect the kinds of crimes officers taking part in the training actually encounter; exercises involving serious crimes would not be appropriate for non-specialist police officers.

3.3. Format

It is commonly accepted that hands-on exercises, and immediate feedback, are crucial for training to be successful.¹⁹ Therefore, training programmes should include sufficient practical exercises together with a facility for feedback to be given.

Role-plays

Role-play constitutes one of the least expensive forms of incorporating practical exercises into training. Many training programmes systematically rely on role-play exercises that are designed to consolidate learning.²⁰ Police officers who have taken part in training involving role-play reported that the technique was the most useful

¹⁸ Callahan, Kiker & Cross 2003.

¹⁹ Powell, 2002; Warren *et al.* 1999.

²⁰ Lamb *et al.* 2000.

element in the training, although they often did have some initial apprehensions about engaging in simulated exercises.²¹

One important consideration in designing role-play exercises is whether those taking part should consist only of participants in the training, or whether one party should be played by a non-participant. Powell has suggested that role-play exercises in which participants are required to act the parts of interviewer and interviewee are less effective than role-play exercises in which actors or researchers play the role of the interviewee.²² A further variable is whether the actor receives training in the role that they play. Research on training in the interviewing of children has demonstrated that role-play exercises where the interviewee is played by an actor who has been trained to play the role of the child is more effective than exercises using untrained actors.²³

The question of whether role-play exercises prompt authentic interactions was examined by Stokoe.²⁴ This study demonstrated that whilst police officers commenced role-play interrogations and real interrogations in a similar way, for example, by identifying the persons present, the interactions in role-play interrogations were more elaborate or exaggerated in comparison to real life practice. With regard to notification of the right of access to a lawyer, the process took longer in role-plays compared to real interrogations, because in the former officers asked the suspect about their understanding of the right, which officers did not do in real interrogations. Stokoe's research also found that where actors played the part of the suspect, they sometimes confronted the police officers with scenarios that were unlikely to occur in real interviews.²⁵

Therefore, the evidence suggests that role-play can be a useful training technique, but that consideration must be given to whether actors should be used, to whether they should receive training in the role they are to play, and also to trying to ensure that interviewee's reactions reflect 'real-life' encounters. It also suggests that consideration should be given to other techniques designed to improve skills, such as using audio-visual recordings of real suspect interrogations.²⁶ Studies of training using this technique have shown that they can contribute to significant improvement in performance.²⁷

Pilot training: participants' perspective

The participants and experts emphasized that training which involves the practical application of legal and professional obligations and responsibilities enables police

²¹ Powell & Wright 2008.

²² Powell 2002.

²³ Powell, Fisher, & Hughes-Scholes 2008.

²⁴ Stokoe 2013.

²⁵ Stokoe 2012; Stokoe 2013.

²⁶ Powell 2002.

²⁷ Dommicent *et al.* 2008.

officers and lawyers to develop their skills so that they are more effective. They found the role-play exercises to be the most valuable method of demonstrating the issues that we sought to highlight, because the impact was felt by them directly rather than through the analysis of a written or visually recorded example. For example, in Bristol, the exercise which involved a police officer playing the part of a lawyer in consultation with a client, followed by a lawyer playing the part of the lawyer, was particularly well received as it clearly demonstrated good and bad practice. Furthermore, by linking this exercise to the previous disclosure decisions made by police officer participants, it enabled the officers to understand the difficulties experienced by lawyers who had been given little information in advising clients. It demonstrated to the police officers that a lawyer with little information may well feel that they have little alternative but to advise their client to remain silent, whereas a lawyer with full disclosure could properly explore the case with the suspect, test their account and, where appropriate, advise them to give an account during the interrogation. Officers were, therefore, more aware of the impact of their disclosure decisions, which led them to re-evaluate their approach to disclosure.

With regard to the format of the role-play exercises, some participants suggested that they should be conducted in a separate room, with the other participants observing via CCTV. This, they believed, would enhance the quality and credibility of the role-play by increasing the 'intimacy' of the interaction. Some participants also thought that using actors to play the part of the suspect would enhance this. The exercise also highlighted the need to provide detailed and realistic instructions to the participants, in order for them to fully engage in the process. Where time allows, instructions affording different outcomes are also useful to explore in more depth the impact of a particular technique.

Feedback

It is commonly recognized that expert feedback, that is, feedback from people who are experts in the subject or skill concerned, is a core element of successful training programmes.²⁸ Research on training regarding the interviewing of victims found that post-training expert feedback significantly increased the quality of subsequent interviews.²⁹

A second form of feedback is that provided by peers. In clinical training, group feedback was found to be an effective mechanism which enabled trainees to learn from their peers.³⁰ Participation in group feedback encourages a culture of critical reflection on colleagues' performance (as well as the trainee's own performance), and also helps to develop the skill of providing constructive feedback to colleagues. The findings of research on the effectiveness of individual versus collective

²⁸ Powell & Steinberg 2012.

²⁹ Cyr *et al.* 2012.

³⁰ Stoltenberg, McNeil, & Delworth 1998.

feedback in role-play exercises and ‘real interview’ exercises are rather equivocal. Some studies report a small but positive effect from individual feedback,³¹ whereas others did not find significant differences between individual and group feedback.³² Since collective feedback is less time-consuming and resource-intensive than individual feedback, a collective feedback technique is appropriate for training police officers and lawyers. However, in order to enhance its effectiveness, collective feedback requires some instructions for the participants in order to ensure that they both provide and receive feedback in a constructive manner.

Pilot training: participants’ perspective

Participants emphasized the need for sufficient time to be given in the training programme to allow thorough, detailed, feedback to be given. The experts also observed that where group participants are watching a role-play exercise, it would be helpful to give observers instructions that frame what they should be identifying and analysing.

3.4. Structure of Training

With regard to the structure of training programmes, two interconnected elements are identified in the literature: the distribution of training over time, and follow-up supervision.

Distribution of training over time

One of the main factors that distinguishes effective training programmes from those that are ineffective is the distribution of training over time; that is, training programmes in which the primary training event is supplemented by further training events such as refresher training and/or by incorporating training into subsequent practice.³³ Unfortunately, as with the techniques of providing exemplars of good practice and expert feedback (two other core elements of effective training) this element is often missing in current training programs.³⁴ Research has found that where these elements are not incorporated into a training programme, the effectiveness of training declines.³⁵ If a training program is to result in positive change in

³¹ Dommicent *et al.* 2008; Smets 2012.

³² Lamb *et al.* 2000. However, it should be noted that the experimental group (individual feedback) and the control group (no individual feedback) could not be directly compared because the experimental group was trained in interviewing victims whereas the control group received training in interviewing suspects.

³³ Powell, Fisher & Wright 2005.

³⁴ Powell & Steinberg 2012; Snook *et al.* 2012.

³⁵ Powell, Fisher, & Hughes-Scholes 2008.

behaviour and skills, the distribution of training over time is necessary.³⁶ This can be in the form of refresher training and/or appropriate supervision.³⁷

Follow-up supervision

Research consistently demonstrates the importance of intensive training, followed by supervision that is incorporated into practice, in achieving successful and sustained improvement.³⁸ Research on the process of notification of rights to suspects by the police has demonstrated the benefits of appropriate supervision following training.³⁹ A workplace supervision strategy was found to be positively related to improved performance in the 'engage and explain' phases of PEACE model of interrogation. Moreover, supervision also 'appeared to provide some safeguards for suspects who did not have a legal advisor'. However, the cost and resources involved in workplace supervision mean that in practice training programmes often omit this element.⁴⁰

Despite the cost and resource implications of follow-up supervision, a strategy of providing expert feedback at the initial training event, together with follow-up supervision, has been recommended as an effective method for securing sustainable changes in attitudes and improvement in skills.⁴¹ This was echoed by the participants in the pilot training. However, if supervision is to be effective, it must be embedded in the organization concerned: it requires high level institutional commitment, including: identification of who is to conduct supervision; the provision of training for supervisors; and building supervision into supervisors' job descriptions and the allocation of necessary time and resources for supervision to be carried out.

It is recommended that a supervision and follow-up strategy is developed for both police and lawyer training.

4. Conclusions

The research on the procedural rights of suspects in police detention, reported in *Inside police custody: An empirical account of suspects' rights in four jurisdictions*, identified the need for training as a crucial element in ensuring that the procedural rights set out in the EU Directives are effective in practice. Some of the needs identified, such as those concerning the right to interpretation and translation, the notification of rights to the suspect, the pre-interview disclosure of evidence, the format of consultation between lawyer and client, the role of the lawyer during interrogation

³⁶ Powell & Steinberg 2012.

³⁷ See e.g. Clarke, Milne & Bull 2011; Crawshaw, Devlin & Williamson 1998; Rischke, Roberts & Price 2011; Snook *et al.* 2012.

³⁸ Vanderhallen *et al.* 2013.

³⁹ Clarke, Milne & Bull 2011.

⁴⁰ Lamb *et al.* 2002; Powell, Fisher & Wright 2005.

⁴¹ See e.g. Clarke, Milne, & Bull 2011; Crawshaw, Devlin, & Williamson 1998; Powell, Fisher & Wright 2005; Price & Roberts, 2011.

and the right to silence, were addressed in a pilot training held in England and the Netherlands. Some of the mechanisms for delivering effective training that have been identified in this training framework – for example, expert feedback, refresher training and follow-up supervision – may, in view of their resource and organizational implications, be difficult to achieve especially for small-scale organizations such as many law firms.⁴² However, the training framework provides examples of a number of training strategies that can be incorporated into existing training programmes, or which may form the basis of new training programmes designed to give effect to the EU Directives. These include training-the-trainer, joint training and cross-jurisdictional training approaches. With regard to the content and format of training, role-play can be an effective technique although ideally it should be conducted using actors, and supplemented with discussion of ‘real life’ interrogations during subsequent supervision sessions.⁴³

⁴² See Powell 2002.

⁴³ Future research in this field should focus on providing a more precise understanding of the barriers to effective implementation of suspects’ procedural rights, from the perspective of both police officers and lawyers, and of the types of training strategies that are both effective in overcoming those barriers and are cost-efficient. See Powell & Steinberg 2012.

THE TRAINING SYLLABUS

1. Introduction to Syllabus

This syllabus aims to complement training programmes for police officers and lawyers in police custody procedures. It is not intended to be prescriptive nor to provide a stand-alone training module. Rather, it is offered as a resource which can be used in, and incorporated into, training programmes designed to improve the knowledge and skills of police officers and lawyers who deal with suspects in police detention. Each of the rights identified provides an important safeguard for suspects during the detention stage and the syllabus should therefore be considered as a whole, rather than priority being given to particular rights to the exclusion of others. The syllabus identifies elements for police officers and lawyers to consider in the exercise of their roles during police detention, providing practical examples or explanations where these are considered helpful.

The training syllabus has been compiled using the data gathered during the course of the *Inside Police Custody* research.¹ It should be read in conjunction with the research findings and conclusions, which identify the issues and problems in implementing the rights of suspects in police detention, and which explain why a training need has been identified.

The syllabus is organized around, and informed by, the four procedural safeguards covered by the EU Directives enacted in accordance with the EU Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings: the right to interpretation and translation, the right to information, the right of access to a lawyer, and the right to silence.² Whilst the Directives will require most, if not all, Member States to change their laws and regulations to a

¹ Blackstock *et al.* 2014.

² Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings O.J. 4.12.2009 (C 295), 1, and see section 1 above.

greater or lesser extent, the areas suggested for training could be introduced irrespective of the need for legal changes since they focus on the necessary knowledge and skills of individual criminal justice practitioners.

The training mechanisms used to deliver the syllabus will be instrumental in its effectiveness; as illustrated in sections 2 and 3, there are a number of approaches that can be adopted, such as group discussion, role-plays, case examples, and observational exercises. Providing joint and cross-jurisdictional training can also enhance the understanding of rights.

The objective of the training syllabus is to establish a familiarity amongst police officers and lawyers with procedural safeguards in the fulfilment of their roles during police detention, so that rights delivery becomes an accepted procedural practice. Moreover, the suggested syllabus aims to ensure that procedural rights are delivered effectively, so that suspects may exercise, and receive the benefit of, their rights. In particular, the syllabus envisages a fully informed notification procedure, verification of understanding by suspects, and an enhanced role for lawyers in the protection of suspects' interests during the police investigative stage.

2. Vulnerable Suspects

Inside Police Custody did not focus on the rights of vulnerable suspects as a distinct right. Nevertheless, the impact of police detention upon children and other vulnerable suspects was observed during the research. Each element of the syllabus below must be delivered with greater care and attention when a vulnerable suspect is taken into detention. Consideration must be given as early as possible to whether the suspect should, or may be, assisted by another person, such as an appropriate adult, who would be able to aid their level of understanding, their ability to communicate, and their ability to exercise their rights. More attention may need to be given to the notification of rights so that vulnerable suspects understand them, and more time may be needed to enable vulnerable suspects to decide whether to exercise their rights, for consultation with a lawyer, and for the interrogation process. In particular, the approach to interrogation with vulnerable suspects may need careful consideration so as to ensure questions are not confusing, misleading or oppressive.

3. Syllabus

3.1. *Right to Interpretation and Translation*

Scope of the right

The EU Directive on the right to interpretation and translation requires Member States to ensure that a procedure or mechanism is in place to ascertain, without delay, whether a suspect speaks and understands the language of the proceedings and whether they need the assistance of an interpreter. The right applies during

police questioning, and for the purposes of communication with the suspect's lawyer in connection with any questioning or hearing, or for making other procedural applications. The right extends to appropriate assistance for hearing or speech impaired suspects. With respect to translation, all essential documents must be translated within a reasonable period of time. The relevant documents are: a decision depriving the suspect of their liberty; a charge or indictment; and such materials as are relevant for the person to have knowledge of the case against them. The interpretation and translation must be of sufficient quality to safeguard the fairness of the proceedings. The suspect may, however, submit a reasoned request for additional documents to be translated. A procedure must be in place to challenge a decision not to allow interpretation or translation of a document, or to complain about the quality of the translation. Legal professionals must also be trained in the process of communication with interpreters so as to ensure efficient and effective communication.

Police Training Elements

- Assessing the need for interpretation and/or translation from the point of arrest (for example, using telephone interpretation at the scene and organizing an interpreter for arrival at the police station and/or interrogation).
- Understanding of the enhanced vulnerability of suspects during detention where they cannot speak the language, and of the need to facilitate proper communication.
- Acknowledging that the role of the police officer is distinct from that of an interpreter, and that police officers should only converse in the foreign language if they are fluent in the legal terminology of that language (taking into account the fact that trying to communicate in another language may diminish their ability to carry out their professional duties), and not for formal procedures such as the delivery of rights or interrogation.
- Verifying accreditation of interpreters and identifying poor quality interpretation, and the need to replace the interpreter where necessary.
- Assessing the need for multiple interpreters in multiple suspect cases, to maintain confidentiality.
- Verifying that a lawyer conversing in the foreign language has sufficient skill where the lawyer opts to speak that language, and engagement of an interpreter where necessary.
- Facilitating the efficient provision of interpretation where the need is identified, to ensure that the suspect is able to follow all communications regarding their treatment during the detention and investigation.
- Arranging face-to-face rather than remote interpretation as standard practice, unless there is urgency, in order to enable effective communication.

Lawyer Training Elements

- Understanding of the enhanced vulnerability of suspects during detention where they cannot speak the language, and of the need to facilitate proper communication.
- Acknowledgement that the role of a lawyer is distinct from that of an interpreter and that lawyers should only converse in the foreign language if they are fluent in the legal terminology of that language (*taking into account the fact that trying to communicate in another language may diminish their ability to carry out their professional duties*), and not during lawyer-client consultation.
- Challenging the decision of police officers to communicate in the suspect's language, and engaging an interpreter where necessary.
- Verifying accreditation of interpreters and identifying poor quality interpretation, and the need to replace the interpreter where necessary.
- Assessing the need for separate interpretation for lawyer-client consultations on a case-by-case basis, to protect confidentiality (*for example, where there are multiple suspects, or particularly emotive circumstances in the case*).
- Facilitating efficient provision of interpretation where the need is identified, to ensure that the suspect is able to follow all communications regarding their treatment during the detention and investigation.
- Demanding face-to-face interpretation rather than remote interpretation where this is necessary to enable effective communication.

3.2. Right to Information

Scope of right

The EU directive on the right to information contains three aspects. Firstly, all suspects must be promptly provided with information concerning at least the following rights, as they apply under national law: access to a lawyer, advice free of charge, information about the accusation, interpretation and translation, and the right to silence. The information must be provided either orally or in writing and in simple and accessible language, taking into account any particular need of vulnerable suspects. A suspect must additionally be promptly provided with a written letter of rights setting out the rights detailed above, which they must be entitled to keep throughout detention. Further information concerning additional rights whilst detained must also be recorded in the letter of rights (as they apply under national law): access to the materials in the case; contact with consular officials and a third person; urgent medical assistance; how long the deprivation of liberty can last; and the ability to challenge detention. The letter must be available in a language which the person understands. Where this is not available, the rights must be explained through an interpreter and a letter of rights provided without undue delay. A letter of rights must also be provided in European Arrest Warrant cases.

Secondly, information about the criminal act suspected must be promptly provided and in such detail as is necessary to safeguard the fairness of the proceedings and to enable the effective exercise of the person's right of defence. During initial detention the suspect must be informed of the reasons for arrest including the criminal act they are suspected of committing.

Thirdly, access must be given to materials free of charge. Where a person is arrested or detained, Member States must ensure that the documents related to the case in the possession of the prosecuting authorities are made available to the suspect. The relevant documents are those essential to enable effective challenge the detention in accordance with national law. More generally, access must be granted to all material evidence in the possession of the prosecution *for or against* the suspect in order to safeguard the fairness of the proceedings and in due time to allow an effective defence. The disclosure obligation is limited where to provide it might lead to serious risk to life, the fundamental rights of another person, or if it is strictly necessary to safeguard an important public interest, such as prejudicing an ongoing investigation, or where it may seriously harm national security. Nevertheless, limiting access to material must not prejudice the right to a fair trial. The decision to limit disclosure must either be taken by a judge or be subject to judicial review. The suspect may challenge the failure to provide information.

Police Training Elements

- Understanding the importance of notifying suspects of their rights, at the earliest stage, and throughout the relevant stages of detention in order that those rights may be exercised.
- Taking the time to explain the rights to suspects in a way that they can understand, according to their personal characteristics and needs (*identifying a vulnerability; ensuring a repeat offender is still properly informed of their rights, akin to the in-flight safety protocol adopted by commercial airlines*), avoiding routinely providing standardized information, and verifying that they understand those rights by way of an effective mechanism; providing a letter of rights; and using any other written aids to assist in explaining the rights (*it is not enough to simply ask if a suspect understands: for example, asking the suspect to repeat back the right and asking them why they wish to waive a right is good practice*).
- Ensuring that the letter of rights and other required written information is disseminated to suspects in all cases.
- Explaining the right of access to a lawyer as a positive rather than negative right (*for example, a lawyer will assist the suspect, not simply slow down the process*) and providing sufficient information about the right for the suspect to make an informed decision.
- Affording the suspect sufficient time and assistance (*through written aids, appropriate adult, interpreter or the officer's knowledge*) to exercise their rights in an informed manner.

- Considering the amount of information to be provided to the suspect and their lawyer about why the suspect has been arrested and detained; and understanding how providing this information may further rather than hinder the investigation (*for example, providing only very basic information about the suspected offence that has been committed is likely to result in the suspect exercising the right to silence; whereas providing some information about the evidence the police have of the suspect's involvement may result in the suspect providing an explanation that furthers the investigation*).

Lawyer Training Elements

- Ascertaining whether the suspect has been informed of their rights by the police and repeating the notification.
- Explaining the rights to suspects in a way that they can understand, according to their personal characteristics (*identifying a vulnerability; ensuring a repeat offender is still properly informed of their rights, akin to the in-flight safety protocol adopted by commercial airlines*), and verifying that they understand those rights by way of an effective mechanism (*it is not enough to simply ask if a suspect understands: for example, asking the suspect to repeat back the right or asking them why they wish to waive a right is good practice*).
- Seeking information from the police about the suspected offence and negotiating sufficient information to enable the lawyer to advise the suspect as to their defence, the defence strategy, and the strategy in interrogation.

3.3. Right of Access to a Lawyer

Scope of right

The EU Directive on the right of access to a lawyer requires that suspects have the right of access to a lawyer in such a time and manner so as to allow the suspect to exercise their rights of defence practically and effectively. They must be entitled to have access to a lawyer without undue delay and in particular from the deprivation of their liberty, and before they are questioned. The suspect has the right to meet in private, and confidentially communicate, with their lawyer. Where the suspect requests it, their lawyer can be present and participate effectively during questioning. Such participation shall be in accordance with procedures in national law, provided these procedures do not prejudice the effective exercise and essence of the right. The lawyer must also be entitled to attend investigative and evidence-gathering acts with the suspect such as identity parades, confrontations and experimental reconstructions of the scene of crime. Member States must make the necessary arrangements to ensure that suspects or those deprived of their liberty are in a position to effectively exercise their right of access to a lawyer and shall endeavour to make general information available to facilitate access. Certain limited derogations apply to the right in exceptional circumstances. In order to waive the right, the suspect

must have been provided, orally or in writing, with clear and sufficient information in simple and understandable language about the content of the right and the possible consequences of waiver. The waiver must be given voluntarily and unequivocally, and may be revoked at any time.

Police Training Elements

- Understanding the importance of notifying suspects of their right to a lawyer, at the earliest stage, and throughout the relevant stages of detention in order that the right may be exercised (*in that the suspect will have to make decisions about the case against them from the moment that they are arrested, and a lawyer can help them decide their defence strategy*).
- Understanding the role of the defence lawyer at the police station and their value to the suspect (*for example that a lawyer does not simply delay progress of the investigation*), and in particular during interrogations.
- Facilitating the lawyer's role – providing sufficient information to enable the lawyer to advise the suspect effectively; affording sufficient time for consultation between the suspect and their lawyer; allowing the lawyer to intervene where appropriate during interrogation (*which may involve reminding the suspect of their right to silence, and objecting where inappropriate or oppressive questioning, or undue pressure, is used*); affording the opportunity to lawyers to make representations regarding release from detention and charge, or in relation to any other procedure in the police station where the suspect may be adversely affected (*such as identification parades*).

Lawyer Training Elements

- Understanding the role of the lawyer and the significance of legal advice and assistance during police detention at each stage (*advice, interrogation, other investigative acts, decision as to charge and as to release*).
- Understanding the needs of suspects and any vulnerability (for example, the knowledge, demands and support needs of repeat or new suspects may differ; the impact of the desire for release upon the suspect's decision-making; and the suspect's ability to articulate their circumstances), and the need to test the suspect's account and to discuss the implications of this in order to determine an appropriate defence, and interrogation, strategy.
- Enhancing the ability of the lawyer to effectively carry out their role: the timely provision of legal advice and assistance; the importance of advising in person; making the decision whether to attend interrogations; negotiating disclosure; ensuring confidentiality.
- Making effective use of the lawyer-consultation, particularly where time-limited – introducing and explaining their (independent and confidential) role; obtaining instructions; and advising on law and procedure.
- Considering the implications of procedural errors by police, and whether the lawyer should intervene.

- Developing skills related to advising during, and intervening in, interrogations (including identifying unfair, unlawful, or inappropriate questioning by police) and developing the role of the lawyer as an active defender rather than a passive observer.

3.4. Right to Silence

Scope of right

The EU Directive on the right to information requires that a suspect be notified of the right to silence promptly, but does not specifically require that the suspect be given notice, or be reminded, of the right to silence at the commencement of an interrogation. European Court of Human Rights (ECtHR) case-law, on the other hand, requires that notification of the right to silence be given when the right arises. There is no uniform set of words in the Directive or ECtHR case-law as to how the right must be delivered or whether it may be qualified. Nevertheless, the right is recognized as significant in ensuring the right to a fair trial, and breach of the right has resulted in findings by the ECtHR that the right to a fair trial has been violated.

Police Training Elements

- Understanding the importance of the right to silence and the presumption of innocence to the suspect and of its impact upon the proceedings.
- Conducting interrogations in a way that does not undermine, or seek to undermine, the right to silence (*for example, respecting the exercise of the right by not repeatedly asking the same question, and not seeking to undermine the value of the right to silence by suggesting that its exercise will have adverse consequences for the suspect*).
- Dealing appropriately with repeat suspects by ensuring that they are effectively notified of their rights.

Lawyer Training Elements

- Understanding the value of the right to silence as a safeguard, and the procedural impact of exercising or not exercising it.
- Understanding the difficulty for suspects of maintaining silence in the face of questioning and intervening as appropriate to protect the exercise of the right.
- Using the right to silence as a negotiation tool in order to obtain sufficient disclosure from the police to enable appropriate advice to be given to the suspect as to: the interrogation strategy; the prospects of pre-trial release; and the availability of an out-of-court disposal.

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OVERVIEW ANNEXES PILOT TRAINING MATERIALS

1. Aims of the training day
2. Information for delegates
3. Information for expert group
4. Training day programme - England
5. Training materials - England (with alternatives for the Netherlands in parentheses)

ANNEX 1: AIMS OF THE TRAINING DAY



Warwick | Law School



'Inside Police Custody: Mechanisms for delivering procedural safeguards to suspects'

Aims of the Training Day

The organizations identified above are conducting a research project in four European jurisdictions examining four key procedural rights of suspects in police custody: the right to interpretation and translation; the right to information; the right of access to a lawyer; and the right to silence. An important part of the project is the production of training guidance designed for police and lawyer trainers – which uses the findings of the research to identify the areas whereby the problems in implementing the four rights may be improved by training. The training programme will be published and available across all 27 Member States of the EU.

During the training day we will present the findings of the research that have implications for training, conduct some exercises for participants to develop the best ways of providing training solutions to real practical problems, and give participants the opportunity to evaluate the various approaches. We will, in particular, cover: (1) arrival at the station, 'booking in', and informing suspects of their rights; (2) disclosure and consultation; and (3) interrogation.

The aims of the training day are as follows. (1) Delegates will have the opportunity to hear about how processes and problems that they encounter are dealt with in different jurisdictions and also understand the different perspectives between police and lawyers in the delivery of suspects' rights. (2) Delegates will participate in developing practical approaches to training in respect of the four rights. (3) Dele-

gates will be helping to develop a major training programme that will be used by police forces and defence lawyers across the EU.

Funded by the European Community



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ANNEX 2: INFORMATION FOR DELEGATES

We are conducting a research project, funded by the European Union (EU), which is intended to contribute to the successful implementation of EU legislation on the procedural rights of suspects in police custody. The project is led by Maastricht University in the Netherlands, together with Avon and Somerset Constabulary, the Universities of Warwick and the West of England, and JUSTICE and the OSJI.

The objective of the research is to examine, in four jurisdictions – England and Wales, Scotland, the Netherlands, and France – the practical application of four rights on which the EU is legislating: the right to interpretation and translation; the right to information; the right of access to a lawyer; and the right to silence. The Directive on the right to interpretation and translation must be implemented in all Member States by October 2013, the Directive on the right to information in criminal proceedings must be implemented by June 2014, and the Directive on the right of access to a lawyer must be implemented by 2016. The EU is currently considering what action to take, if any, concerning the right to silence. The EU legislation will have a direct impact on the work of both the police and defence lawyers.

An important part of the project is the production of training guidance designed for police and lawyer trainers – which uses the findings of the research to identify the areas whereby the problems in implementing the four rights may be improved by training. The training programme will be published and available across all 27 Member States of the EU.

In order to help us develop the training guidance, and to make it relevant to the needs of the police and defence lawyers across the EU, we are organizing two one-day events – one in Bristol, and the other in Maastricht. For the Bristol event we are inviting up to 10 police officers and 10 defence lawyers (5 from each jurisdiction). We are also inviting 5 experts to observe and offer their views.

During the day we will present the findings of the research that have implications for training, conduct some exercises for participants to develop the best ways of providing training solutions to real practical problems, and give participants the opportunity to evaluate the various approaches. We will, in particular, cover: (1) arrival at the station, ‘booking in’, and informing suspects of their rights; (2) disclosure and consultation; and (3) interrogation.

What will participants get out of it? First, they will have the opportunity to hear about how processes and problems that they encounter are dealt with in different jurisdictions and also understand the different perspectives between police and lawyers in the delivery of suspects’ rights. Second, they will participate in devel

oping practical approaches to training in respect of the four rights. And third, they will be helping to develop a major training programme that will be used by police forces and defence lawyers across the EU.

ANNEX 3: INFORMATION FOR EXPERT GROUP

The research project is briefly explained in the Information for Delegates. An important part of the project is the production of training guidance designed for police and lawyer trainers – which uses the findings of the research to identify the areas whereby the problems in implementing the four rights may be improved by training. The training programme will be published and available across all 27 Member States of the EU.

In order to help us develop the training guidance, and to make it relevant to the needs of the police and defence lawyers across the EU, we are organizing two one-day events – one in Bristol, and the other in Maastricht. For the Bristol event we are inviting up to 10 police officers and 10 defence lawyers (5 from each jurisdiction). We are also inviting 5 experts to observe and offer their views.

During the day we will present the findings of the research that have implications for training, conduct some exercises for participants to develop the best ways of providing training solutions to real practical problems, and give participants the opportunity to evaluate the various approaches. We will, in particular, cover: (1) arrival at the station, ‘booking in’, and informing suspects of their rights; (2) disclosure and consultation; and (3) interrogation.

The purpose of having expert observers is to help us devise the most appropriate guidance for police and lawyer trainers. We are asking the expert group to observe Sessions 1 to 3, rather than to participate in them, and using your own experience to assess whether the types of exercises involved are appropriate for wider use across the EU. It is important to note that the training day will only cover some of the areas covered by, and the issues raised by, the research, and that the training guidance that we devise will also cover other issues.

We will ask the expert group to contribute to the evaluation session for all participants, and also to contribute to the final evaluation session.

ANNEX 4: PROGRAMME OF THE TRAINING DAY



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JUSTICE INITIATIVE

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'Inside Police Custody: Mechanisms for delivering procedural safeguards to suspects'

Training Day Bristol Thursday 18 April 2013*

Programme

10.00 – 10.15	Introduction to the research
10.15 – 11.30	Session 1: Arrival at the police station: Identification of vulnerabilities, and Notification of rights
11.30 – 11.45	Break
11.45 – 01.00	Session 2: Disclosure and consultation
01.00 – 01.45	Lunch
01.45 – 03.00	Session 3: Right to silence and interrogation
03.00 – 03.45	Evaluation of training approaches by participants
03.45 – 04.00	Break
04.00 – 04.30	Evaluation by expert group

Each session will commence with an outline of the research findings relating to the subject of the session.

** The different exercises conducted in the Netherlands are identified within this example programme in parentheses.*

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ANNEX 5: TRAINING MATERIALS

Session 1: Arrival at the police station

1. Programme (10:15 - 11:30)

- 10:15 - 10:35: Explanation of research findings right to translation and interpretation (PowerPoint presentation)
- 10:35 - 10:45: Research findings on notification of rights
- 10:45 - 11:15: 2 times role play (2 x 10' role play + 10' feedback in small groups on the two role plays)
- 11:15 - 11:30: Group feedback by pilot trainers (based upon observations in small groups) supplemented by remarks from participants.

2. Round table discussion (integrated in PowerPoint presentation: interactive presentation of research findings)

Questions to be presented to the participants:

1. If the suspect does not understand English/Dutch, a language identification card can be used. Are you familiar with these cards? What do you think of them? How would you deal with illiterate people?
2. If the suspect has some knowledge of the language, how do you decide whether he/she has sufficient knowledge to be interrogated.
3. What extra precautions should be taken in the case of minors, people with mental disabilities, etc. Should an interpreter be allocated in any case of non-native speakers when they have an additional vulnerability?

Objectives:

- To prompt participants to think about how to identify the need for translation and interpretation and to create awareness of the pitfalls.
- To prompt participants to think about the purpose of the right to translation and interpretation (a right of the suspect rather than an aid to the police).

3. Role play

Organisation of the exercise:

Participants will be divided into small groups of 3-4 participants (mixed groups: lawyers and police). An expert will observe one of the groups.

Within these small groups two of the participants will act as a police officer and notify the suspect of his/her rights. The notification will take place according to the participants' national legislation.

The role of the suspect will be played by law students who will be provided with a scenario.

Participants will receive minimal information about the crime: burglary, yesterday (17 or 22 April) in Bristol/Maastricht. The suspect is brought to the police station by some colleagues who picked him up at home in the morning after a statement was taken from a witness.

Each role play takes 10 minutes at the most. The second role play starts immediately after the first, and feedback on both role plays will be provided afterwards. As an observer, participants are required to take notes in order to provide precise feedback.

Scenario:

Students are provided with two scenarios:

Scenario 1: a vulnerable person who doesn't understand the legal language (low IQ).

Scenario 2: a regular suspect who wants to skip the notification.

Feedback in small groups proceeds as follows: the role players (police officer and suspect) explain their experience. Additionally, observers will point out strengths and weaknesses, referring to examples.

Group feedback:

Group feedback will be started by the pilot trainers who will reflect on their observations. Participants will be asked to add to or supplement these observations.

Objectives:

- To enable participants to experience the difficulties of adequately notifying the suspect of his/her rights.
- To prompt participants to think about how rights are perceived by suspects.
- To create awareness of the importance of the notification of rights (with regard to the further proceedings, for example, the evidential impact at court).
- To identify and understand any differences in working methods and how they can affect the effective communication of rights to the suspect.
- To address differences between suspects.

Session 2: Disclosure and consultation

Exercise 1 – Disclosure of information to lawyer

Organisation of the exercise

Lawyers and police officers in separate groups. Both groups to be given a scenario and decide through a 5 minute discussion (a) police – what to disclose to the solicitor and (b) solicitors – what they would need to advise their client adequately. Whole group to then discuss the levels of disclosure and identify the reasons for the difference in approach.

Objectives of the exercise

- To prompt participants to think about the purpose of disclosure and what impact it can have on the experience of the suspect in detention.
- To prompt participants to think about the purpose of the role of the lawyer during police detention.
- To show how this role is influenced and/or prevented by the level of disclosure provided.
- To identify and understand any differences in attitudes towards the role of the lawyer during police detention and any conflict between this and the purpose of police detention (i.e. to obtain an admission to support a charge/to further enquiries with the suspect secured/to give the suspect an opportunity to put their case forward).

Instructions to participants

Consider the following case information and decide (a) if you are a police officer, what you would disclose to the defence solicitor and (b) if you are a defence solicitor, what you would need to have disclosed in order to fully advise your client how to respond to interview:

Billy Jones (21) has been arrested on suspicion of burglary of a house on Posh Road, Bristol, on the 17th April at around 1am. In the burglary items with an estimated value of £5,000 were stolen. These items include jewellery, laptop computer, and part of a home entertainment system. Entry was gained through climbing over the back garden fence and forcing the back door with a metal object. A size 9 footprint was left at the scene and fingerprints were lifted from the external glass on the door as well as a mirror in the lounge. The footprint is consistent with Billy Jones' foot size and the external fingerprint matches his, but not the internal one.

Billy Jones was seen by Fred Smith (25), who has form for dwelling house burglary and other acquisitive crime, carrying a large, heavy bag two streets from the scene at 1.30am. Billy Jones is known to Fred Smith as they were co-perpetrators on the last burglary Smith got two 1/2 years for. Jones was then a youth and was only sentenced to a referral order (the

lowest community sentence for a juvenile) because the court believed he had been placed under pressure by Smith.

The house was fitted with external CCTV which has not yet been viewed.

A search of Jones' property has taken place. A large sports bag was found and an expensive looking necklace. This has not yet been identified by the victims as theirs.

Exercise 2 – Consultation with client

Organisation of the exercise

Role-play with student playing suspect. Police officer to act as lawyer [or lawyer in the Netherlands] and conduct role-play using the information the police agreed in the last session to disclose to the lawyers. Ten minutes. Lawyer to then conduct role-play with full disclosure. Further ten minutes. Following the role-plays the group will discuss the different approaches to the role of the lawyer and implications of the differing levels of disclosure upon the outcome of the consultation. The group will be asked to list the purposes of the client-lawyer consultation during the discussion.

Objectives of the exercise

- To promote understanding of the purpose and role of the lawyer during police detention and the significance of the consultation for the suspect.
- To prompt participants to think about how the delivery of the role can impact upon the procedural rights of the suspect and the progression of police detention.
- To identify the impact the police have upon the delivery of the right to silence and the right of access to a lawyer.
- To identify any differences in attitude towards the purpose and value of the consultation between police and lawyer participants.

Instructions to participants

A volunteer officer will conduct a legal consultation as lawyer with Billy Jones on the information the police decided to disclose to the lawyers in Exercise 1. At the end of the consultation the officer 'lawyer' should advise Jones on whether to answer questions during interview.

A volunteer solicitor will then re-conduct the consultation with full disclosure.

A discussion will then follow during which the purpose and role of the lawyer-client consultation will be considered.

Session 3: Right to silence and interrogation

Exercise 1 – The right to silence, and the right of access to a lawyer

Organisation of the exercise

Presentation to the whole group of major findings of the research regarding the right to silence. Discussion of a number of questions concerning the right to silence.

Objectives of the exercise

- To prompt participants to think about what the right to silence, and the right to consult a lawyer, mean.
- To prompt participants to think about whether, and if so to what extent, the police should be permitted to seek to undermine (a) the right to silence, and (b) the right of access to a lawyer.
- To identify any differences between police and lawyer participants in their understandings of the two rights.
- To identify, and to understand, any differences in attitudes and approaches as between the two rights (e.g. is there greater acceptance of the legitimacy of police actions that undermine the right to silence, compared to those that undermine the right of access to a lawyer?).

Questions to participants

- The European Court of Human Rights has held that a suspect who is interviewed by the police has a right to legal assistance. What is your understanding of the right of a suspect to the assistance of a lawyer?
- How far can, or should, the police go in trying to persuade a suspect not to consult a lawyer?
- The right to silence is an internationally accepted principle in criminal proceedings. What do you understand by the expression 'the right to silence'?
- How far can, or should, the police go in trying to persuade a suspect to answer police questions?

Exercise 2 – The role of the defence lawyer in police interviews

Organisation of the exercise

Lawyers and police officers in separate groups. Groups to identify up to five reasons why a defence lawyer should be able to intervene in a police interview, and write up reasons on poster paper. Then participants read through the extract from the case of *R v. Paris, Abdullahi and Miller* and answer the questions below, summarizing them on poster paper. Discussion of outcomes in plenary session.

Objectives of the exercise

- Prompt participants to consider reasons why a defence lawyer may intervene in a police interview, and identify any agreement or differences between police and lawyer participants.
- Using an example from a real case, identify the respective perceptions of police and lawyer participants as to when intervention by the lawyer is legitimate.
- Determine the expectations of police and lawyer participants as to the legitimacy of police interview tactics, and the response of the defence lawyer to such tactics.

*Instructions to participants***Task 1**

Identify up to five reasons why a defence lawyer should be able to intervene in the course of a police interview, and write them up on poster paper.

Task 2

Read the extract from one of the interviews in the case of *R v. Paris, Abdullahi and Miller* (see next page), and discuss the following questions.

The extract is from an interview of Stephen Miller who, together with a number of others, had been arrested on suspicion of murder. This interview followed a number of other interviews during which Miller had consistently denied involvement in the murder. He was in an emotional state, and crying during parts of the interview. Miller's lawyer was present during the interview.

1. Would you have expected the defence lawyer to have intervened during this part of the interview?
2. If so, what would be the basis for intervention?
3. How, if at all, should the interview proceed from here?

Summarize the outcome of the discussion on poster paper.

[In Maastricht, Task 2 was conducted slightly differently. Visually recorded fragments were shown of two different exercises: (a) from training videos showing role-plays involving best practice and (b) from real visually-recorded interrogations. Participants were asked to follow their usual practice and could press the 'stop' button: (a) when they saw something they would not have done / when they would have done something differently (police officers), or (b) when they would have intervened (lawyers). Group feedback then followed on any intervention made.]

Extract from *R v. Paris, Abdullahi and Miller (1993) 97 Cr App R 99*

Miller: I wasn't there.

DC Greenwood: How can you ever...

Miller: I wasn't there.

DC Greenwood: How you... I just don't know how you can sit there. I...

Miller: I wasn't...

DC Greenwood: Really don't.

Miller: I was not there, I was not there.

DC Greenwood: Seeing that girl, your girlfriend, in that room that night like she was. I just don't know how you can sit there and say it.

Miller: I wasn't there.

DC Greenwood: You were there that night.

Miller: I was not there.

DC Greenwood: Together with all the others, you were there that night.

Miller: I was not there. I'll tell you already...

DC Greenwood: And you sit there and say that.

Miller: They can lock me up for 50 billion years. I said I was not there.

DC Greenwood: 'Cause you don't wanna be there.

Miller: I was not there.

DC Greenwood: You don't wanna be there because if...

Miller: I was not there.

DC Greenwood: As soon as you say that you're there you know you're involved.

Miller: I was not there.

DC Greenwood: You know you were involved in it.

Miller: I was not involved and I wasn't there.

DC Greenwood: Yes you were there.

Miller: I was not there.

DC Greenwood: You were there, that's why Leanne is come up now...

Miller: No.

DC Greenwood: 'Cause her conscience is...

Miller: I was not there.

DC Greenwood: She can't sleep at night...

Miller: No. I was not there.

DC Greenwood: To say you were there that night...

Miller: I was not there.

DC Greenwood: Looking over her body seeing what she was like...

Miller: I was not there.

DC Greenwood: With her head like she had and you have got the audacity to sit there and say nothing at all about it.

Miller: I was not there.

DC Greenwood: You know damn well you were there.

Miller: I was not there.

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