

# Vulnerability in police custody and partnership responses: Mapping the contours of a changing terrain

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# Vulnerability – an example

I observe a very drawn and ill-looking **woman suspect of about 30 arrested in a domestic abuse** case ... being given an information leaflet by staff. The Detention Officer (DO) explains that she **was too intoxicated to be given one last night when she arrived** ... The very vulnerable female suspect mentioned above (**COPD, borderline personality disorder, depression, carpal tunnel, alcohol addiction, possible lung cancer etc.**) has now been here for 10 hours. She has started making allegations about her supposed 'victim' in the domestic abuse case. Her boyfriend, the 'victim', is well known to the police – the two sergeants both suck their breath in and one of them remarks, "I thought he was dead by now". He has a history of violence and assaults. **The woman suspect is now alleging rape and common assault, so will likely become the victim in the case** (Participant observation, 15 November 2020).

# A disproportionately vulnerable population?

- Detainees more likely than the general population to have:
  - Mental health conditions,
  - Physical health conditions,
  - Learning disabilities,
  - Addictions → intoxication(Rekrut-Lapa and Lapa, 2014; Samele et al. 2021)
- Needs to be taken into account to safeguard well being and integrity of CJ process.

# Aims

1. Map the contours of vulnerability in police custody – who is vulnerable, why?
2. Consider how vulnerability is identified and responded to in police custody
3. In particular, consider partnerships responses to detainee vulnerability
4. Examine the implications for the definition of vulnerability and for police custody partnership working in the future

Note – Not going to talk about C&YP or s136 detentions under the MHA 1983

# The PACE definition of vulnerability (revised in 2018)

Vulnerable' applies to any person who, because of a **mental health condition or mental disorder** (see Notes 1G and 1GB):

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

- their arrest and detention; or (as the case may be)
- their voluntary attendance at a police station or their presence elsewhere (see *paragraph 3.21*), for the purpose of a voluntary interview; and
- the exercise of their rights and entitlements.

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

(iii) appears to be particularly **prone to**:

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

(PACE Code C, 2019: 1.13, my emphasis)

# Conceptualising vulnerability: protected characteristics

- Examples:
  - “Mental health problems;
  - Learning difficulties;
  - Physical illness or disability ...
  - Age (all children are vulnerable, and older people may be more likely to be vulnerable through illness, for example); and
  - Race/ethnicity – people from minority communities can be vulnerable because of their minority status.” (HMIC, 2015: 17).
- Criticisms e.g. lists not exhaustive

# Re-Conceptualising vulnerability: Universal vulnerability?

- Everyone potentially vulnerable, until proven otherwise?
- Fineman (2008):
  - All humans susceptible to harm;
  - Harms are beyond our control;
  - Arise from embedded nature of social actors;
  - Complex, overlapping and multiple vulnerabilities.
- Implications for police custody – situational vulnerabilities arising from cultural and material conditions of police custody.

# Identifying and responding to vulnerability

Keeping vulnerable detainees safe	Safeguarding the vulnerable suspect in the criminal process
Robust authorisation of detention	Robust authorisation of detention
Look at police records e.g. warning markers	Look at police records e.g. warning markers
<b>Risk assessment</b>	<b>Refer to HCP/L&amp;D</b>
Strip searching	<b>Assess fitness for detention/interview</b>
Cell checks/CCTV observation	<b>Secure appropriate adult</b>
<b>Refer to HCP/L&amp;D</b>	Secure legal advice
Pre-release risk assessment	Decisions about charge & bail/remand



# Key players

## Introduced by PACE 1984

- Custody officers and inspectors;
- Legal advisors;
- Appropriate adults;
- Interpreters;
- Forensic medical examiners (FMEs).

## Introduced subsequently

- Civilian detention officers (from the 1980s but given more impetus from 2002);
- Independent Custody Visitors (-2002);
- Drug and alcohol workers (-2003);
- **Health care professionals (-2003);**
- Immigration officials (-2012)
- **Liaison and Diversion (-2014).**

# Growing role for HCPs and L&D

## **Healthcare Professionals (HCPs)**

- From 2003 shift from FMEs to HCPs (nurses, paramedics, doctors).
- Embedded in police custody.
- Police/PCC not NHS commissioned.
- Perform healthcare assessments, prepare care plans, refer detainees to other services, collect forensic evidence etc.

(Rees, 2020)

## **Liaison and Diversion (L&D)**

- Identify and refer those with mental health needs and other vulnerabilities
- Have existed for 25 years, but national roll-out from 2014
- Co-located in police custody, with access to patient information systems.
- Staff from range of disciplinary backgrounds.
- 88% of those referred have at least one vulnerability, mostly a mental health condition or drug or alcohol misuse
- Interventions vary as does uptake.

(Disley et al., 2016 and 2021)

# Case study – decisions about appropriate adults for vulnerable adults

*According to Code C, the decision regarding implementation of the appropriate adult safeguard is the responsibility of the custody officer. Yet, it transpired from interview and observation that, **not only did HCPs ... play a role in identifying vulnerability, they were also key participants in deciding whether the safeguard should be implemented.** Thus, whilst custody officers repeatedly reiterated that such decisions were ‘a personal judgement’, **in reality the decision to obtain an appropriate adult is often delegated to the HCP** and the outcome is then largely decided by them ... A custody officer would typically accept the advice of the HCP ... even when such advice contradicted the custody officer’s initial thoughts on the matter (Dehaghani, 2019: 121).*

# Partnership working between the police, HCPs and L&D: key issues

- Co-location;
- Make best use of L&D and HCP expertise, access health information, and “mutual engagement” (Charman, 2015)
- Inform key decisions, including RAs, fitness for detention, AA, charge, bail/remand etc.
- Share the burden of risk, but ultimate responsibility rested with the custody officer (Disley et al., 2016; Skinns, 2011)

*I think [the police] want us there and they're quite sort of reliant on our feedback before they're happy to release somebody. Yeah, so it's kind of **sharing out the risk**. I think from their point of view it's about **letting go of some of the risk** and reducing their anxiety about some of the people they've got in custody.  
Frontline L&D member of staff, area 1 (cited in Disley et al., 2016: 77)*

# Partnership working between the police, HCPs and L&D: key issues

- Shared goals to some extent e.g. minimising risk of death, but framed in ways useful to the police (Rees, 2020).
- Maintaining independence – “interdependent independence” (Rock, 1990: 39).
- Information sharing and confidentiality – critical for L&D (Disley et al., 2016), but conflicts of interests (Skinns, 2011)?
- Custody seen as “police territory” and HCPs and L&D staff are “guests” (Rees, 2020; Skinns, 2011).
- Partnership responses to vulnerability in police custody - “communities of practice” where practitioners engage in “boundary work” (Crawford and L’Hoiry, 2019: 71).

# Key points

- Vulnerability largely operationalised in relation to PACE definition.
- Vulnerability identified and responded to through risk assessments, AA need, fitness for detention/interview etc.
- Partnership responses enabled by PACE introduction of legal advisors, AAs, interpreters etc. into police custody and, post-PACE, by arrival of HCPs and L&D.
- Through their collaborative work the police, HCP and L&D play a key role in identifying and responding to detainee vulnerability.
- Familiar challenges remain, stemming from 'boundary work' as part of a 'community of practice' (Crawford and L'Hoiry, 2019)

# Implications for future practice

- Joined up approaches to detainee vulnerability essential, but more research needed e.g. on overlap between HCP/L&D +how interact with legal advisors and AAs.
- Should vulnerability be more radically reconceptualised as all suspects vulnerable to some extent (a la Fineman)? Opt out not opt in, though accepting that this requires more resources?
- What is the future role of the custody officer in relation to vulnerable detainees? Should formal responsibility for decision-making be divested to HCPs and L&D?

Any questions?

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