

The contours of the police custody process: Governance and accountability in a post-PACE world

Layla Skinns looks at the implications of the growing use of CJ practitioners and the extended policing family in the management of police detention.

Detention in police custody can be frightening, uncomfortable, and uncertain for detainees who often have multiple needs, including mental disorder, medical conditions, and substance misuse, which affect their detention and mean that the stakes are high. The worst-case scenarios might be a death in police custody or risks to the integrity of the criminal justice process and detainee's access to justice (e.g. if evidence is improperly obtained and is later inadmissible in court). At the very least, if police custody areas are poorly governed, they are likely to be stressful places in which to be detained or to work. Since 1984, the Police and Criminal Evidence Act (PACE) and the associated codes of practice have been used to safeguard detainees and police officers, and to govern the custody process. While PACE remains largely unchanged, the police custody process has been transformed by the gradual introduction of a range of criminal justice practitioners into custody areas, including members of the extended police family. Therefore, the purpose of this article is to examine these changes and the implications for governance and accountability in a post-PACE world. In particular, I argue that the involvement of these practitioners

raises questions about whether they should comply with PACE and the existing police complaints processes, and that these accountability mechanisms are in need of revision to accommodate changes to police detention.

Since the introduction of PACE, police custody areas have become increasingly attended and even inhabited by a range of professionals. For example, PACE gave a statutory role to solicitors and appropriate adults, the Police Reform Act 2002 gave a statutory role to independent custody visitors (formerly known as lay visitors), while the implementation of the Criminal Justice Integrated Teams in 2003 formalised the role of drug workers. This inter-professionalism is necessitated by the multiple needs of detainees. Another reason for involving a range of professionals in police custody areas is that they can be an independent buffer in the sometimes antagonistic relationships between the police and detainees. However, the growing use of a range of professionals in police custody areas raises questions about whether all such staff should comply with PACE.

The increasing use of the extended police family in custody areas raises a different set of issues. In the 1980s, the police began to

employ civilians as detention officers (who are responsible for looking after detainees in their cells); by July 2004, 32 of the 43 forces in England and Wales had employed civilians in this capacity (HMIC, 2004). Furthermore, the role of detention officer is also filled by staff from private security companies. For example, between 2001 and 2006, the Reliance Security Group employed 340 staff as custody assistants or managers in 27 different custody areas in four different police forces. The transfer to the CPS of key custody officer responsibilities (e.g. reviewing evidence and deciding about charging) means that they too can now be civilians employed by the police or a private security company. (See section 5 of the Serious and Organised Crime and Police Act 2005.)

Potentially, the extended police family may be a force for changing the organisational culture of the police. For example, police community support officers are regarded in this way, given their large numbers and that they are more ethnically diverse than the police (Johnston, 2007). However, in a neo-liberal managerialist context, one of the main reasons for using the extended police family in police custody areas is the need to make police custody more cost-effective. HMIC (2004:168) argue that members of the extended police family will free up the capacity of experienced police constables and sergeants, who can then be re-deployed on front-line duties. Money is also saved, in theory, because civilian officers in police custody areas cost less than their police counterparts; although, whether they are actually more cost-effective, especially in the longer-term, remains to be seen, particularly as research on prisons has shown that privatisation does not always result in the anticipated savings, for example, because of the hidden costs of monitoring contracts with private companies (e.g. Padfield, 2006).

Yet, an instrumental focus on cost-effectiveness obscures other more important normative issues. The plurality of staff in custody areas,

through growing inter-professionalism, civilianisation, and privatisation, may impact on access to procedural and substantive justice. This is illustrated by the provision of telephone legal advice. In recent research in a predominantly privatised police custody area, Skinns (in press) found that detainees were concerned about the lack of privacy when consulting with their solicitor over the telephone; conversations took place in the cells, via a loudspeaker on the wall, which meant that the entire conversation could be heard by anyone within earshot. However, the lack of available staff meant that the police and the private security company were reluctant to accompany detainees from their cells to use a 'proper' telephone in the custody area, and solicitors did not have the resources to always consult with their client in person. Therefore, the lack of privacy threatened procedural and substantive justice; it inhibited conversations between solicitors and their clients, and increased the opportunities for the police to overhear important information. This is worrying because case law shows instances of the police unlawfully bugging private consultations between solicitors and their clients in police stations (e.g. *R. v Grant* [2005] EWCA Crim 1089). This example illustrates a further risk, in pluralised police custody areas, of opportunities for 'buck-passing' responsibilities for the care and fair treatment of detainees. In this case, there was a reluctance to take responsibility for the provision of satisfactory legal advice.

In privatised custody areas, uncertainties about who is responsible for the care and fair treatment of detainees might also be manifest in relation to the police complaints process. In particular, questions are raised about whether serious complaints would be dealt with by the Independent Police Complaints Commission and/or the private security company. Locally

negotiated contractual arrangements may be one way for the police to hold private security firms to account for their role in the custody process. However, these arrangements may be too ad hoc, depending on the police services and private security firms involved and lack public scrutiny. It would seem wise, therefore, for private security employees, to comply with regulatory and accountability mechanisms in PACE or in the Police Reform Act 2002, as a condition of their contract rather than by informal agreement.

The discussion so far also has a bearing on proposals for police detention in short-term holding facilities (STHFs), which could be permanent or mobile and located in areas of high offending such as shopping facilities or at public events. It is argued that STHFs will have operational advantages, such as speeding up the custody process for minor offenders and improving the collection of biometric data. However, to make them cost-effective, it may be that the police will have to rely on the extended police family to staff them. In addition, it seems unlikely that other professionals (e.g. solicitors, appropriate adults, and drug workers) will have the resources to attend the STHFs *as well as* existing police custody areas. Together, this suggests that STHFs will further erode mechanisms, such as clear lines of accountability, which protect detainees' safety and access to procedural and substantive justice, and that any advantages of an inter-professional context may be lost. Until these issues and others, such as the retention of biometric data, can be resolved, STHFs require further public discussion.

To conclude, since the introduction of PACE in 1984, the police custody process has increasingly involved, first, a range of criminal justice practitioners to meet the multiple needs of detainees and, second, members of the extended

police family, including those employed by private security firms, to contribute to the goal of a more cost-effective police custody process. It would seem, therefore, that the police custody process is being civilianised and privatised, and that existing accountability mechanisms cannot accommodate these changes. Perhaps there is a need for private security firms to be held to account through a mixture of a national framework and possibly in the same way as the police, for example, through legislation such as PACE, as well as through locally negotiated contractual arrangements. The 'fine tuning' of these safeguards seems all the more prescient in the light of the proposals for STHFs. For these reasons, the review of PACE, which began in March 2007, could not be more timely. Failing to accommodate changes to the police custody process into accountability mechanisms is likely to create unnecessary uncertainties and inadequate safeguards for police custody workers and detainees, in a post-PAVE world. ■

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