

# Not remotely fair?

Access to a lawyer in the  
police station during the  
Covid-19 pandemic



February 2021



# A report written by Transform Justice, the National Appropriate Adult Network and Fair Trials.

## About Transform Justice

The logo for Transform Justice, featuring the words "Transform" and "Justice" stacked vertically in a bold, black, sans-serif font. A small red dot is positioned above the letter 'i' in "Transform".

Transform Justice is a national charity campaigning for a fairer, more humane, more open and more effective justice system. It works to enhance the justice system through promoting change – by generating research and evidence to show how the system works and how it could be improved, and by persuading practitioners and politicians to make those changes. Transform Justice has produced reports on unrepresented defendants, on the overuse of police custody, on justice reinvestment and on magistrates and diversity. [www.transformjustice.org.uk](http://www.transformjustice.org.uk)

## About Fair Trials

The logo for Fair Trials, consisting of the word "Fair" in a blue box and the word "Trials" in a teal box, with the two boxes overlapping.

Fair Trials is a global criminal justice watchdog with offices in London, Brussels and Washington, D.C., focused on improving the right to a fair trial in accordance with international standards. Fair Trials' work is premised on the belief that fair trials are one of the cornerstones of a just society. Its work combines: (a) helping suspects to understand and exercise their rights; (b) building an engaged and informed network of fair trial defenders (including NGOs, lawyers and academics); and (c) fighting the underlying causes of unfair trials through research, litigation, political advocacy and campaigns. [www.fairtrials.org](http://www.fairtrials.org)

## About the National Appropriate Adult Network

The logo for the National Appropriate Adult Network (NAAN), featuring the words "National Appropriate Adult Network" stacked vertically. "National" is in a small blue font, "Appropriate" is in a large blue font, "Adult" is in a large blue font, and "Network" is in a small blue font. There is a blue square graphic behind the text.

The National Appropriate Adult Network (NAAN) is a charity with over 90 member organisations, providing the national centre of expertise on appropriate adults (AAs). Our vision is that every child and vulnerable person detained or interviewed as a suspect is: treated fairly with respect for their physical and mental welfare; can exercise their rights and entitlements; and can participate effectively. Our mission is to ensure that children and vulnerable people are supported by effective AAs. We achieve this by strengthening local AA provision, informing the public, and working with others to create a fairer system. [www.appropriateadult.org.uk](http://www.appropriateadult.org.uk)

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# Foreword

**Who would be a duty police station lawyer? Anti-social hours and weekends on call; clients who are vulnerable or distressed (frequently both); and then there are the police. All that hassle, for what?**

The average fee for a duty case is about £150 for what could be five or six hours at a police station in the early hours of the morning. For criminal defence firms, this important work is a “loss leader” undertaken in the hope of picking up profitable work further down the line. The pandemic has delivered many police station reps a break with tradition.

Lawyers were concerned that custody suites weren’t “Covid secure” and that social distancing was impossible in cramped interview rooms. A protocol was swiftly drafted between the police, CPS and the legal profession’s representative bodies allowing interviews to continue with lawyers advising via phone or video links except in serious cases or where a suspect hasn’t consented.

Many police station solicitors stopped going to police stations. This study draws on the experiences of appropriate adults (AAs) who continued to attend, many on a voluntary basis.

AAs reported that of the more than 4,700 police station interviews attended between 1 September and 17 November 2020, legal assistance was provided remotely in more than half of the cases. In Surrey, AAs estimated that almost nine out of 10 interviews were conducted remotely; but in Suffolk it was only three out of 10. The majority of the 315 AAs who responded to the survey felt that remote assistance had “a negative impact” on the ability of suspects to participate effectively in the process. The protection of suspects in the police station should have been paramount in the implementation of the protocol. That hasn’t happened and this failing needs to be addressed immediately.

We must remember our history. The role of robust legal representation in the police station is at the heart of the “due process” protections that we ought to cherish, but don’t. Anyone who is detained or interviewed by the police is entitled to a legal aid lawyer. That right is enshrined in the Police and Criminal Evidence Act 1984 (PACE). Many notorious miscarriages of justice, such as the Guildford Four and Birmingham Six, occurred when suspects were denied access to police lawyers or else forced to rely on ineffectual ones who sat passively by. In those cases, innocent Irishmen (and one English woman) were terrorised, beaten and forced to put their names to false confessions.

Maxwell Confait, a male sex worker known as “Michelle”, was throttled and his body discovered in a burnt-out flat in Catford, South London in 1972. Three innocent and vulnerable youths (the youngest was just 14 years old and two had learning disabilities) were jailed for his murder after making “confessions” without a lawyer in the room. Medical evidence subsequently demonstrated the prosecution case could not have been true. They had alibis at the time of Confait’s death. That tragedy led to a royal commission and the PACE regime including the right to a lawyer in interviews and to an AA for children and vulnerable suspects.

Listeners to the brilliant BBC podcast *Shreds* on the Cardiff Three, wrongly convicted of the 1988 murder of Lynette White, will have been appalled by the tactics employed by South Wales Police to extract false confessions in the interrogation of Stephen Miller. In the Court of Appeal, Lord Chief Justice Taylor said that “short of physical violence, it is hard to conceive of a more hostile and intimidating approach by officers to a suspect”.

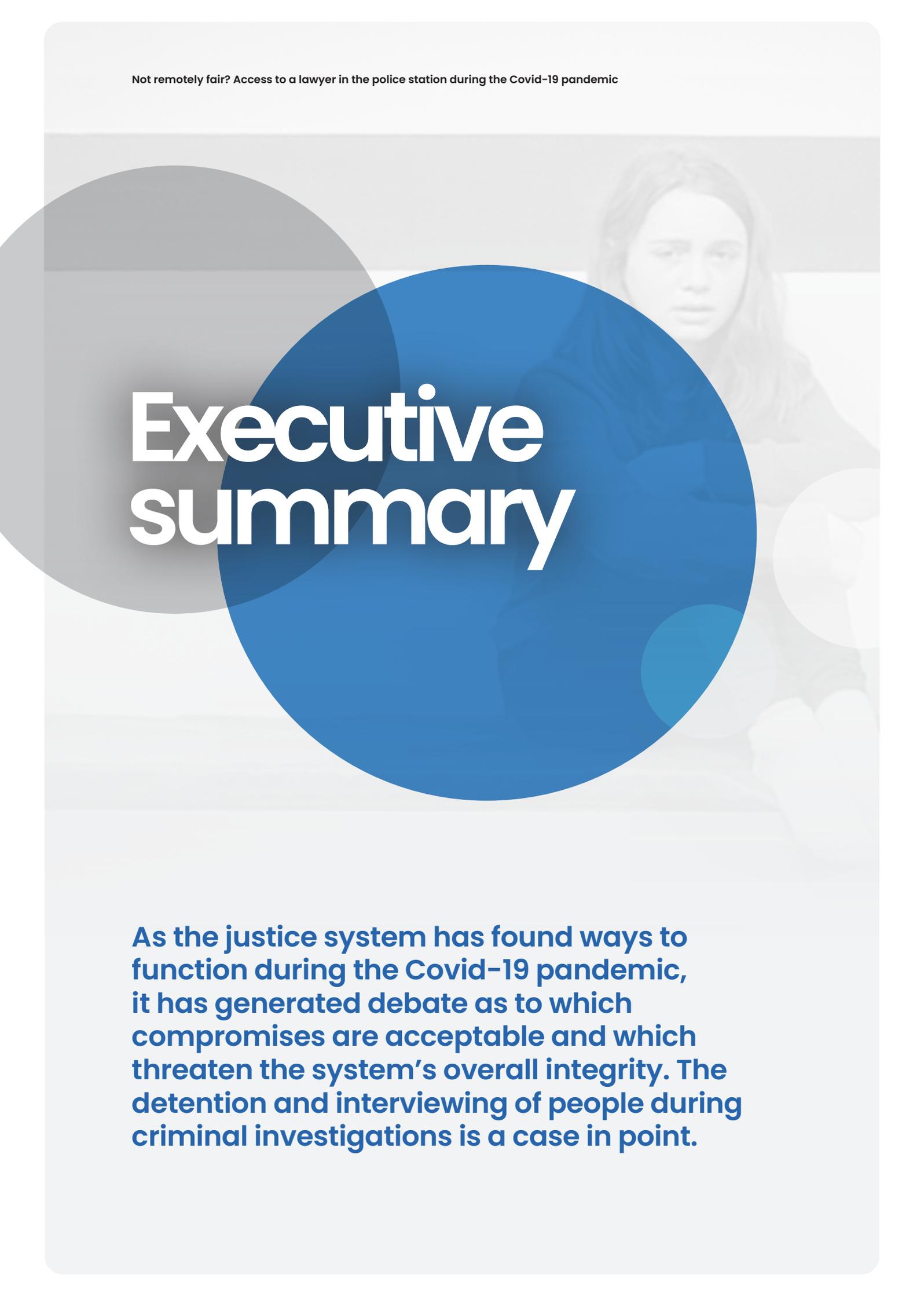
The Law Society’s handbook for police station reps used to be called “Active Defence”. AAs now attest to some lawyers not just being “passive” when advising remotely but completely disengaged – for example, eating during an interview, talking to their gardener, playing Candy Crush on their phone or driving their car. “At no point during the interview did the solicitor engage in any form of communication, or seem to be paying attention to the interview,” the AA noted in that last case. They paraphrased the words of the distressed detainee who felt as though their life “did not matter”. “Even their solicitor doesn’t care about representing them. There is no point in living. No one cares”. One alarming theme of the research is police station lawyers refusing to attend in person in serious cases (e.g. murder and rape) and then refusing to drop such cases. In one case of attempted murder, the suspect had never been arrested previously and was identified as having learning disabilities. He arrived hearing voices and was described by the AA as “delusional, suffering from stress, OCD and anxiety”.

This is not written without sympathy for beleaguered police station lawyers. This important work has been devalued for years. Defence lawyers have suffered a 20-year freeze in legal aid rates. The Government slashed fees by 8.75% in 2014 and a second equal-sized cut was put on hold. Where else do we see cuts on that scale? But the legal profession isn’t blameless. Many firms regard police station work as having “the lowest status of all”, as the academic Dr Hannah Quirk wrote in her 2017 book *The Rise and Fall of the Right of Silence*. Consequently, it has often been delegated to the most junior, frequently legally unqualified, staff or else farmed out to agencies staffed by retired police officers. As one AA notes, the new regime “incentivises” lawyers to attend remotely and take on more cases – because no travel is needed.

It has been suggested that the pandemic is an opportunity to “press the reset button”. We hear calls for “nightingale” courts, limiting trial by jury and the seemingly irresistible push for “remote justice”.

Frankly, we didn’t need a pandemic to reveal the all too obvious problems of our “broken” criminal justice system. But some problems in our criminal justice system remain hidden. Transform Justice, the National Appropriate Adult Network and Fair Trials are to be commended for shining a light on this little understood but vital part of our justice system.

**Dr Jon Robins, editor of the Justice Gap**

A woman with long dark hair is sitting at a desk, looking down at a laptop. The image is faded and serves as a background for the report cover. Overlaid on the image are several overlapping circles in shades of blue and grey. The title 'Executive summary' is written in large white letters across the center of the blue circles.

# Executive summary

**As the justice system has found ways to function during the Covid-19 pandemic, it has generated debate as to which compromises are acceptable and which threaten the system's overall integrity. The detention and interviewing of people during criminal investigations is a case in point.**

**People detained in custody or otherwise interviewed by police have a right to free legal advice and assistance, to safeguard legal rights and ensure fair questioning. Solicitors normally make contact with clients in advance of interview via a short phone call, before attending the police station or other interview location.**

Children and mentally vulnerable adults are particularly at risk due to their specific needs – often relating to communication. Safeguards to ensure their fair treatment include having an “appropriate adult” and legal assistance (if requested) always being delivered in person.

However, as the pandemic struck in March 2020, solicitors raised concerns about the Covid-19 safety of police custody, leading to anxieties that essential interviews with solicitors present at the police station would not proceed. A protocol was agreed between prosecutors, police and defence solicitors to mitigate health risks. It discouraged unnecessary interviews in detention and, contrary to established laws and procedures, supported the temporary *remote* delivery of legal representation in interview.

This report aims to provide an insight into the implementation of the protocol and the effect of remote legal advice, particularly on children and mentally vulnerable people. An online survey was carried out with trained appropriate adults, many of whom continued to attend police custody throughout the pandemic. 315 responses were received between September and November 2020, from AAs active in all police force areas in England and Wales.

#### Appropriate adults (AAs) reported that, in relation to children and vulnerable adults:

- Legal representation at interview was provided remotely in half (51%) of cases, and this varied widely within and between areas.
- Over a third (38%) of respondents indicated that remote representation was more often than not provided by audio-only (telephone or video conferencing with the camera off).
- Issues with consent included: consent was often not sought from suspects and their AAs; suspects and their AAs felt pressured to consent; refusal of consent was ignored or defied.
- Remote legal assistance at interview negatively impacted people’s ability to understand what was happening and the legal advice they were given.
- Some solicitors were more passive and less likely to intervene during interview when assisting remotely, and were less likely to hold a post-interview debrief with their client.
- Where solicitors were not physically present in custody and in interviews, AAs felt it necessary to take on a more proactive role.
- Some solicitors refused to attend in person even though their child or mentally vulnerable client was suspected of something as serious as attempted murder or rape.

The protocol, which remains in operation almost a year later, has not been widely understood and complied with. The rights of suspects and the integrity of investigations have been compromised. This represents a systemic risk for policing and the courts over the coming months and years.

The focus should now be on an exit strategy from the temporary protocol, with the normal safeguard of in-person legal advice being re-applied to children and vulnerable adults immediately.

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# Introduction

# Police station legal advice and assistance

**Police often want to interview suspects as a “reasonable line of enquiry” in the interest of their investigations. For example, this may be to deal with common defences, obtain confessions, anticipate pleas, draw adverse inferences from silence, or discover new lines of enquiry.**

Anyone who is detained or interviewed by police is entitled to legal advice and assistance, funded by legal aid. The solicitor<sup>1</sup> plays a crucial role in protecting a suspect’s fair trial rights – including the right to disclosure of evidence, the right to silence and the right to legal aid. Many people detained in a police station are not aware of their rights and do not understand what they mean – the language is technical and suspects are under significant stress. The solicitor therefore serves as a crucial “gateway”<sup>2</sup> to other procedural safeguards and rights; without them, it’s difficult for a suspect to participate effectively in the criminal justice process.

A solicitor can shorten a client’s time in custody and obtain better outcomes, such as an out of court disposal rather than a charge, or release on bail instead of pre-trial detention. What happens in police custody also significantly influences the later (more public) stages of criminal proceedings. Legal assistance can prevent inappropriate cases being pursued, support diversion from the criminal justice system and result in better charging decisions, all of which can contribute to efficiency savings. In recognition of the crucial role of solicitors at this point in proceedings, this is the only point in the system at which free legal advice is available to all.

The vast majority of police station legal advice is funded under legal aid (rather than by the client). Requests for legal advice are passed on by police to the Duty Solicitors Call Centre (DSCC). In most cases, the solicitor’s firm is paid a fixed fee (between £126.58 and £274.66, depending on geographical location<sup>3</sup>) covering the entire period of detention, no matter how many interviews take place, how long the solicitor spends in custody, how many times they have to leave and return, how serious the charge is, or the extent of a client’s needs.<sup>4</sup> Solicitors are expected to contact their client within 45 minutes of accepting the case. This is often achieved by a brief telephone call, with solicitors then attending in person in advance of an interview.<sup>5</sup>

Despite the crucial role defence solicitors play in ensuring the fair and effective operation of the criminal justice system, successive cuts to legal aid have left firms in a financially precarious position. This has been exacerbated by the pandemic due to the impact of trial delays. Law firms have, in particular, long struggled to match the time spent on police station work with the payment received for it. It has effectively been a “loss leader” for these businesses in the hope that the firm obtains more profitable work at the later stages of a criminal case.

<sup>1</sup> Police station legal advice and representation can be provided by duty solicitors, a person’s own solicitor or accredited legal representatives. Throughout this report we use the term solicitor to describe all.

<sup>2</sup> <https://www.fairtrials.org/publication/wheres-my-lawyer>

<sup>3</sup> <https://www.legislation.gov.uk/uk/sj/2016/313/schedule/3/made?view=plain>

<sup>4</sup> Solicitors firms can claim a higher fee if the costs of their time and travel (based on set values) exceed three times the value of the fixed fee.

<sup>5</sup> In very limited circumstances, suspects are limited to advice from CDS direct – a purely telephone-based service. However, this does not apply to people for whom an appropriate adult is required.

# Responding to Covid-19

**When the Covid-19 pandemic hit the UK in March 2020, there were significant concerns about the impact on the criminal justice system and the health of those within it. One of these was the risks associated with police interviews, particularly within the confines of police custody.**

In March 2020, the National Police Chiefs' Council issued strategic guidance to police forces on managing custody, including on procedures for admitting essential visitors. This was followed in April with guidance, developed with Public Health England (PHE), outlining what personal protective equipment (PPE) should be used in different operational situations (e.g. wearing masks and gloves when in close contact with members of the public) and that measures such as hand sanitising and social distancing should be implemented where possible. Police forces developed their own protocols based on the guidance.

In addition to police officers and civilian staff, other key workers in custody made changes to their ways of working. Services faced, and continue to face, the challenge of balancing health and safety risks with risks to suspects' rights and the integrity of the criminal justice system. For example, many independent custody visitor (ICV) volunteers stopped visiting custody in Spring 2020.

With support from the Independent Custody Visiting Association (ICVA), all schemes adopted remote monitoring methods including telephone/video visiting and in-depth reviews of custody records.<sup>6</sup> By the autumn, the majority had returned to custody. Many are still visiting in person, while others are monitoring remotely or using a hybrid approach due to the impact of local infection rates on volunteer availability. In the early stages, NHS England's liaison and diversion (L&D) services adapted to the needs of forces by local agreement, with risk assessments determining whether they operated remotely or from within custody. However, L&D services have now returned to police custody.<sup>7</sup>

Appropriate adult schemes, typically funded by local government,<sup>8</sup> continued to attend custody throughout the pandemic, including during lockdown periods. NAAN provided guidance to AA schemes in late March 2020. Many AAs were unable to attend due to age or underlying health conditions, placing enormous strains on local scheme coordinators and remaining AAs. However, PACE Codes of Practice are explicit that, in the case of a child or vulnerable person, the police must secure the physical presence of an AA for common and key procedures including searches, samples, fingerprints and interviews.<sup>9</sup>

<sup>6</sup> ICV volunteers make unannounced visits to police custody to check on the rights, entitlements, wellbeing and dignity of detainees held in police custody, reporting to PCCs and Policing Authorities. See [www.icva.org.uk](http://www.icva.org.uk)

<sup>7</sup> Liaison and Diversion (L&D) services identify people who have mental health, learning disability, substance misuse or other vulnerabilities when they first come into contact with the criminal justice system. See <https://www.england.nhs.uk/commissioning/health-just/liaison-and-diversion/about/>

<sup>8</sup> Local authorities have a statutory duty to ensure provision of AAs for children. They have historically and typically funded provision for adults on a non-statutory basis. See the There to Help research series.

<sup>9</sup> NAAN (2020) Coronavirus (COVID-19) guidance: Levels of AA involvement required to achieve PACE compliance when working with children and mentally vulnerable adult suspects.

# Remote legal assistance and the Joint Interim Interview Protocol

**In early April 2020, organisations representing solicitors, prosecutors and the police agreed a Joint Interim Interview Protocol (JIIP). The JIIP recognised the challenge of dealing with cases fairly during the pandemic, urging “careful consideration of what new offences are brought into the system and how those offences are investigated by the police and progressed through the CJS” and recognising that “for public health reasons interviews may need to be postponed or even dispensed with”.**

It was also intended to allow *necessary* police interviews to continue, while minimising health risks to solicitors (and those with whom they came into contact). The protocol allowed for remote legal assistance to be provided to suspects during police interviews where the interviews were necessary. The signatories to the protocol recognised that PACE (the law governing the obtaining of police evidence) assumes legal representatives will physically attend and includes no provisions for remote legal representation in interviews. However, they felt that the JIIP was “within the spirit of recent amendments to criminal procedure, law and evidence”.

Remote legal assistance during the pandemic involved a temporary shift from established laws and procedures designed to protect fair trial rights. The Notice of Rights and Entitlements provided to all detained suspects reflects the underlying assumption that legal assistance is provided in person (human rights laws underpinning the right to legal advice and assistance in the police station also assume in-person advice and assistance).<sup>10</sup> The notice states, “When the police ask you questions, you can ask for a solicitor to be *in the room with you*” (emphasis added). PACE does include provisions for some services to be provided remotely (interpretation, for example), but not legal assistance.<sup>11</sup> PACE Code C 6B states that where a detained person needs an AA, or is unable to communicate over the telephone, “the DSCC should arrange for advice to be given by a solicitor *at the police station*” (emphasis added).

However, in the context of Covid-19, it was argued that PACE did not explicitly *require* solicitors to be physically present. The signatories to the JIIP agreed that where an interview was necessary (i.e. the case could not be handled in another way), and where the detained person gave consent, it should take place with the solicitor taking part by video link (e.g. Skype) whenever possible. The protocol would be “reviewed monthly as from 1 April 2020” and was “intended for use only during the period of the Coronavirus crisis”.

Within three weeks, and following concerns raised by NAAN, the protocol was swiftly amended to include additional safeguards for suspects.<sup>12</sup> These safeguards included that remote legal assistance in interview may not be used for offences of high “severity”, or where the suspect has not given *informed* consent to remote legal assistance. Where the person to be interviewed is a child or vulnerable person, additional safeguards applied, such as the police being required to conduct a case-by-case assessment of their suitability and to secure the informed consent of the AA (in addition to that of the child or vulnerable person) to remote legal assistance. A full description of the safeguards under the amended JIIP is included in appendix 1.

As of February 2021, this version of the interim protocol remains in place, albeit as an explicitly temporary measure. In June 2020, the Home Office consulted on proposed temporary amendments to PACE Code C, reflecting the protocol and allowing legal assistance by telephone or video link for a period of twelve months from commencement.<sup>13</sup> Of the 29 consultation submissions, 27 expressed concerns about this proposed change to PACE. The government subsequently abandoned plans to amend PACE codes, stating that, “the consultation responses highlighted significant issues” and “it would be much more beneficial to increase compliance with the existing interview protocol requirements”.<sup>14</sup>

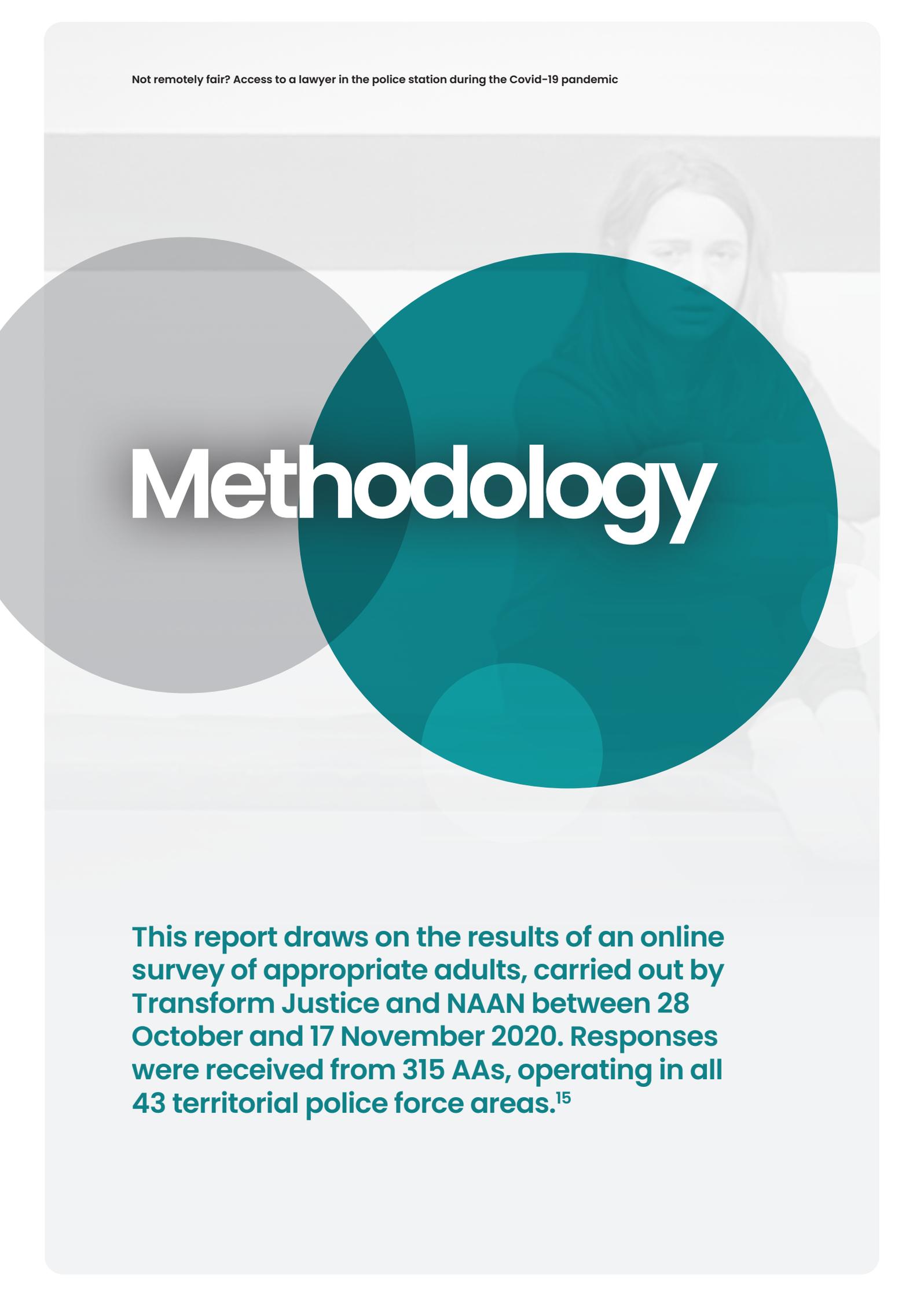
<sup>10</sup> For example *Dayanan v. Turkey*, App. no. 7377/03, (Judgment of 13 October 2009), paragraph 32 and *Beuze*

<sup>11</sup> In recent years, PACE has been amended to include provisions allowing interpreters and police officers to attend PACE interviews remotely. This was to address specific issues of local availability of interpreters with specific language skills and questioning of suspects held by one force by officers in a distance force. Extensive safeguards are included and amendments were agreed by both Houses of Parliament.

<sup>12</sup> <https://www.cps.gov.uk/legal-guidance/coronavirus-interview-protocol-between-national-police-chiefs-council-crown>

<sup>13</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/893192/2020\\_CONSULTATION\\_CodesCE\\_Letter\\_to\\_consultees.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/893192/2020_CONSULTATION_CodesCE_Letter_to_consultees.pdf)

<sup>14</sup> <https://www.gov.uk/government/consultations/revising-pace-codes-c-and-e/outcome/response-to-the-consultation-on-pace-codes-c-and-e-accessible-version>

The background of the page features a faded image of a woman with long dark hair, looking downwards. Overlaid on this image are several large, semi-transparent circles. A large teal circle is positioned in the center-right, overlapping a smaller teal circle below it. To the left of the teal circles is a large grey circle. The word 'Methodology' is written in a large, white, sans-serif font across the center of the teal circles.

# Methodology

**This report draws on the results of an online survey of appropriate adults, carried out by Transform Justice and NAAN between 28 October and 17 November 2020. Responses were received from 315 AAs, operating in all 43 territorial police force areas.<sup>15</sup>**

**Appropriate adults (AAs) safeguard the interests, rights, entitlements and welfare of children and vulnerable adults who are suspected of a criminal offence. The police must involve an AA if the suspect is under 18 or meets the criteria for a “vulnerable person” described in PACE Code C paragraphs 1.4 and 1.13(d).<sup>16</sup> In some cases the AA is a parent, family member or other person known to the person suspected of the offence. In other cases, the AA is a trained person from a locally organised scheme. This person may be a volunteer, sessional worker or employed professional such as a youth offending team officer or social worker.**

All respondents were part of organised AA schemes run by local authorities or commissioned from independent providers.<sup>17</sup> As such, experiences reported in the survey relate to cases involving children and vulnerable adults where the AA was from an organised scheme in England and Wales. Cases where the AA was a parent or family member are not covered in the data.

While AAs from organised schemes are trained, they are not legally qualified. They are not in a position to judge the quality of legal assistance. However, their regular and continued physical attendance at police stations throughout the pandemic, and their time spent supporting people who are detained, gives them a unique insight into the impact of remote legal assistance on children and vulnerable adults.

An AA only attends in cases where the suspect is a child or vulnerable adult. This survey therefore does not capture data on the prevalence and impact of remote legal assistance on non-vulnerable adult suspects – the majority of those in police custody. However, it is arguable that many of the findings could be extrapolated to all those detained in custody. Prevalence of remote legal assistance is likely to be higher amongst non-vulnerable adults, as the additional JIIP safeguards relating to cases involving children and vulnerable adults do not apply.

The impact of remote legal assistance on a suspect’s ability to effectively participate is likely to vary depending on the age and mental vulnerability of the suspect. However, many of the impacts identified will also apply to non-vulnerable adult suspects, to some degree. Furthermore, much vulnerability in the police station goes un-identified.

The survey was carried out from 28 October to 17 November 2020. Questions 2–6, which sought to determine the prevalence of remote legal advice and assistance, asked respondents to limit responses to their experience from 1 September 2020. This was a time of flux in Covid-19 regulations, between national lockdowns. By 1 October 2020, around 23% of people in England and 76% of people in Wales were in local lockdowns.<sup>18</sup> 82% of responses were received prior to 5 November, when England entered a 4-week second national lockdown.

The majority of quotes in this report come from the survey responses. Additional quotes, examples and case studies were provided to NAAN by AAs and AA scheme managers.

<sup>16</sup> For a list of police forces see <https://www.police.uk/pt/contact-the-police/uk-police-forces/>

<sup>17</sup> <https://appropriateadult.org.uk/information/what-is-an-appropriate-adult>

<sup>18</sup> <https://appropriateadult.org.uk/information/get-an-appropriate-adult>

<sup>19</sup> “Covid rules: How much of the UK is now under some sort of lockdown?”. BBC News. UK. 1 October 2020. Retrieved 2 October 2020. URL <https://www.bbc.co.uk/news/uk-54373904>

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# Results



# Prevalence of remote legal advice and assistance amongst children and vulnerable people in police custody

## Prevalence of remote legal advice and assistance across forces

### Respondents were asked:

- how many police station interviews they had attended as an AA since 1 September 2020
- how often legal assistance at interview was provided remotely
- how often pre-interview legal advice was provided remotely

Of the over 4,700 police station interviews attended by respondents between 1 September 2020 and 17 November 2020, legal assistance during interview was provided remotely to children and vulnerable adults in roughly half (51%) of cases.

Figure 1 shows the percentage of cases observed by AAs where legal assistance at interview was provided remotely. One third of AAs (34%) reported that legal assistance was provided remotely in 76-100% of the cases they had attended. About half of respondents (49%) indicated that remote was used more often than not. Approximately one in six respondents (16%) reported that legal assistance had been given in person for all the cases they attended.

The proportion of pre-interview legal advice provided remotely (54% of cases) was similar to remote assistance at interview. This suggests that it was extremely rare for a solicitor to switch to physical attendance once initial advice was given remotely.

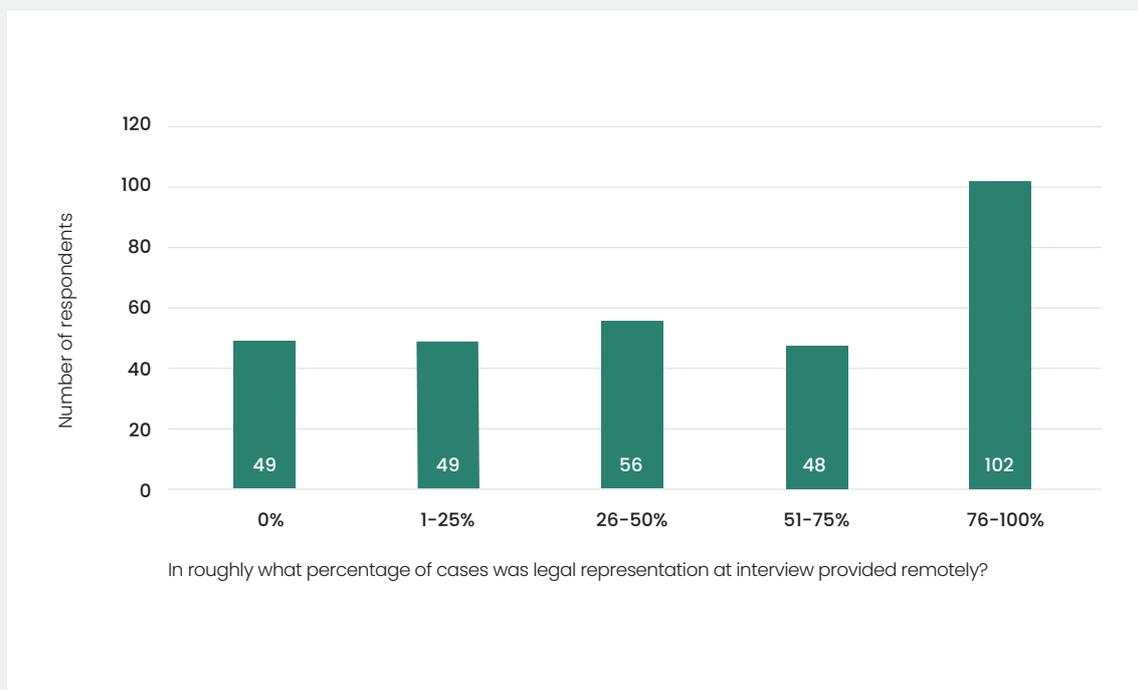


Figure 1 Prevalence of remote legal assistance at interview, as reported by appropriate adults (n=304)

### Variations in prevalence between and within police force areas

There was significant variation in the amount of remote assistance observed by AAs in different geographical areas, as well as by AAs within the same area.

Figure 2 shows the proportion of remote legal assistance at interview in ten different police force areas (those with the greatest number of AA respondents). Appropriate adults operating in Surrey estimated that 87% of interviews were conducted remotely. In Avon and Somerset, 73% of interviews had legal assistance provided remotely. In comparison, in Suffolk 30% of interviews were conducted remotely. These figures are based on the perceptions of small groups of AAs per force.

In their qualitative responses, some AAs reported that the amount of in-person attendance varied based on the location of the police station (*“more attendance in person in Nottinghamshire than Derbyshire”*) or the attitudes/policies of specific law firms:

*“In Northamptonshire only one of the panel lawyer firms refuse to attend.”*

*“One particular solicitors’ practice is of the opinion that if the [suspect] needs an AA then the solicitor should be there in person.”*

*“The police in Cumbria appreciate the presence of solicitors in the station, but only one company attends.”*

One AA believed solicitors were taking on shifts in different counties on the basis that they would not need to travel to the police station, a practice also adopted by this Lincolnshire firm:

*CDA Solicitors (@CdaSolicitors) tweeted at 8:19 PM on Fri, Dec 18, 2020: We’re looking for some extra Police Station help because it’s that busy. All of our local PS interviews are done remotely so you don’t need to be local to Lincolnshire - it would be ideal for a freelance rep looking for some extra work - <https://twitter.com/CdaSolicitors/status/1340028992821321729?s=03>*

Another respondent felt that some solicitors were incentivised to attend remotely as this allowed them to take on a greater number of cases per shift than when attending in person:

*“I have noticed that solicitors who have not been attending are taking on large numbers of clients that would be impossible to take on if they had to be physically present.”*

Individual AAs had different experiences of the prevalence of remote legal assistance, even within the same police force. In Norfolk, ten AAs reported that assistance was remote all of the time, while seven others reported that legal assistance at interview was delivered in person for all the cases in which they provided support.

This variation within forces indicates that the difference in prevalence of remote legal assistance is not simply a matter of different forces implementing the JIIP differently. Other significant factors may include case type, and the individual solicitors and AAs involved.

### Prevalence of audio-only remote legal assistance across forces

Respondents were also asked how often remote legal assistance at interview was delivered by audio only. This includes where the solicitor provides advice during the interview either via telephone or by a video call with the camera turned off.

Figure 3 shows the percentage of remote cases observed by AAs where assistance was provided by audio-only. Over a third (38%) of respondents indicated that audio only was used more often than not.

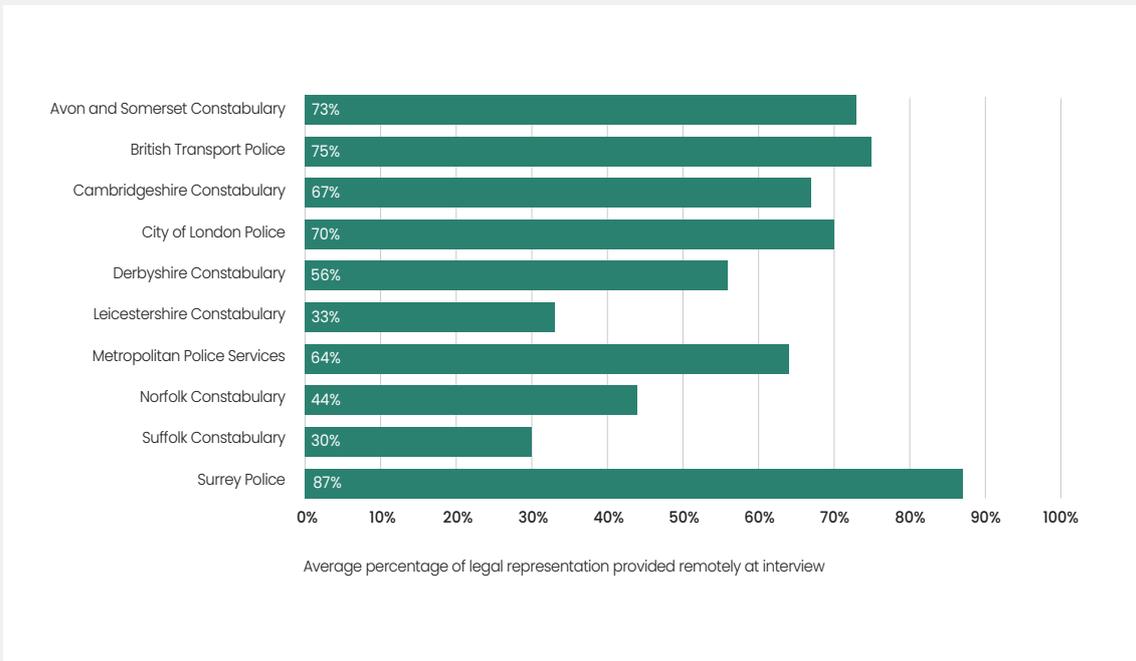


Figure 2 Prevalence of legal assistance provided remotely at interview, in the ten force areas with the most respondents (n=196)

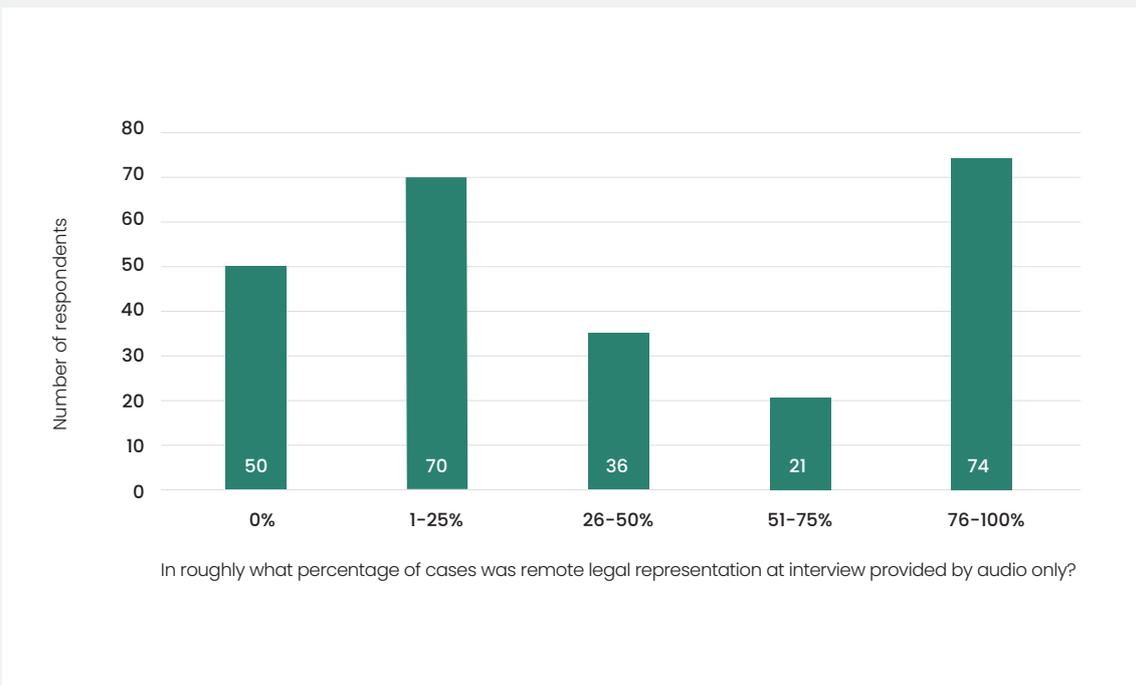


Figure 3 Prevalence of audio-only legal assistance at interview, as reported by appropriate adults (n=251, excluding those with no remote experience)

**Variations in prevalence of audio-only remote legal assistance by force area**

However, there was again significant variation across geographical areas.

Appropriate adults operating in Cambridgeshire estimated that of interviews conducted with remote assistance, almost all (92%) of these were conducted via audio only. By contrast, in Norfolk this figure was 11%.

Figure 4 shows the proportion of remote legal assistance at interview that was delivered by audio only in ten different police force areas (those with the greatest number of AA respondents).

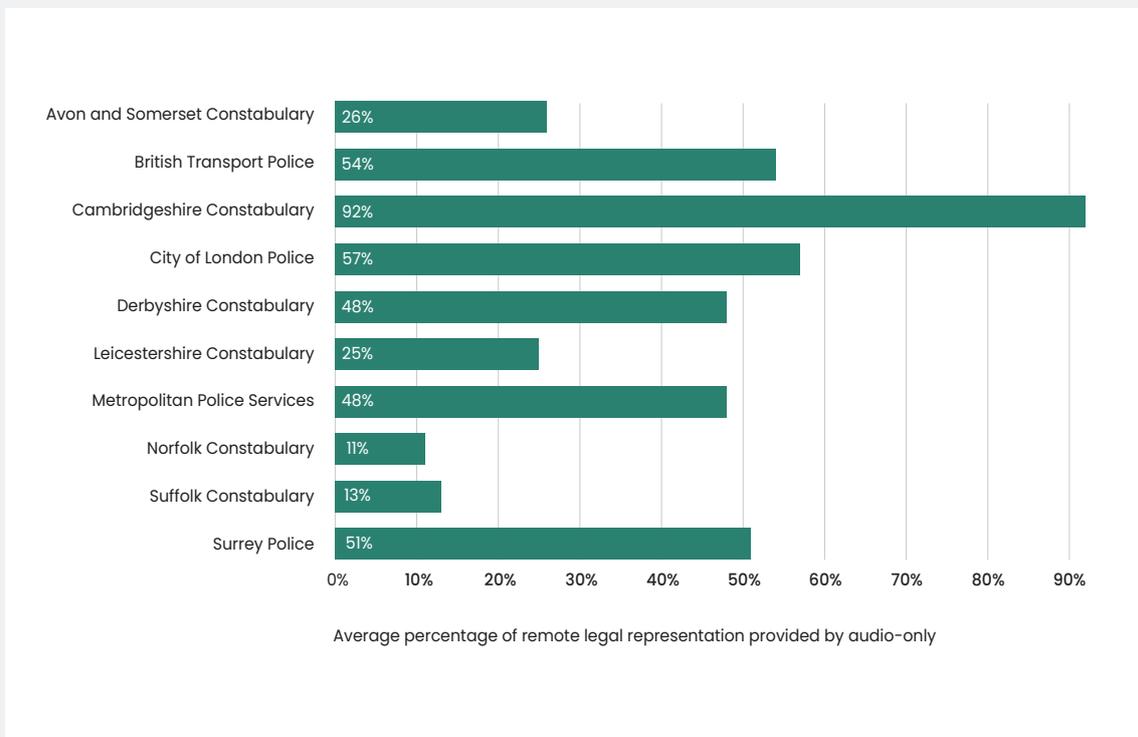


Figure 4 Prevalence of audio-only legal assistance at interview in the ten force areas with the most respondents (n=164, excluding those with no remote experience)

### The impact of Covid-19 safety measures on prevalence of remote legal assistance

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Concerns have been raised about the health risks of attending police stations during the pandemic. Making police custody Covid-safe clearly presents challenges. Custody infrastructure varies, with smaller and older suites presenting specific issues. There is some evidence to suggest that risk management measures have not been applied evenly over time or across suites and forces. For example, we understand that some forces have been reluctant to use screens and masks.

Our survey did not ask AAs to report on Covid-19 safety protocols in the police stations they visited, but a few (nine) respondents volunteered information. Most reported that PPE, social distancing measures and/or cleaning procedures were in place:

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*"When I did attend, masks were worn, distancing was in place."*

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*"All stations have very strict distancing and cleaning, PPE rules. The solicitors have been venturing out for a while with no issues."*

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*"I am unsure why legal services are still being provided remotely when PPE is now being used so all are being protected."*

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*"I recently met a solicitor who stated to me that due to the seriousness of the case she ended up attending Basingstoke for the first time in months. She commented that she was pleasantly surprised at the covid protocols in place. I was able to assure her that being a regular attender I had witnessed how rigorous and conscientious the custody staff and interviewing officers are at sanitising the rooms and providing PPE on request."*

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One respondent observed mixed levels of adherence to health and safety procedures, with rooms set up for social distancing but police officers not always wearing masks:

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*"Some officers are not always wearing a face mask. I will wear one at the station, but I will remove it when talking with to the child. The pen to sign the custody sheet was cleaned before and after use. A large room has been designated for interviews with social distancing."*

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This remains a changing situation. In January 2021, the NPCC and College of Policing published significantly strengthened PPE guidance, requiring custody staff to wear a surgical mask, nitrile gloves, apron and goggles in all common areas of custody. This was quickly adopted by forces, including the Metropolitan Police. Liaison and diversion services, independent custody visitors and AA schemes are conducting their own formal and informal assessments and, where issues arise, these are dealt with locally.

The comments from this survey are not enough to draw any conclusions about the robustness of Covid-safe measures in police stations and custody, or its impact on solicitors' willingness to attend in person. But they do indicate that more could be done to update solicitors on the safety measures that are now in place.

# What difference does it make? Consequences of remote legal advice and assistance

## Impact on the suspect’s effective participation

Respondents were asked about the impact of remote legal advice and assistance on the ability of children and vulnerable people to participate effectively in the process (e.g. to understand the process and their rights and to express their views).

The largest group, over half (55%) of respondents, said that remote provision of legal advice and assistance had a negative impact on the ability of the suspect to participate effectively in the process.

One third (33%) felt it had no impact. It is worth noting, however, that many of these pointed to the fact that as AAs they were taking on additional work to make up for the lack of in-person advice. There may have therefore been an impact on the *process* but not, in their view, on the ultimate outcome.

Only 1% of respondents said remote advice led to more effective participation.

Respondents were then asked to outline in what ways, if any, they thought remote provision impacted on the ability of the detained person to participate effectively and to understand their legal rights. The following sections summarise these responses.

## Impact on the suspect’s understanding of the process

One key role of a solicitor at the police station is to ensure the suspect understands why they have been detained and the strength of the case against them. Following instruction, the solicitor then advises their client on how to proceed, including how to respond to police questions (if at all), and whether or not to make a written statement.

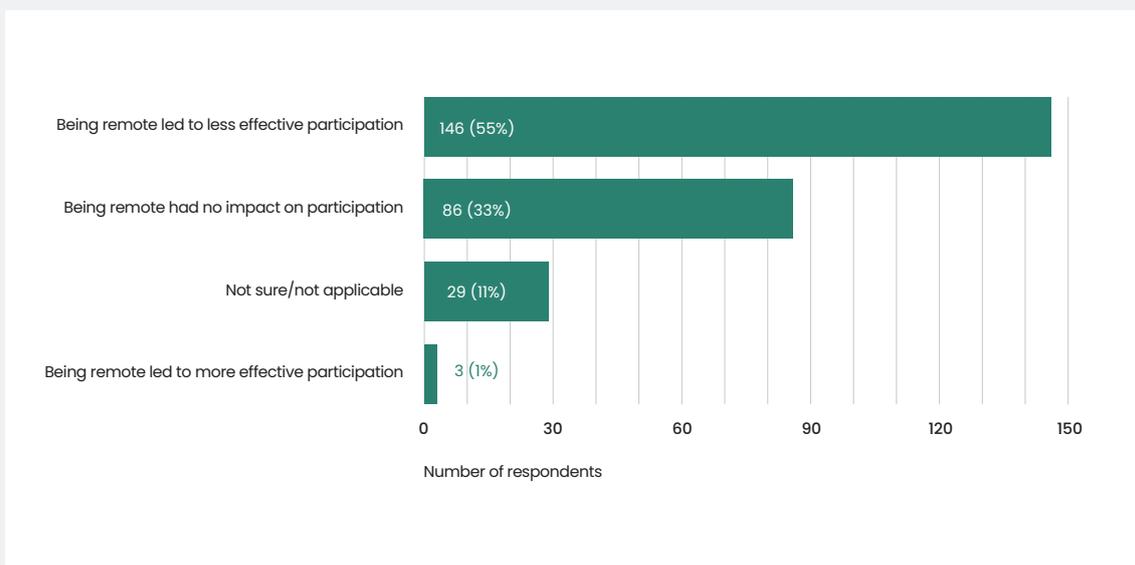


Figure 5 Impact of remote legal advice and assistance on the ability of the detained person to participate effectively (n=264, excluding those with no remote experience)

The survey results indicate that remote legal assistance can negatively impact a suspect's ability to understand what is happening, and the legal advice they have been given. Respondents said that when legal assistance was provided remotely, suspects were *less likely* to:

- ask questions when they didn't understand what was happening: *"I have had [suspects] ask legal type questions after phone consult which I wasn't able to answer...[suspects] were offered another phone chat but to 'save time' decided to carry on even though they had questions."*
- stop the interview to ask the solicitor for advice: *"The vulnerable suspect is not always aware that they can stop the interview for further legal advice."*
- follow the legal advice given to them: *"The suspect is less likely to follow solicitor advice if they are not present."*
- hear what the solicitor was saying due to problems with technology: *"The suspect told me afterwards that he had difficulty hearing."*

Solicitors can often pick up on a suspect's level of understanding by reading body language and facial expressions. However, respondents reported that being remote seemed to make this more difficult for solicitors to do.

One respondent reported that a solicitor was *"concerned he couldn't read the reactions of the young person"* and asked the AA to sit in on the legal consultation. While it is the right of a suspect to choose whether or not to have their AA present at a legal consultation, solicitors are often extremely cautious about the risk to legal privilege.<sup>19</sup> However, this had become standard practice for some respondents:

*"I have now made it my policy to be involved in all pre-interview discussions to try to address the communication difficulties – it can be as basic as the solicitor and young person being unable to comprehend each other's accents over a crackling phone line".*

Some AAs – either at the request of the solicitor or under their own steam – felt obliged to take on a more proactive role in the process to help the suspect understand what was happening. When the solicitor was remote, many AAs felt obliged to ask more questions, to monitor body language more closely to check the suspect understood what was happening, and to remind the suspect more frequently that they could stop interviews for further legal advice.

*"Where access is only audio I have on occasions needed to explain what is happening in the interview for the benefit of the legal representative to understand [the suspect's] reactions."*

*"On a number of occasions solicitors have asked for me as the AA to ensure [the suspect] follows the legal advice and prompt them if they do not follow this."*

#### Impact on the suspect's experience of the process

Appropriate adults observed suspects getting upset and angry that solicitors were not there physically, in some cases causing suspects to disengage from the process.

*"On a number of occasions the [suspect] and myself have requested for the solicitor to attend...each time this has been refused. On approximately nine occasions the interviews have needed to be stopped because the [suspect] was angry at the solicitor and felt they should be there."*

*"It looks like the solicitor couldn't bother coming to the station...So the [detained person] automatically feels let down and not supported."*

<sup>19</sup> Consultations between suspects and appropriate adults are subject to the common law duty of confidentiality, rather than legal privilege. There is case law to the effect that the presence of an AA at a legally privileged conversation does not destroy that legal privilege. However, legal experts remain cautious due to the lack of legislation or obvious legal remedy if privilege is broken by the AA. See <https://www.counselmagazine.co.uk/articles/cljw-legal-privilege-and-appropriate-adults>

*"I have heard comments from the [detained person] that the solicitor just couldn't be bothered to come out, even though they've understood fears about Covid transmission. That's their perception anyway, that the solicitor doesn't care enough about them or their case."*

Respondents gave examples of suspects having particular difficulty participating in the interview when legal assistance was provided via audio only:

*"I have noticed that people struggle more if the remote advice is audio only...feedback from volunteers is that sometimes audio only can increase a [suspect's] paranoia."*

*"Detained person with ADHD was unable to tolerate phone/voice and terminated interview and refused further phone consult."*

#### Impact on the solicitor's participation in the interview

A solicitor would be expected to intervene during the police interview in a range of situations, for example to object to improper questioning, to seek clarification, to remind a client of their previous advice on whether to comment, or to pause the interview to give further legal advice. Often interventions are extremely subtle, yet impactful. For example, a solicitor may simply look at a police officer and raise an eyebrow in response to questioning that may be inappropriate.

Some AAs observed a difference in the level of participation by solicitors when legal assistance was provided remotely, with solicitors being more passive and less likely to intervene:

*"Solicitors attending in person are more likely to remind the detained person of their earlier advice, and are much more likely to intervene during questioning."*

*"During [remote] interview, solicitors are less likely to intervene or asks for alone time with detained person."*

A small minority of AAs did however report solicitors engaging effectively remotely:

*"Solicitors can and do interject and pauses for confidential consults are common and work OK too."*

*"Some solicitors have been very good on video."*

Some of the AAs surveyed reported that solicitors appeared to be distracted or doing something else while participating in the interview, such as eating, answering other phone calls, and even driving:

*"I have personally experienced solicitors at home during interviews having their kids run around in the background or having brief chats with family members when they are being delivered coffee. How is this fair on the detainee?"*

*"One solicitor recently while on a video got in their car and started driving, which caused the [suspect] at the time to become very distressed and concerned for the solicitor's safety."*

In one case, the solicitor dropped off the call entirely early on in the interview, and no one in the room was aware until the interview had almost finished.

#### Impact on legal assistance outside of interview

Once an interview is over, solicitors can speak to the suspect privately to explain what has happened and what the next steps will be. But some AAs reported that solicitors were less likely to hold a post-interview debrief with their client when they weren't there in person:

*"On no occasion have I seen a lawyer remotely have a chat with their client post interview. They seem rushed to get off the call. Whereas when the legal representative is present, in 99% of those cases the legal representative asks for a post interview chat with their client."*

One respondent attributed this to solicitors being able to line up more cases as a result of providing legal assistance remotely:

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*"I have noticed that solicitors who have not been attending are taking on large numbers of clients that would be impossible to take on if they had to be physically present. This has also led to solicitors often wanting to leave an interview before having a post interview consultation with the suspect as they have to deal with other cases. This often leaves the suspects being taken back to their cells with little idea of what the next steps will be."*

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One AA reported being asked by the solicitor to liaise with the police about the case, something which the solicitor would do if they were attending in person:

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*"Legal advisor also requesting additional duties of AA to assist [suspect] e.g. write down my number and pass to [suspect]. Speak to Officers about X etc."*

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Outside of the survey, some AA schemes have raised concerns with NAAN about post-interview 'intelligence gathering' by police. This involves police continuing to ask questions of a suspect after their recorded PACE interview. For example, a child detained in relation to drugs may be asked to provide information about local drug dealers or gangs. This process is not without risk for suspects and AAs had noted that solicitors who attended physically would normally be present for this process but this did not apply where remote interviews were used.

### Impact on the confidentiality of legal consultations

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A small number of AAs raised concern about the confidentiality implications of legal consultations conducted remotely. Suspects have a right to consult privately with their solicitor. However, remote legal consultations were taking place on police laptops or telephones which police felt unable to leave with unsupervised suspects, meaning conversations could be overheard or, in theory, recorded by police.

One AA reported that remote legal consultations were not taking place in private rooms:

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*"Representation is only over the phone, not by video call as the phone signal/internet coverage is very limited in the custody suite. The result is...that the call with the solicitor lacks any confidentiality from the police."*

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*"Legal advice should be private for detainees, in a private room, not in custody at any time. Everything is recorded in custody. It's not confidential. The solicitor must attend if the police don't have those resources."*

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*"The police need to make the necessary accommodations to provide for a confidential place for discussion and adequate internet to enable a video call."*

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### Impact on the speed of the custody process and length of detention

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While very few AAs (1%) said that remote legal assistance improved participation, several commented on its potential to shorten the length of time in detention.

Suspects can spend hours in a police custody cell while investigations are carried out – the average length of time in detention is almost 14 hours.<sup>20</sup> By the time the police are ready to interview, the suspect can be desperate to get out. Remote legal assistance means solicitors do not need to travel to the police station, which in some areas can add an hour or more to the suspect's time in detention. Some AAs noted the potential benefits of this for suspects:

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*"Detainees are less anxious waiting for solicitors to attend the police station. Very often solicitors have other interviews to conduct, which delays the process. By remote working the detainee is given a time for interview which increases participation and reduces apathy."*

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*"Both police, myself and detainees have found it reduces the waiting time when solicitors are remote, it's a lot easier and quicker to get legal advice."*

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<sup>20</sup> [https://www.transformjustice.org.uk/wp-content/uploads/2020/06/TJ\\_Police\\_Custody\\_Report\\_042.pdf](https://www.transformjustice.org.uk/wp-content/uploads/2020/06/TJ_Police_Custody_Report_042.pdf)

# Are the safeguards working?

Appropriate adults reported several issues related to awareness and application of the safeguards in the protocol. These included remote legal advice being used: inappropriately in relation to offences of high severity; without informed consent from suspects; and, in the case of children and vulnerable adults, without informed consent from their AA (see appendix 1).

## Awareness of the joint protocol

At the time surveyed, the JIIP had been published for around six months, and heavily disseminated by national bodies. However, AAs reported that police and solicitors sometimes said they had not heard of the protocol. This did not appear to prevent the use of remote legal advice – with police apparently simply responding to the fact that solicitors were not attending. However, it did mean consent was often not sought and AAs faced resistance to applying the safeguards:

*“In my experience, no Custody Sergeant, interviewing officer or solicitor has heard of the JIIP.”*

Four AAs said that they hadn't heard of the protocol either:

*“I did not know the suspect had to give consent for remote legal advice. I feel bad about this now. After advising them to have free legal advice I have always followed it up with an explanation that it will be done remotely due to the pandemic.”*

## Cases of a serious nature

In some cases, the safeguard requiring solicitors to physically attend “due to severity” of the offence was working well. Appropriate adults gave examples of solicitors turning up in person for cases where the offence was serious: *“If the allegations are very serious the local solicitors are attending in person.”*

However, others reported instances where the solicitor refused to attend in person even though their client was suspected of something as serious as murder or rape (in addition to being particularly young or otherwise vulnerable).

*“I have dealt with 5 serious cases involving under 16s (murder/rape) and solicitors have refused to attend the station.”*

*“I have had at least 2 occasions in the past 5 months where the solicitor has refused to come out in person to represent clients on allegations of rape which is totally unacceptable.”*

Appropriate adult scheme coordinators provided NAAN with further examples of remote interviews being conducted for very serious cases with children and vulnerable adults with serious mental illness. Examples included:

- attempted murder of a sibling
- sexual touching (suspect had a learning disability)
- threats to kill / actual bodily harm / grievous bodily harm (suspect had schizophrenia)
- rape (suspect had depression and a learning disability).

**Informed consent**

Under the JIIP, remote legal assistance in interview may not be used unless the police have secured the informed consent of the suspect, and of the AA (where the suspect is a child or vulnerable adult).

Respondents who had attended one or more remote interviews since 1 September 2020 reported that consent was hardly ever refused. Over half reported that consent had not been refused at all in that time period, and over 90% of respondents said consent was refused less than 25% of the time (see figure 6).

Several concerns about the application of the protocol emerged as common themes.

**1. Consent is not sought from the child or vulnerable person**

Some reported that the consent process was explained well by police officers, or that children and vulnerable people were giving “informed consent”:

*“It seems fine to me, but I attend a fairly quiet rural PIC (Police Investigation Centre) – the custody sergeant always checks carefully with the [suspect and] with me that they give informed consent.”*

However, others were clear that, in practice, children and vulnerable people were neither being informed of their right to legal advice in person nor were they asked for their consent to remote:

*“The suspect is never asked if he consents to remote legal advice, the police just put him through on the phone and announce the legal adviser will be attending via Teams.”*

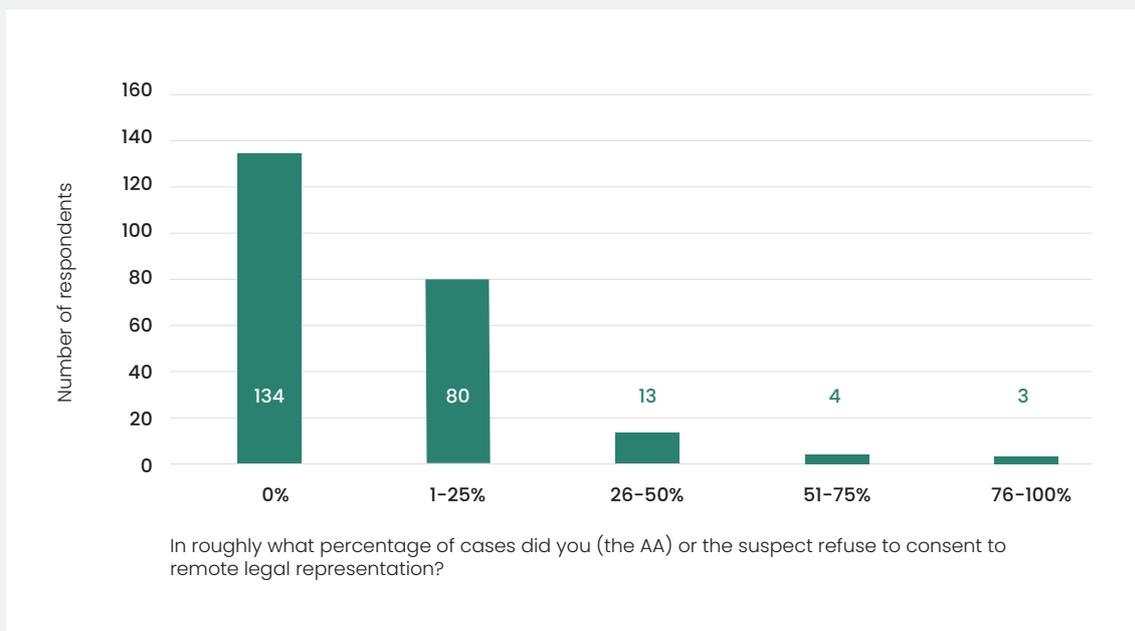


Figure 6 Percentage of cases in which the AA or the suspect refused to consent to remote legal assistance in interview and asked for face to face assistance instead (n=234, excluding those with no remote experience)

## 2. The context makes it difficult for a child or vulnerable person to give informed consent

The protocol does not define “informed” consent but some AAs felt it was often not possible for children and vulnerable people to understand what they were consenting to.

This might be due to the unpleasant, stressful nature of the situation:

*“The suspect often does not fully understand how pivotal it is to have the solicitor present for consultation and interview, especially if is emotionally stressed.”*

*“I do, as an AA, inform them that they can refuse but usually they are guided by a ‘just get on with it’ attitude as they are keen to be dealt with quicker.”*

Another factor is the power imbalance between solicitor and client:

*“[Children and vulnerable people] think that they don’t matter and have said, they’ll [the solicitor] be horrible to me if I make them come to the station. They are using ‘you’ll be there longer if you want me there’. To someone vulnerable this is frightening and makes them feel that they are not wanted.”*

Notably, one respondent drew a distinction where children and vulnerable people had asked for their own solicitor rather than a duty solicitor who was unknown to them:

*“In most of these cases the suspect has asked for a solicitor or solicitors’ firm they already know, when told this will be remotely they do not have a problem with this as they already have a relationship.”*

## 3. Consent is not sought from appropriate adults

Several respondents reported never having been asked to consent to remote legal assistance, which was often presented as a “fait accompli” by police officers:

*“[The police] called me to say that the solicitor was available to take part in a video interview and then asked if I could attend custody. When I reached custody, the interview room was already set up with a laptop and the solicitor was visible on the screen.”*

## 4. AAs are pressured to consent to remote legal assistance

AAs reported being pushed to consent to remote legal assistance by solicitors:

*“Solicitors are very forceful about having remote meetings”.*

AAs also reported being pushed by police, who used the incentive of a speedier release:

*“[Officers] are often more concerned with time pressures than with following [the joint interim interview protocol] and will put pressure on the suspect to use remote legal advice by telling them they’d have to go back to their cell for hours if they want someone in person.”*

One AA explained that power imbalances between the solicitors and police and the AA made it difficult to refuse consent:

*“Sometimes officers and solicitors put me in a bad position in front of a suspect by saying that because of AA’s requests (to have a face to face legal rep) it is likely that the interview will be delayed by an hour or so. [Suspect] then gets frustrated and ask to ignore AA’s advice or refuses to have a solicitor completely.”*

## 5. Refusal of consent is ignored or defied

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Where the joint interview protocol was working well, a refusal to consent to remote legal assistance led to the police officer relaying this back to the solicitor who then either attended in person, or passed the case to another solicitor at their firm, or back to the DSCC for redistribution to the duty or other solicitor.

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*"I have twice refused consent because the [suspect] in my view was not capable of understanding the ramifications of his situation. The duty sergeant immediately booked a solicitor in person."*

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*"In these cases the solicitor asked a colleague to attend. On one occasion the client was supported by back-up duty."*

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*"I had one case I asked solicitor to attend... as I felt the [suspect] had several needs...The solicitor refused and said that we were putting him at risk of covid asking him to come in. We got another solicitor."*

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However, there were many examples given by AAs where a decision not to consent was ignored or defied. Some solicitors refused to attend in person and the interview went ahead remotely, as in this case involving a 12 year old boy:

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*"Solicitor refused to attend the station. On this occasion myself and the officer raised serious concerns...When the solicitor was asked to attend they said no because it was inconvenient for them. Raised this issue with custody sergeant and was told that the interview should go on and that the AA was holding up the investigation, [that] it's the solicitor's right not to attend and not hand the case over to someone who would attend."*

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The police sometimes pushed back on a refusal to consent, citing the delays that would result from arranging for in-person legal assistance:

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*"You also receive grief when you request a solicitor be present with responses such as 'We are ready to go' or 'a solicitor could take 1-2 hours to get here'".*

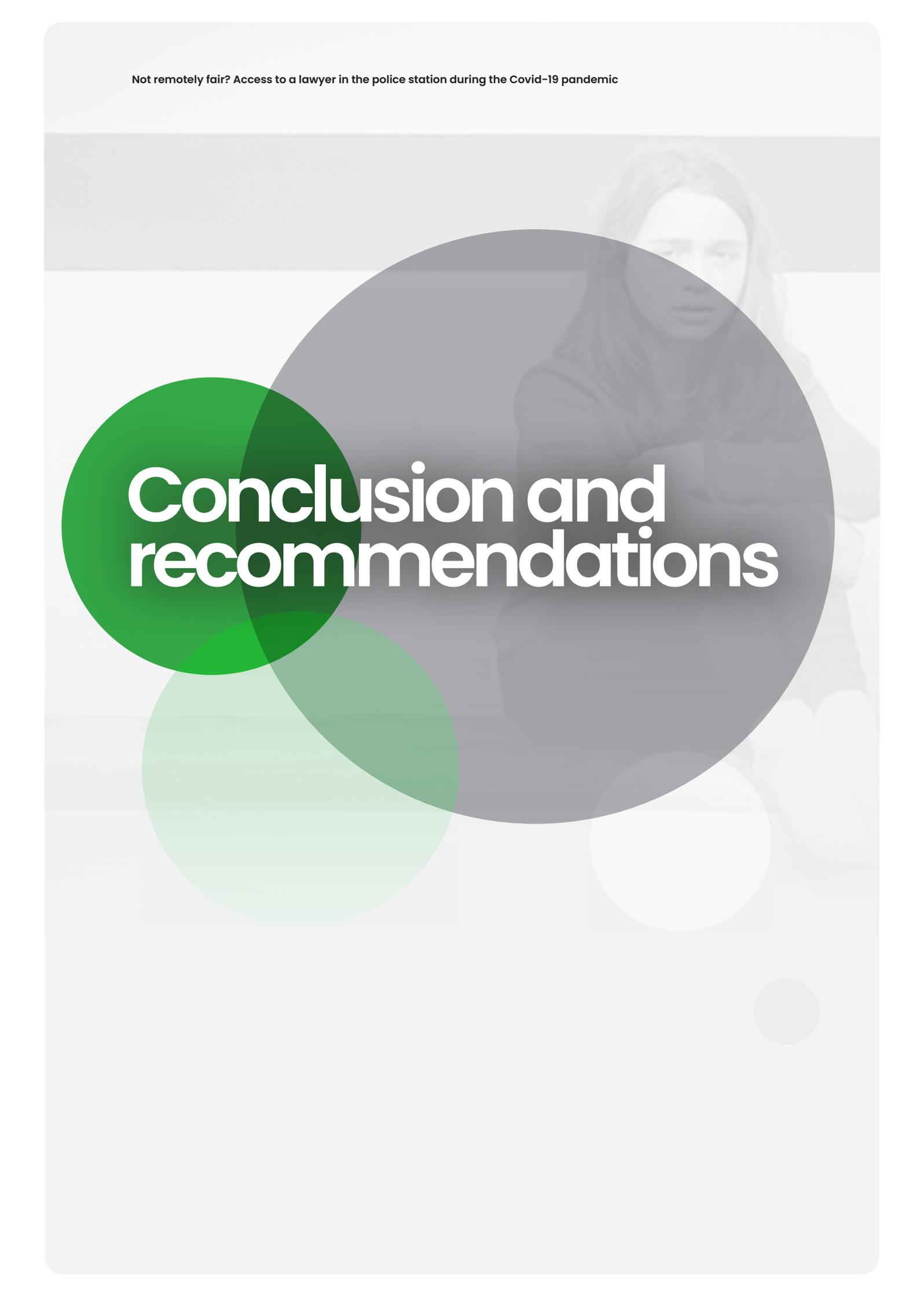
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Although AAs may not be party to the consultation between a solicitor and detainee, some AAs felt that pressure to accept remote assistance may have been exerted by the solicitors themselves during pre-interview consultations. This included solicitors speaking to the suspect directly to convince them to change their mind:

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*"I have also experienced where the suspect has requested attendance, spoken to the legal representative and told them that they want them present, the legal representative has persuaded them to go ahead [remotely]. When I have tried to question this the suspect has told me his conversation with the legal representative is confidential!"*

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# Conclusion and recommendations

**This report raises serious concerns about the impact of remote legal assistance on the treatment of suspects in police custody. It indicates the urgent need to return to in-person assistance, particularly for children and vulnerable people and, as soon as possible, for all other suspects.**

**Due to the importance of effective assistance in the police station, it is for good reason that it has always involved in-person attendance. However, our survey shows a disturbing level of reliance on remote assistance even for those with the greatest need – children and vulnerable adults.**

The survey does not provide direct evidence regarding those who are not deemed to need an appropriate adult – the vast majority of those detained in custody. However, anecdotal evidence suggests most legal advice for these clients is being given remotely. The fact that legal firms are offering shifts for legal representatives, irrespective of home location, indicates that remote legal assistance has become the default, at least for some firms.

However, remote has clearly not been a default for all solicitors. Some have continued to attend for children and vulnerable adults. A hallmark of the findings is the lack of consistency in how legal advice is being provided (even in the case of children and vulnerable adults), with significant variance between areas. These differences may be due to: varied awareness of the protocol amongst police; differences in the physical and IT infrastructure and health and safety arrangements (room sizes, PPE, screens, social-distancing, hand sanitiser) in police stations; and the varied approaches of police and policies of local law firms.

Safeguards intended to protect the rights of children and mentally vulnerable people have clearly not always been followed. Police have not always informed suspects and their AAs (often parents) of the right to in-person legal advice. The informed consent of the suspect and AA has not always been secured before remote advice was provided.

AAs are concerned that some children and vulnerable adults have been influenced to accept remote legal advice, whether by police, solicitors, circumstance or a combination of these. Interviews of children and vulnerable adults have also proceeded with remote legal advice in very serious cases.

Questions remain about how remote assistance has affected suspects' rights and case outcomes. Has it led to more no comment interviews? Will courts allow adverse inferences to be drawn from a no comment interview if legal advice was given remotely? How will courts view the admissibility of evidence from a vulnerable person if their solicitor was on the phone? Has the take-up of legal advice and assistance been impacted?

The protocol was an emergency measure to meet genuine and valid anxieties. However, we are now approaching a year of application. Many custody suites are operating at normal volumes. There is no standardised, evidence-based tool for determining suitability for remote legal assistance. In some places (and for some firms) remote assistance is a default position, even for those with additional needs. Audio-only advice is also accepted as mainstream in many areas. This presents a systemic risk to the integrity of the justice system, particularly in dealing fairly and effectively with children and vulnerable adults.

The operation and impact of the protocol, and the principle of remote legal advice and assistance, need to be urgently reviewed – in particular, its use with those whom the system is most at risk of failing.

# Recommendations

1. **Return to in-person advice and assistance for children and vulnerable adults immediately.**

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2. **Return to in-person advice and assistance for all suspects as soon as possible.**

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3. **Given the impact of Covid-19 on the criminal justice system overall, ensure the strict application of the existing rules on necessity of arrest, detention and interview to reduce the number of people dealt with in police custody.**

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4. **Focus on measures to make police stations and custody suites as Covid-secure as possible, and on communicating these measures effectively to solicitors and other visitors to custody.**

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5. **Introduce a heightened level of scrutiny by courts to evidence obtained during interview without a solicitor present in person, including:**
  - a. requiring evidence to be provided that informed consent was given to remote advice and assistance;
  - b. questioning the format used for remote assistance (audio-only or audio-visual);
  - c. in appropriate cases, refusing to draw adverse inferences from “no comment” interviews where advice was given remotely; and
  - d. in appropriate cases, refusing to rely on evidence obtained during interview without a solicitor there in person.

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6. **Develop better understanding of the impact of remote legal assistance on suspects, particularly children and vulnerable adults, including:**
  - a. conducting rapid research on the impact of remote legal assistance on the experience of suspects and fairness of criminal justice proceedings during Covid-19; and
  - b. conducting longer-term research on the impact of remote legal advice and assistance on the fairness of proceedings, effective participation and case outcomes.

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# Appendix 1 – Joint Interim Interview Protocol safeguards

## Under the JIIP (as amended), remote legal assistance in interview may not be used for any interview:

- **Necessity:** If an interview is not necessary immediately;<sup>21</sup>
- **Severity:** If the severity of the offence means that all parties were physically required;
- **Advice:** If the suspect has not had legal advice (the use of telephone automatically being considered acceptable for initial legal advice);
- **Informed:** If the suspect is not informed and advised about remote legal assistance;
- **Consent:** Unless the police have secured the informed consent of the suspect;
- **Audio:** In the case of audio-only link (telephone or video conferencing with camera switched off), unless the police have secured additional specific informed consent from the suspect.<sup>22</sup>

## Where the person to be interviewed is a child or vulnerable person, the following additional safeguards apply under the JIIP:

- **Special care:** The police should take special care in deciding whether, and how, an interview of a child or vulnerable adult should proceed (and make the assessment in consultation with the legal advisor and AA).
- **AA presence:** The physical presence of an AA is always required, and that will need to be taken into account when an interview is being considered; it may not be possible to conduct an interview with a suspect and their AA, and alternatives (e.g. charge without interview, bail/RUI, written statement under caution) should be considered.
- **AA consent:** Police must secure the informed consent of the appropriate adult (in addition to that of the child or vulnerable person) to remote legal assistance.

- **Audio AA consent:** If audio-only were to be used, police must secure the additional, specific informed consent of the appropriate adult (in addition to that of the child or vulnerable person) to the use of audio-only legal assistance.
- **PACE live-link safeguards:** Where legal assistance is to be provided remotely, police should comply with the principles contained in PACE Code C 12.9A,<sup>23</sup> those being:
  - The custody officer is responsible for determining fitness for interview;
  - The custody officer must be satisfied that the technology provides for accurate and secure communication;
  - Each decision must take account of the age, gender and vulnerability of the suspect, the nature and circumstances of the offence and the investigation and the impact on the suspect of carrying out the interview with remote legal assistance;
  - For this reason, the custody officer must consider whether the ability of the particular suspect, to communicate confidently and effectively for the purpose of the interview is likely to be adversely affected or otherwise undermined or limited if the legal advisor is not physically present;<sup>24</sup>
  - If satisfied, the custody officer must inform the suspect, their solicitor and the AA and explain and demonstrate the operation of the technology to them;
  - The suspect, solicitor and AA must be asked if they wish to make representations that the technology should not be used or if they require more information about it;
  - They must be told that at any time live-link is in use, they may make representations to the custody officer or the interviewer that its operation should cease and that the physical presence of the solicitor should be arranged.

<sup>21</sup> See JIIP Annex A.

<sup>22</sup> Where an interview proceeds with any party attending via audio link, this interview should be visually recorded by the police.

<sup>23</sup> PACE Code C 12.9A applies to the use of 'live-link' where the interviewer is not present at the same station as the detainee.

<sup>24</sup> PACE Code C 12.9A (b) notes that "Although a suspect for whom an appropriate adult is required may be more likely to be adversely affected as described, it is important to note that a person who does not require an appropriate adult may also be adversely impacted if interviewed by means of a live link".

## Appendix 2 – Survey questions

1. In which police force area(s) do you act as an appropriate adult? Please tick all that are appropriate.  

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2. Since 1 September 2020, roughly how many police station interviews have you attended?  

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3. Since 1 September 2020, in roughly what percentage of the cases you attended as AA was the pre-interview legal advice provided remotely?  

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4. Since 1 September 2020, in roughly what percentage of the cases you attended as AA was the legal representation at interview provided remotely?  

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5. Since 1 September 2020, of cases where legal representation at interview was provided remotely, in roughly what percentage was this by audio only (telephone call or video call with lawyer's video turned off)?  

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6. Since 1 September 2020, in roughly what percentage of cases did you or the suspect refuse consent to remote legal representation in interview and ask for face to face representation instead?  

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7. Please tell us more about how the process for consenting to remote legal advice and representation is working. For example, in your opinion how able is the suspect to give informed consent? If consent is refused, why? What happens when consent is refused?  

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8. In cases you have attended as AA where legal advice and representation was provided remotely, what impact do you think this had on the ability of the detained person to participate effectively in the process (e.g. to understand the process and their rights and to express their views)?
  - a. Being remote led to more effective participation
  - b. Being remote had no impact on participation
  - c. Being remote led to less effective participation
  - d. Not sure/not applicable

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9. Please explain your previous answer: in what ways, if at all, did remote provision impact on the ability of the detained person to participate effectively and to understand their legal rights? Please provide examples if possible.  

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10. Do you have anything else you would like to share about your experience of remote legal advice and representation at police stations? If so please do so here.  

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