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A Formal Interview Tool in an Informal Setting? An exploratory study of the Use of Body-Worn Camera at the Scene of an Alleged Crime

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Police body-worn cameras (BWCs) are an increasingly important area of police practice and research. Originally being introduced as a way of improving police accountability, their use has spread to other areas of police work. As explored in this paper, in England and Wales, since 2018, BWCs are used to interview suspects at the scene of an alleged crime. It has therefore become a formal investigative tool in informal settings, such as suspects' homes, on the roadside, in the back of police cars, in shops, etc. The interviewing of suspects is a vital part of the criminal process as it forms future directions of enquiry, serves as evidence, and can effectively determine the outcome of a criminal case. However, as discussed, in this paper, when used in this way, BWCs may undermine Police and Criminal Evidence Act safeguards, thereby tipping the criminal process further in favour of crime control and increasing the possibility of miscarriages of justice.

Key words: Body-worn cameras, police interviews, voluntary interviews, due process

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Introduction

Since 2005, the use of body-worn cameras (BWCs), or their products, body-worn videos (BWVs) has become common place, driven by the aim of enhancing police accountability and transparency.² BWCs are a small and visible recording device fixed to a police officer's uniform (usually on the chest), which can be manually switched on and off and are capable of capturing both video and audio information. They have been deployed in various parts of police work (e.g. stop and search or use of force situations), in various countries including the United States, England and Wales, Canada, and Australia,³ and in other criminal justice sectors such as prisons.⁴ All police forces in England and Wales are now using this technology.⁵ Since 2018, this includes using BWCs as a tool for conducting voluntary police interviews at the scene of an alleged offence, such as in citizens' homes, in shops, in police cars, on the roadside, etc. After a decade of austerity and of declining workforce numbers, this new use of BWCs was seen as a way of "saving officers time and freeing them up for other duties" and producing "swifter, fairer and more importantly cheaper justice".⁶ The number of forces that have begun to use BWCs in this way remains unknown. The most recent national guidance on BWC and BWV produced by the College of Policing in 2014 is of limited value,⁷ as it does not consider the specific use of BWCs for voluntary at scene interviews (VASI). Similarly, Home Office guidance on interviewing suspects which was last updated in February 2020 makes no mention of BWCs or VASIs.⁸

Based on a small-scale exploratory study in one police force area, we examine how, as result of the BWC technology, a formal procedure, the police interview, can now take place in

² Bowling, B., & Iyer, S. (2019). Automated policing: The case of body-worn video, *International Journal of Law in Context*, 15(2), 140-161; Lum, C., Stoltz, M., Koper, C.S. and Scherer, J.A., (2019). Research on body-worn cameras: What we know, what we need to know, *Criminology & Public Policy*, 18(1), 93-118; Ariel, B., (2016). Police Body Cameras in Large Police Departments, *Journal of Criminal Law & Criminology*, 106(4), 729-768;

³ Lum, C., Stoltz, M., Koper, C.S. and Scherer, J.A., (2019). Research on body-worn cameras: What we know, what we need to know, *Criminology & Public Policy*, 18(1), 93-118.

⁴ Ministry of Justice (2017) *Increased security measures to give prison officers right tools for the job*, online at: <https://www.gov.uk/government/news/increased-security-measures-to-give-prison-officers-right-tools-for-the-job> [Accessed 20 August 2020]

⁵ College of Policing (2019a) Personal communication with Customer Contact Centre Agent [21 June 2019].

⁶ Home Office (2017) *Home Office consults on using body-worn video for police interviews*, online at: <https://www.gov.uk/government/news/home-office-consults-on-using-body-worn-video-for-police-interviews> [Accessed 19 November 2018]; Marsh, A. (2015). Faster and fairer justice, online at: <https://news.npcc.police.uk/releases/faster-and-fairer-justice>, [Accessed 20 March 2019].

⁷ College of Policing, (2014) *Body-Worn Video*, online at: <http://library.college.police.uk/docs/college-of-policing/Body-worn-video-guidance-2014.pdf> [Accessed 4 June 2020]

⁸ Home office (2020) *Interviewing suspects*, Online at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/864940/interviewing-suspects-v7.0.pdf [Accessed 8 January 2021].

relatively informal settings, and whether this has the potential to undermine important due process safeguards. We situate this empirical analysis within Packer's due process and crime control model, arguing that the use of BWCs for VASIs tips the criminal process further in favour of crime control. Though small in scale, this study makes an original contribution to knowledge by shining an initial light on two sets of unexplored and novel police practices, the use of BWCs for at scene interviews, but also 'voluntary' interviewing, about which little is also known. We argue that even though they take place in more informal settings, VASIs using BWCs, remain an important formal investigative tool and should be seen as such by the police and suspects. In what follows, we first review the literature on the context, theory and practice of police interviews, including voluntary ones, then briefly set out the methods employed in the research, followed by key findings and a discussion.

The context, theory and practice of police interviews

Following an era in which (vulnerable) suspects had been left exposed to miscarriages of justice, the Royal Commission on Criminal Procedure 1981 (RCCP) marked an important turning point for the safeguarding of suspects in police custody in England and Wales. Many of the recommendations from the RCCP, such as about suspects' right to legal advice, the recording of police interviews and the treatment of vulnerable suspects were taken up in PACE and the associated Codes of Practice. Custody officers were also established to oversee suspect access to these due process protections, independently of arresting and investigator officers.⁹ The RCCP noted that "a suspect, once arrested, must not be interviewed about his or her involvement in the offence except at a police station ... it is only at the police station that the full range of safeguards - access to legal advice, tape recording of interviews, and so on - can be provided under the supervision of the custody officer".¹⁰ Though far from benign,¹¹ it also improved the largely unregulated pre-PACE police detention practices,¹² becoming

⁹ How independent this role is has long been questioned. See: Skynns, L., (2011) *Police custody: legitimacy, governance and reform in the criminal justice process*. Cullompton: Willan Publishing, pp47-8; Choongh, S. (1997) *Policing as social discipline*. Oxford: Clarendon, pp173-7; McConville, M., Sanders, A. and Leng, R., (1991). *The Case for the Prosecution*. London & New York: Routledge, pp55.

¹⁰ Royal Commission on Criminal Procedure (1981). *The investigation and prosecution of criminal offences in England and Wales: The law and procedure*. London: HMSO.

¹¹ PACE was seen to empower and authorise the police, but also to regulate their powers to a greater extent. See: Dixon, D. (2008) *Authorise and regulate: a comparative perspective on the rise and fall of a regulatory strategy*. In E. Cape and R. Young (eds.) *Regulating policing*. Oxford: Hart, pp21-44.

¹² Skynns, L., (2011) *Police custody: legitimacy, governance and reform in the criminal justice process*. Cullompton: Willan Publishing, pp10 and pp47-8.

institutionalised amongst custody officers who refer to the PACE Codes of Practice as their “bible”.¹³

The subsequent Royal Commission on Criminal Justice (RCCJ) also marked a turning point, but this time in relation to police interview practices. Research in the 1990s demonstrated that these interviews were poorly conducted, that investigating officers lacked the necessary skills and the police tended to accuse suspects in order to pressure them into confessing.¹⁴ All of this became of growing concern, leading a Home Office and Chief Officer-led working party to recommend a shift away from accusatory police interrogations and towards interviews based on information-gathering and referred to by the acronym PEACE. This stands for: (i) Planning and preparation; (ii) Engage and explain; (iii) Account; (iv) Closure; (v) Evaluate (College of Policing, 2019c). This approach to police interviews was rolled out from 1992 onwards in England and Wales, including through national guidance and training,¹⁵ albeit with varying degrees of success.¹⁶ Nonetheless, since the early 1990s, the intention has been to improve police interview practices in England and Wales, recognising that well-planned, skilful information-gathering interviews can prevent miscarriages of justice, by eliminating the factually innocent and increasing convictions of the factually guilty.¹⁷

In the majority of cases, the interviewing of suspects takes place in the police station following an arrest and detention, with a requirement that these interviews be recorded if the facilities are

¹³ Skinnis, L., (2019) *Police powers and citizens' rights: discretionary decision making in police detention*. London: Routledge, pp. 103-4.

¹⁴ McConville, M., & Hodgson, J. (1993). Custodial legal advice and the right to silence. *The Royal Commission on Criminal Justice Research*, Research Study No. 16. London: HMSO. See also: Baldwin, J. (1992) *Video-taping of police interviews with suspects: An evaluation*. London: HMSO; Baldwin, J. (1993) *Police interview techniques. Establishing truth or proof?* *British Journal of Criminology*, 33, 325-352.

¹⁵ College of Policing., (2019b). *Authorised Professional Practice: Investigative Interviewing*, online at: <https://www.app.college.police.uk/app-content/investigations/investigative-interviewing/> [Accessed 24 June 2019].

¹⁶ For example, officers conducting interviews are not always PEACE-trained. See: Quirk, H., (2016). *The rise and fall of the right of silence*. London: Routledge, pp70; Blackstock, J., Cape, E., Hodgson, J., Ogorodova, A. and Spronken, T., (2014). *Inside police custody: an empirical account of suspects' rights in four jurisdictions*. Cambridge: Intersentia, pp374. However, Soukara et al. found most police interviews broadly in-keeping with the PEACE model. See: Soukara, S., Bull, R., Vrij, A., Turner, M. and Cherryman, J. (2009) What really happens in police interviews of suspects? Tactics and confessions, *Psychology, Crime and Law*, 15 (6), 493-506.

¹⁷ Miller, J.C., Redlich, A.D. and Kelly, C.E., (2018). Accusatorial and information-gathering interview and interrogation methods: a multi-country comparison, *Psychology, Crime & Law*, 24(9), 935–956; Meissner, C.A., Redlich, A.D., Michael, S.W., Evans, J. R., Camilletti, C. R., Bhatt, S. and Brandon, S., (2014). Accusatorial and information-gathering interrogation methods and their effects on true and false confessions: A meta-analytic review. *Journal of Experimental Criminology*. 10(4), 459–486.

available.¹⁸ Such arrests are premised firstly on *reasonable suspicion* that the arrested person has committed an offence, or was in the course of doing so, or was about to do so.¹⁹ Secondly, the *necessity* of someone's arrest should also be considered by the arresting officers,²⁰ taking into account for example the need to ascertain someone's name or address or to allow prompt and effective investigation.²¹ In reality, though, arrests are made on hunches and imperfect interpretations of the necessity of arrest criteria, which have been found to be too complex to apply in practice, given the demands of modern police work.²² Once arrested, the police are required to take a suspect to a police station, where their detention must be authorised by a custody officer,²³ who should take an *independent* view of the reasons for and necessity of their arrest, though in practice it is rare for someone's detention *not* to be authorised by the custody officer.²⁴

VIs, by contrast, arise when the police have determined that there is no necessity to arrest a suspect,²⁵ who is instead informed that they are "voluntarily" assisting the police with the investigation of an offence and "may leave at will unless arrested".²⁶ In some cases, VIs do take place at the police station, (though not in police custody), when citizens are asked by the police to attend by appointment at a particular time/day. However, VIs may also take place away from the police station, such as at the scene of an alleged offence. This is partly because of this becoming technologically possible due to the widespread introduction of BWCs, but also due to a change in the PACE Codes of Practice in 2018 which allowed BWCs to be designated as an authorised recording device by senior officers.²⁷ The shift towards smaller

¹⁸ If available police interviews must take place using an authorised recording device, an interview room or other suitable location. They must always be audio-recorded (PACE Code E, 2018: 2.1-2.3), with contemporaneous written notes also being taken either at the time or shortly after (PACE Code C, 2019: 11.7 and 11.8). Where there is no authorised recording device, a contemporaneous written record must be made.

¹⁹ See s24 PACE 1984.

²⁰ See s.24(5) PACE 1984.

²¹ The full list can be found PACE Code G (2012), para 2.9.

²² Rowe, M., Pearson, G., Turner, E., (2018) Body-Worn Cameras and the Law of Unintended Consequences: Some Questions Arising from Emergent Practices, *Policing* 12(1):83-90.

²³ s37 PACE

²⁴ Kemp V, 'Authorising and Reviewing Detention: PACE Safeguards in a Digital Age' [2020] *Crim LR* 569-584; Dehaghani, R. 'Automatic authorisation: an exploration of the decision to detain in police custody' [2017] *Crim LR* 187-202.

²⁵ See also: Cape, E., (2017) Recording Interviews with Body-Worn Cameras: The Latest PACE Codes Consultation. The Justice Gap, online at: <https://www.thejusticegap.com/recording-interviews-body-worn-cameras-latest-pace-codes-consultation/> [Accessed on 06 July 2019].

²⁶ PACE Code C, 2019: 321. Suspects may also voluntarily agree to be searched including as a way of verifying their identity and to have photographs taken either of them or identifying marks, though coercion may not be used. See PACE Code D, 2017: 5.19-5.21.

²⁷ An authorised recording device is determined by Chief Officers and includes body-worn cameras. See: PACE Code C, 2019: 1.6(a)(i).

numbers of larger out-of-town police custody facilities is also likely to have played a role too,²⁸ given the consequently lengthier journey times and the need therefore for a viable alternative to arresting and detaining someone. A VI is ‘voluntary’ in the sense that the suspect is not formally arrested, but if they do attempt to leave the VI, then the necessity of arrest threshold may be seen as being crossed and the police may therefore arrest them. Furthermore, depending on what is revealed by a suspect during the VI, this may provide further grounds for arresting them. Given these possibilities of arrest and the *potential* for coercion in all police-citizen encounters,²⁹ it is difficult to regard VIs as truly voluntary.

Regardless of whether interviews take place in police custody following arrest and detention or take place voluntarily, either in the police station, though not in police custody, or elsewhere such as at the scene of an alleged offence, PACE provides citizens with the following rights and entitlements:

- Information about the nature of the offence they are being questioned about and the right to information about their substantive rights;³⁰
- Access to free and independent legal advice, as soon as is practicable;³¹
- A qualified right to silence, meaning adverse inferences may be drawn from failures to disclose information about objects relevant to the crime they are suspected of or about their presence at a crime scene, which is later relied on in court;³²
- That the interview must take place under police caution,³³ which in effect informs suspects of their qualified right to silence;
- Access to an appropriate adult (AA) if a suspect is a child or vulnerable adult, with a requirement that the police caution and information about the offence and their rights and entitlements be given to the suspect in the presence of the AA;³⁴

²⁸ Skinns, L., Sprawson, A., Sorsby, A., Smith, R. and Wooff, A. (2017) Police custody delivery in the twenty-first century in England and Wales: Current arrangements and their implications for patterns of policing, *European Journal of Policing Studies*, 4 (3), 325-349.

²⁹ Brodeur, J.-P (2010) *The policing web*. Oxford: Oxford University Press.

³⁰ PACE Code C, 2019: 3.21A.

³¹ PACE Code C, 2019: 3.21A(a). This may be provided either by a solicitor of the suspect’s choosing, the duty solicitor who is available 24/7 or the criminal defence service direct for a small number of minor offences (e.g. drink driving).

³² In effect, adverse inferences mean that guilt may be inferred at court. It is presumed that “the ‘fact’ later relied upon in court is a post-interrogation fabrication, which may therefore be read as indicator of guilt”. See Welsh, L., Skinns, L. and Sanders, A. (2021) *Criminal Justice*, Oxford: Oxford University Press.

³³ PACE Code C, 2019: 3.21 (b).

³⁴ PACE Code C, 2019: 3.21A(c).

- Access to an interpreter if they do not speak or understand English.³⁵

Whereas during arrest and detention, access to these rights and entitlements are facilitated by the custody officer in conjunction with others (e.g. healthcare practitioners (HCPs) or liaison and diversion teams (L&D)), during VIs they are facilitated by the arresting/investigating officers whose duty must “reflect that of the custody officer with regard to detained suspects”.³⁶ Therefore VIs place a heavy burden on arresting/investigating officers, even though they lack independence from the criminal investigation.³⁷ Given the imperfections of facilitating access to key rights and entitlements in the police detention – for example, where large proportions of vulnerable adults go without an appropriate adult because their vulnerabilities are hidden, not ‘performed’ sufficiently, or are missed or overlooked by staff³⁸ – there is a risk of these difficulties being compounded outside the police station.³⁹

In spite of these reservations, VIs have grown in use, potentially contributing to the declining numbers of people who are arrested and detained each year.⁴⁰ This may be because of some of their advantages. Particularly for vulnerable suspects, they are able to answer questions put to them, sometimes on the spot and at the scene of an alleged offence, which may prevent them from being put in the cells, thereby avoiding the harmful and painful effects of this.⁴¹ By

³⁵ PACE Code C, 2019: 3.21A(e)

³⁶ PACE Code C, 2019: 3.21 (b).

³⁷ See also Cape, E., (2017) Recording Interviews with Body-Worn Cameras: The Latest PACE Codes Consultation. The Justice Gap, online at: <https://www.thejusticegap.com/recording-interviews-body-worn-cameras-latest-pace-codes-consultation/> [Accessed on 06 July 2019].

³⁸ In 2018-19, for adult suspects, the estimated level of unrecorded need for an AA was between 22 and 39% in England and Wales. See Bath, C. and Dehaghani, R. (2020) There to help 3, online at: <https://www.appropriateadult.org.uk/downloads/research> [Accessed 8 January 2021].

³⁹ See Bath, C. and Dehaghani, R. (2020) There to help 3, online at: <https://www.appropriateadult.org.uk/downloads/research> [Accessed 8 January 2021].; Dehaghani, R. (2019) *Vulnerability in police custody: definition, identification and implementation in the context of the appropriate adult safeguard*. Abingdon: Routledge, p121-22; Gudjonsson, G., Clare, I.C.H., Rutter, S. and Pearse, J. (1993) *Persons at risk during interviews in police custody: the identification of vulnerabilities*. Royal Commission on Criminal Justice Report. London: HMSO; Young, S., Goodwin, E.J., Sedgwick, O. and Gudjonsson, G.H. (2013) The effectiveness of police custody assessments in identifying suspects with intellectual disabilities and attention deficit hyperactivity disorder, *BMC Medicine*, 11, 248–259.

⁴⁰ Between 2013/14 and 2017/18, the estimated number of detentions reduced by around 30%, whilst voluntary interviews only reduced by 20%. Therefore, whilst both detentions and voluntary interviews decreased in the relevant time period – reflecting dropping crime rates – this reduction was greater for detentions than voluntary interviews. See: Bath, C. (2019) *There to help 2*, online at: <https://www.appropriateadult.org.uk/policy/research/there-to-help-2>, pp6 [Accessed 12 June 2020]; Her Majesty’s Inspectorate of Constabulary (HMIC) (2015) *The welfare of vulnerable people in police custody*, online at: <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/the-welfare-of-vulnerable-people-in-police-custody.pdf>, pp70 [Accessed 22 May 2020].

⁴¹ Skinnis, L. and Wooff, A. (2020) Pain in police detention: A critical point in the ‘penal painscape’? *Policing and Society*. DOI: 10.1080/10439463.2019.1706506

participating in a VI and provided they are not subsequently arrested and charged, a citizen may also avoid a formal record showing up in a Disclosure and Disbarring Service (DBS) check when applying for jobs. In the context of managerialist demands for efficient and cost-effective criminal justice,⁴² VIs have advantages for the police too. Especially at the scene of an alleged offence, they enable rapid responses to police questions, the avoidance of lengthy journeys to and stays at police custody whilst suspects are booked in and the potential reduction in the number of vulnerable detainees, who drain police resources due to lengthier detention times.⁴³ Furthermore, VIs also sit well with the pragmatism and crime control orientation of the police which is routinely found to be part of the cultural and organisational context of frontline officers,⁴⁴ as they allow them to immediately follow up their suspicions and to begin building a case for the prosecution.⁴⁵

This shift in use of BWCs from an accountability to an investigative tool in VASIs are reflective of a rapidly changing context in which the police and other criminal justice organisations are harnessing the power of (video-aided) technology,⁴⁶ particularly in the face of austerity politics, constraints on police resources and managerialist demands for efficient and cost-effective forms of justice.⁴⁷ However, as argued below, the pace of the deployment of the technology is outstripping the availability of research evidence, guidance, and regulatory frameworks. Given

⁴² Hodgson, J. (2020) *The Metamorphosis of Criminal Justice: A comparative account*. Oxford: Oxford University Press, pp72; McEwan, J., (2011). From adversarialism to managerialism: criminal justice in transition. *Legal Studies*. 31(4), 519–546.

⁴³ Skinns, L. (2010) ‘Stop the clock’: predictors of detention without charge in police custody areas, *Criminology and Criminal Justice*, 10 (3), 303-320.

⁴⁴ Skinns, L., (2019) *Police powers and citizens' rights: discretionary decision making in police detention*. London: Routledge, pp 108-9; Bowling, B., Sheptycki, J. and Reiner, R. (2019) *The politics of the police*. Oxford: Oxford University Press, pp101-2; Loftus, B. (2009). *Police culture in a changing world*. Oxford, Oxford University Press, pp189; Waddington, P.A.J. (1999) *Policing citizens*. London: Routledge, pp117-8; Chan, J. (1997) *Changing police culture: policing in a multicultural society*. Cambridge: Cambridge University Press, p76; Reiner, R. (1992) Policing a postmodern society, *Modern Law Review*, 55(6), 761–781; Holdaway, S. (1983) *Inside the British police*. Oxford: Blackwell, pp20; Ericson, R.V. (1982) *Reproducing order: a study of police patrol work*. Toronto, ON: University of Toronto Press, pp198.

⁴⁵ McConville, M., Sanders, A. and Leng, R., (1991). *The Case for the Prosecution*. London & New York: Routledge, pp55.

⁴⁶ Weir, K. Norris, A. Kilili, S. (2020) Technology as a Policing Enabler—Utilizing Sentry SIS to Improve Police Efficiency and Effectiveness, *Policing: A Journal of Policy and Practice*, <https://doi.org/10.1093/police/paz079>; Headley, A.M., Guerette, R.T. and Shariati, A., (2017). A field experiment of the impact of body-worn cameras (BWCs) on police officer behaviour and perceptions. *Journal of Criminal Justice*. 53(1), 102–109; Ministry of Justice., (2016). *Transforming Our Justice System: By the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals*, online at: <https://www.gov.uk/government/publications/transforming-our-justice-system-joint-statement> [Accessed 12 May 2019].

⁴⁷ Hodgson, J. (2020) *The Metamorphosis of Criminal Justice: A comparative account*. Oxford: Oxford University Press, pp72.

the limited amount known about the use of BWCs for VASIs,⁴⁸ their use may encroach on the rights and entitlements of the suspect, in spite of potentially life-altering effects on them, and on victims too. This reveals the growing role that material and technological objects, such as BWCs, play in shaping and structuring our everyday lives, becoming potential “actants” that “produce a myriad of social relations”.⁴⁹

Whilst Bowling and Iyer examine the structuring effect of BWCs on the automation of police practices,⁵⁰ we explore the structuring effects on police-suspect interactions, which suggest a speeding up of Packer’s crime control conveyor belt. Within the crime control model, repression of criminal conduct through the most efficient means possible is the overarching aim. Packer describes this model as akin to an “assembly line conveyor belt”, on which an endless stream of cases move, passing through a series of routinized operations, with success being gauged by a closed file and a charged and convicted defendant,⁵¹ and within which innocents who are wrongfully convicted become mere collateral damage. By contrast, within the due process model, the extent of coercive state power means that there is a need for a robust set of obstacles – such as presumptions of innocence or access to a lawyer - which hinder the churning of the criminal justice conveyor belt. In what follows, we examine whether the use of BWCs for VASIs furthers the creep of criminal justice towards the value of crime control and away from due process. We also consider the nuances of these discussions, in which the inevitable tension between crime control and due process “cannot be reduced to simplistic accounts of conflict or searches for ‘balance’”.⁵²

Methods

This was an exploratory mixed-method study involving a convergent design,⁵³ entailing the simultaneous collection of qualitative and quantitative data, which helped balance the strengths and weaknesses of each.⁵⁴ The main aim of the research was to critically examine the viability

⁴⁸ Johnston, E. and Smith, T. (2017) The Digital Revolution: Body Worn Cameras and ‘Street’ Interviews. Online at: <https://uwe-repository.worktribe.com/output/878541> [Accessed 22 May 2020]

⁴⁹ Diphorn, T. (2019). ‘Arms for mobility’: policing partnerships and material exchanges in Nairobi, Kenya, *Policing and society*, 30(2), 136-152, pp3.

⁵⁰ Bowling, B., & Iyer, S. (2019). Automated policing: The case of body-worn video, *International Journal of Law in Context*, 15(2), 140-161

⁵¹ Packer, H.L., (1968). *The Limits of the Criminal Sanction*. Oxford: Oxford University Press, pp159-60.

⁵² Dixon, D., (1997). *Law in Policing: Legal Regulations and Police Practices*. Oxford: Oxford University Press, pp47.

⁵³ Creswell, J. W. and Plano Clark, V.L., (2018). *Designing and conducting mixed methods research*. London: Sage, pp68.

⁵⁴ These data were collected by the lead author as part of their Master’s dissertation at the University of Sheffield.

of BWCs as an interview tool in relation to alleged suspects at the scene of a crime. In April 2019, semi-structured interviews were conducted with nine police officers in one police force area – which has been given the pseudonym, Green Fields Police - and three solicitors from criminal defence firms in the South-East of England, including one working in Green Fields police force area. Officers interviewed were neighbourhood beat managers, response officers, and senior officers, including a Chief Constable. These two sets of participants were chosen as their different occupational backgrounds and skills enabled them to provide a comprehensive picture of BWCs for VASI.

Furthermore, the videos of 60 VASIs conducted by Green Field police between the 7 and 17th of April 2019, were viewed on Green Field police premises. Though a short period, it intentionally covered all days of the week, given variations in offences on weekdays compared to weekends. Of these 60 videos, 47 were excluded from the research. Since the focus was on VASIs, footage was excluded when: the date of the offence was not stated; when the interview happened days or weeks after the alleged offence, suggesting they were not conducted at scene; and when they were recorded without sound. The remaining 17 videos were of VIs which took place outside the police station, either immediately at the scene of alleged offence or shortly after, from which a range of de-personalised quantitative and qualitative data were collected, based on themes derived from the study's aims and objectives. The qualitative data encompassed summaries and/or quotations of observed interactions. Along with the transcriptions of practitioner interviews, these qualitative data were thematically coded and analysed. Basic frequencies were produced from the quantitative data, which were then triangulated with the qualitative data and are therefore presented alongside each other in the analysis that follows.

BWCs for VASI in Practice: Where, which offences and when?

Officers noted interview settings to include the police car, suspect's home, alleyways, or the rear of a shop. The video footage confirmed this. It showed interviews taking place in the arresting officer's police car, the suspect's living room or bedroom, by the roadside, and in front of the suspect's home. In cases where suspect interviews were conducted in police cars, officers were observed to ask questions facing the windshield, not the suspect. Hence, in the research interviews, the police car was noted to be a poor location for interviews, as facial expressions and body language could not be used to inform interactions. The informality of the location of an ostensibly formal process, such as a VASI, also concerned some. Whilst some

officers viewed the suspect's home to be a sensible location to conduct interviews, others stated suspects could be lulled into a thinking the interview was not a serious matter. Indeed, the police may use this informality to their advantage, especially given the absence of lawyers (see the section below on safeguarding suspects).

Limited national and force guidance on the use of BWCs for VASI meant the police had flexibility in how they used them, for example, in terms of the type of crimes they were used to investigate. Police respondents described using BWCs for VASI for a range of "low-level crimes", including theft, neighbourhood disputes, public order, drug possession, traffic offences, and shoplifting. Officers saw these types of offences as ones involving fewer evidential issues (and thus less preparation for interviews), no necessity to arrest as no further harm or damage could be caused, and also as more suitable for an out of court disposal. In the BWV footage, suspects were observed to be questioned about a variety of crimes including possession of drugs, property damage, theft from a vehicle, driving offences, but also assault and possession of an offensive weapon in a public place. The seriousness of some of these offences, with some carrying lengthy prison terms, suggests that BWCs for VASI may be being used for more than "low-level" crimes, though further research is required to establish how often this might be happening. The lawyers in the research were in favour of more limited use of BWCs for VASI, saying that they should only be used for offences where legal advice is of limited value (e.g. minor traffic matters), though they recognised that this did not reflect current police practices.

VASIs were described by the police as commencing immediately after an incident, or as being delayed to a later date if the suspect required an AA/solicitor/interpreter, or if it was inappropriate due to other parties being present or if the suspect was agitated, distressed or otherwise unfit to proceed. It was hard to judge, whether, how often and in what circumstances VASIs were delayed in practice, since the research did not observe VASIs in real-time. As noted below, only one of the recordings reviewed by the researcher involved an AA being present, suggesting that no delay took place on that occasion. Similarly, in other BWV footage, VASIs were not delayed when there were grounds to do so. For example, as discussed below, in one case, a VASI continued even when a suspect appeared intoxicated. More research is therefore needed before firm conclusions can be reached about when and whether VIs took place at scene or were in fact delayed to a later date.

Officers discussed some of the practical challenges of using BWCs for VASI, which included the quality of lighting and sound and the optimal positioning of the camera. Further constraints included the battery life of BWCs, the faint screen when officers tried to review recordings, and the ability to upload these footages in a timely manner to the police network which was seen as a “waiting game” (Officer 9). These challenges point to the imperfections of technology. The video footage revealed similar practical challenges. The positioning of the camera, for example, sometimes meant that they only captured snippets of the suspect, AA(s), officer(s), all individuals present, or nothing at all. Yet, as lawyers noted, the omission of non-verbal cues could mean the loss of vital information, including about whether suspects were being put under pressure to speak (Lawyer 3). However, as PACE requires only an audio-recording,⁵⁵ whether the interview takes place in police custody or voluntarily outside of it via BWC, there is a similarly limited form of procedural protection for arrestees and volunteers in that regard.

Safeguarding Suspects and the wider public

For police participants, the use of BWCs for VASIs was predominantly viewed as reducing officers’ workload since they could conduct the interview there and then. They were also seen as enabling flexibility in situations where suspects were vulnerable or where suspects or AAs had mobility or childcare issues, though for the lawyers this was at a cost to the safeguarding of suspects:

I want lawyers to be there and appropriate adults... And that’s where it’s going wrong... The police are using the utility of body-worn camera evidence as a Trojan horse to get behind the walls that PACE erected to protect and preserve the rights of the citizens. (Lawyer 2)

This erosion of PACE protections was evident in three main ways. First, without a custody officer (supported by HCPs and L&D) to oversee suspect access to PACE rights and entitlements, this burden falls on the arresting officers, who are also the investigating officers too. This tripartite role proved too great for some. Though officers had an aide-memoire with them when conducting VASIs, which included information about VIs, suspect rights, and the BWC recording device, in the research interviews, police participants made basic errors in their knowledge of and ability to recall them. They were confused, for example, about whether legal

⁵⁵ PACE Code F 2018, para 2.2.

advice was available free of charge, including from the duty solicitor (Officer 2 and 6). Additionally, whilst a custody officer should ask a suspect their reason for declining legal advice, this was only observed in 3 of the 17 BWV footages. Lawyers were also concerned about the large responsibility placed on officers conducting VASIs. They felt that suspects would be dissuaded from accessing their rights and entitlements either due to a lack of clear guidance provided to response officers about what these rights and entitlements are or due to response officers' inexperience when assessing suspect vulnerability.

Our findings suggest that they were right to be concerned about the latter. The video footage showed that despite some suspects being interviewed about being in possession of drugs, in only 1/9 of these cases did officers ask whether the suspect was under the influence of drugs and/or alcohol before the commencement of the interview. Moreover, in one case, a suspect appeared glassy eyed, had difficulty keeping their eyes open, and continuously laughed and fidgeted, suggesting them to be intoxicated and potentially unfit for interview. Furthermore, there were also two BWV interviews in which AA safeguards may have been necessary but did not appear to have been thoroughly considered, suggesting that suspect vulnerabilities were going unnoticed and thus unmet, which is a concern also raised in police custody.⁵⁶ For example, in Footage 9, a suspect mentioned that they had depression, but steps were not taken on camera to ascertain whether they were fit for interview or whether an AA was necessary.⁵⁷ In Footage 5, the suspect appeared to be under the age of 18, but the responding officer can be heard saying, "I'm sure you'll be fine", when asking if the suspect would like an AA, highlighting the greater possibility of police officers circumventing due process protections for vulnerable suspects outside the police station whilst unsupervised and unscrutinised by cameras and other criminal justice practitioners.⁵⁸ The importance of having an AA, including for VASIs was emphasised in Footage 12, in which an AA *was* present. In this footage, the suspect appeared unfit for interview as they were unable to understand what was being asked

⁵⁶ Bath, C. and Dehaghani, R. (2020) There to help 3, online at: <https://www.appropriateadult.org.uk/downloads/research> [Accessed 8 January 2021]; Dehaghani, R. (2019) *Vulnerability in police custody: definition, identification and implementation in the context of the appropriate adult safeguard*. Abingdon: Routledge, pp121-122; Young, S., Goodwin, E.J., Sedgwick, O. and Gudjonsson, G.H. (2013) The effectiveness of police custody assessments in identifying suspects with intellectual disabilities and attention deficit hyperactivity disorder, *BMC Medicine*, 11, 248-259; Gudjonsson, G., Clare, I.C.H., Rutter, S. and Pearse, J. (1993) *Persons at risk during interviews in police custody: the identification of vulnerabilities*. Royal Commission on Criminal Justice Report. London: HMSO.

⁵⁷ Dehaghani, R. (2019) *Vulnerability in police custody: definition, identification and implementation in the context of the appropriate adult safeguard*. Abingdon: Routledge, pp121-122.

⁵⁸ Skinnis, L., (2011) *Police custody: legitimacy, governance and reform in the criminal justice process*. Cullompton: Willan Publishing, pp 193.

of them. The officers proceeded to obtain an account from this suspect until ten minutes into the interview, when the AA interjected that the suspect was having trouble understanding the questions. As a result, the police discontinued the interview. Though it was not discussed or observed, it seems likely that a suspect's need for an interpreter could similarly go unnoticed and unmet too, which is something that could be explored in future research.

The overly burdensome tripartite role was also evident in officers' approach to interviewing suspects. Compared to investigating officers, response officers are less likely to have received advanced training and are less likely to be familiar with investigative interviews since they do not routinely conduct them.⁵⁹ Although the operational officers in the research said that they understood the 'PEACE' model, lawyers and senior officers noted otherwise:

Some of our interviews are: "Hello, I'm so and so, um, here's your rights. Did you do it? No?" End of interview. I would rather we interview them a little bit more thoroughly.
(Officer 5)

Furthermore, in terms of 'Planning and Preparation' for VASIs, police research participants said they used minimal to zero planning, except where the suspect was unlikely to admit the offence, in which case interviews would be conducted later in a more formal setting. They saw this approach as achieving "the best outcome for the victim" (Officer 6) and ensuring that the "job is watertight" (Officer 7). This lack of planning may have been at least one of the causes of poorly conducted interviews. It was observed in 3/17 videos that officers had difficulties formulating questions to put to the suspects as they sat in the police car staring out the window saying, "I don't know, anything else?" Similarly, more than half of these interviews involved closed-ended questions such as, "Did you steal it? Did you have drugs?" and some leading questions such as, "This white substance is cocaine, right?" Such leading questions are not encouraged in PEACE training, but are in line with police interview practices in police custody.⁶⁰

⁵⁹ Griffiths A., Milne B., Cherryman J. (2011) A Question of Control? The Formulation of Suspect and Witness Interview Question Strategies by Advanced Interviewers, *International Journal of Police Science & Management*, 13(3):255-267.

⁶⁰ Farrugia L. and Gabbert F. (2020) Vulnerable suspects in police interviews: exploring current practice in England and Wales, 17 *Jo Investigative Psychology and Offender Profiling* 17-30; Soukara, S., Bull, R., Vrij, A., Turner, M. and Cherryman, J. (2009) What really happens in police interviews of suspects? Tactics and confessions, *Psychology, Crime and Law*, 15 (6), 493-506.

Second, the very circumstances of the VI, at the scene of alleged offence and without a lawyer present may also amplify the pressure suspects feel to speak to the police. Lawyers noted that a suspect may be eager to answer questions quickly and leave, including without disclosure of the evidence against them and even though this is crucial to their response.⁶¹ The video footage pointed in this direction as the duration of suspect interviews was relatively short, ranging from 2 to 21 minutes. Indeed, the police were also seen to play a role in encouraging suspects to participate in a VASI, even when they objected. In one video, a suspect was persuaded to take part in a VASI in a police car whilst being driven home by the police. The officer said, “look, we’re giving you [suspect] a lift home too, while doing this interview”. In another, the threat of being taken to the police station, rather than interviewed at scene, was another tactic used to persuade a suspect to participate in a VASI. In this case, the suspect asked for the VI to be held another day, to which the officer responded, “no, because we probably won’t find you. We can do the body-worn interview on our cameras right now in the car... or go to the police station”.

Informal conversations before the switching on of the BWC may have been another source of pressure on the suspect to speak, as found in police custody.⁶² One lawyer noted that “the PACE Code needs to be changed” (Lawyer 2) as “conversations off camera are being had. The officer’s in full control of when he needs to answer... and when he doesn’t” (Lawyer 3). Lawyers therefore felt that the BWC should start recording from the outset of the encounter between the suspect and the police and record the entirety of their interaction, not just the VI. This is particularly important given that police actions are less visible and less available for scrutiny in VASIs owing to their location outside of the police station. In the police station and particularly in police custody, at least, CCTV is ubiquitous as is the presence of line managers and other criminal justice practitioners.⁶³

Third, there was evidence of limited suspect access to due process safeguards. Although officers cautioned the suspect in all 17 cases, in 5/17 this was delivered hastily, without explanation or checks on suspect understandings of it. Such difficulties have also been noted

⁶¹ Sukumar, D., Wade, K. A., & Hodgson, J. S. (2016). Strategic disclosure of evidence: Perspectives from psychology and law, *Psychology, Public Policy, and Law*, 22(3), 306–313.

⁶² Skinnis (2011), op cit, pp123-4; Dixon (2006) “A Window into the Interviewing Process?” The Audiovisual Recording of Police Interrogation in New South Wales, Australia, *Policing & Society*, 16:4, 323-348; Choongh, S. (1997) *Policing as social discipline*. Oxford: Clarendon, pp169; McConville, M., Sanders, A. and Leng, R., (1991). *The Case for the Prosecution*. London & New York: Routledge pp58-9.

⁶³ Skinnis (2011), *Police custody: governance, legitimacy and reform in the criminal justice process*, Cullompton: Willan, pp192-6.

about the delivery of the police caution in police custody, albeit that the investigating officers in the police station are more likely than patrol officers to have received advanced training on how to explain the police caution.⁶⁴ Solicitors were not present in any of the 17 videos. On first glance, this lack of access to legal advice looks high compared to the 35% who access legal advice in the police station,⁶⁵ but it may also be because if legal advice was requested, the volunteer was interviewed at the police station instead, and so would not have been included in the sample of videos included in the research. This was confirmed in some of the 43 videos excluded from the research because they took place on a different date, including at the police station, in some of which lawyers were present. Presumably, the time elapsed between the alleged offence and the VI enabled the suspect time to secure legal advice. Further research is therefore required to more robustly compare the extent of access to legal advice in VIs at the scene of an alleged offence, VIs in the police station and in formal interviews with arrestees.

In light of these many pressures and reduced protections, it is no surprise to learn that in all 17/17 cases, the suspect admitted to the offence(s) alleged against them, corresponding with what the police officers interviewed in the study said about primarily conducting VASIs where a suspect was likely admit to the offence, albeit that it is possible in some of these 17 cases that they would have admitted guilt anyway. Even though admissions of guilt were common, if suspects were told at the end of their VASI that they were to be reported for having committed a criminal offence, some showed confusion or wanted an explanation for this. In Footage 11 where an AA expressed concern about the outcome of the VASI, the officer told them that an explanation would be provided after the BWC was switched-off. In another case, an officer told the suspect not to worry, as they would receive information about the outcome of the VASI through the post. This confusion suggests that the VASI and its potential outcomes were not fully explained or understood by the suspect. The foregoing discussion validates the worry that one lawyer has publicly expressed about the use of BWCs for VASIs, namely that they herald a return to the “dark ages” of the pre-PACE era.⁶⁶ Lawyers in the research similarly saw VASIs as a slippery slope which would lead to more miscarriages of justice.

⁶⁴ Griffiths A., Milne B., Cherryman J. (2011) A Question of Control? The Formulation of Suspect and Witness Interview Question Strategies by Advanced Interviewers, *International Journal of Police Science & Management*, 13(3):255-267.

⁶⁵ Pleasence, P., Kemp, V. and Balmer, N.J. (2011) ‘The justice lottery? Police station advice 25 years on from PACE’, *Criminal Law Review*, 3-18.

⁶⁶ Minted Law (2018). Police Body Camera interviews are taking us back to a dark age. *Minted Law*, online at: <https://mintedlaw.wordpress.com/2018/03/23/police-body-camera-interviews-are-taking-us-back-to-a-dark-age/> [Accessed 28 March 2019].

Public protection was another aspect of safeguarding mentioned in the research. An unintended consequence of the growing use of VIs instead of arrests has been a declining number of new suspect profiles in police records, including for sexual and violent offences,⁶⁷ as DNA and fingerprints may not be collected unless someone is arrested. Indeed, the Biometrics Commissioner, Professor Paul Wiles, sees this as a “fundamental threat” to police investigations.⁶⁸ The difficulty in securing DNA and other biometric data from VIs was also expressed as a drawback of VASIs by senior officers in the research. Essentially, the police cannot legally or practically collect biometric data during VIs, and VASIs captured using BWCs will compound this trend. In turn, this could lead to a long-term decline in the utility of police biometrics as an investigatory tool and source of evidence for criminal cases, which has the potential to harm victims and also wider society.

The legal framework

During each interview, participants were asked to describe the policy, legislation and guidelines used to inform the use of BWCs for VASI. A common response from the operational officers was, “I’m allowed to use it... I just know that under PACE, I have the power” (Officer 9). Indeed, these officers seemed familiar with and could recite the procedures regulating VIs. At the same time, as noted above, the use of BWCs for VASIs is not mentioned in the PACE Codes of Practice nor in relevant national guidance. Hence, a senior officer felt it was time to review this situation (Officer 5). Though rules and guidance always require interpretation,⁶⁹ their absence left significant scope for discretion in the use of BWCs for VASIs, which was noted by officers who used BWCs for VASIs “if it meets my own criteria” (Officer 2) and saw the law as “pretty vague... sort of learn how you want to use your own camera” (Officer 9). This illustrates that the use of BWCs for VASIs has developed more quickly than the guidance and rules used to regulate it. The lack of guidance and rules had further consequences for operational officers. They lacked confidence about when and how to use BWCs for VASIs, born out of concerns about being personally liable were things to go awry (Officer 3).

⁶⁷ Wiles, P. (2019) *Biometrics Commissioner: annual report 2018*. London: Home Office. Online at: <https://www.gov.uk/government/publications/biometrics-commissioner-annual-report-2018> [Accessed on 29 July 2019].

⁶⁸ Wiles, P. (2019) *Biometrics Commissioner: annual report 2018*. London: Home Office. Online at: <https://www.gov.uk/government/publications/biometrics-commissioner-annual-report-2018>, pp22 [Accessed on 29 July 2019].

⁶⁹ Skinns, L., (2019) *Police powers and citizens' rights: discretionary decision making in police detention*. London: Routledge, pp21.

The future of BWCs for VASI

Police officers were unanimous about the importance of BWCs for VASIs in the future, and indeed wanted more “freedom” with this new tool (Officer 9) and to use it to its “full potential” (Officer 2), given the benefits of keeping frontline officers away from police custody which could be “a lag on time” (Officer 3). For example, they wanted written summaries of interviews with suspects (and witnesses) to be eliminated and replaced in court by BWV footage only. This would represent a major departure from current laws and practices, however, given that both are currently required. This may be preferable, though, given the opportunity to hear/see an interview in full in a more accessible format and given the difficulties with “contamination and distortion” of transcripts of police interviews.⁷⁰ In the future, police officers also wanted to be able to obtain DNA and biometric data during VASIs and more digitisation of policing processes, in spite of any resistance to such changes.

Lawyers, however, saw significant flaws in the current use of BWCs for VASI particularly with regards safeguarding suspects’ rights, given the more limited “checks and balances” outside of the police station (Lawyer 3). In providing this view, lawyers also reflected on past events in which police practices had once played a crucial role in miscarriages of justice:

They’re not just technical matters, there’s real risk of injustice here... Those safeguards are there to protect the public, not just a suspect, but the whole of the community. Because it’s in no one’s interest that the wrong person confesses to a crime they didn’t commit... How is that healthy? For any democratic society. To have that risk. We’ve trodden this path before, going back now to the Birmingham Six, Guildford Four.
(Lawyer 2)

Therefore, lawyers felt that in the future, this tool had the ability to repeat history’s mistakes, which is something they wished to avoid, at all costs.

⁷⁰ Roberts, A. and Ormerod, D. (2021) The Full Picture or Too Much Information? Evidential Use of Body-Worn Camera Recordings, *Criminal Law Review* (same issue); Haworth K., (2018) ‘Tapes, transcripts and trials: The routine contamination of police interview evidence’, 22(4) *The International Journal of Evidence & Proof*, 428–450.

Discussion

This small-scale exploratory study results in four main sets of findings. First, in practice, VASIs using BWCs take place in a range of relatively informal settings, as well being used for a broad range of offences, including potentially serious ones. Practical challenges arose from the optimal positioning of cameras which affected the quality of the material recorded including whether the non-verbal communication of police officers and suspects was captured. Secondly, we found the use of BWCs for VASIs undermined due process safeguards, suggesting challenges of a more systemic kind. The arresting officer has become an investigating and custody officer, performing roles for which they may lack knowledge, skills and experience and resulting in due process protections being overlooked or disregarded (e.g. access to legal advice or to an AA). The circumstances of VASIs also contributed to pressure on suspects by the police to ‘get it over with’ there and then. In the footage from VASIs, no suspects had a legal advisor and few had an AA present, and the police caution was poorly explained. All suspects observed in the video footage admitted guilt. Due to the absence of legal advisors and AAs, this may have been more likely than if their VI had been at the police station, risking also false confessions given the links shown between vulnerability and suggestibility.⁷¹ Third, police officers recognised the limited guidance and rules for VASIs using BWCs. On the one hand, they saw this as giving them the leeway they needed, but on the other, they also felt at risk of being personally liable were errors made. Fourth, whilst the police were on the whole supportive of the continued use of BWCs for VASIs in the future, particularly because of the savings of time and resources they offered, the lawyers in the research feared a return to miscarriages of justice of the kind seen in the pre-PACE era.

One implication of these findings is that the informal settings in which VASIs are held, which is in turn permitted by the use of BWCs, encourages police officers and suspects to regard VASIs in an informal and perfunctory manner. Police officers were found to engage in minimal planning and preparation and hastily deliver the police caution, thereby paying lip service to the requirements of PEACE and PACE. Given the confused response of some suspects on

⁷¹ Farrugia and Gabbert (2020), op cit; Gudjonsson, G.H. (2010), Psychological vulnerabilities during police interviews. Why are they important? *Legal and Criminological Psychology*, 15: 161-175; Gudjonsson, G. H., Sigurdsson, J. F., Einarsson, E., Bragason, O. O., & Newton, A. K. (2010). Inattention, hyperactivity/impulsivity and antisocial personality disorder: Which is the best predictor of false confessions? *Personality and Individual Differences*, 48, 720–724; Gudjonsson, G. H., Sigurdsson, J. F., Einarsson, E., Bragason, O. O., & Newton, A. K. (2008) Interrogative suggestibility, compliance and false confessions among prisoners and their relationship with attention deficit hyperactivity disorder (ADHD) symptoms, *Psychological Medicine*, 38, 1037–1044.

learning that a formal criminal justice response was to be the outcome of their VASI, as shown in some footage, it would seem that suspects also see them in a similarly informal fashion. The informal setting but also the ‘voluntary’ nature of these interviews mean that suspects fail to recognise the potentially grave and life-altering consequences of what they say. Similarly, at the national level, the shift to using BWCs for VASIs has also not been treated with the level of seriousness that it deserves, as otherwise national guidance would have been appropriately updated. Hence, a key conclusion of the research is that VASIs using BWCs amount to a formal police investigatory procedure in an informal setting. Yet, this formality was rarely recognised by the police and suspects. It should be, though, to enable suspects to make fully informed choices about their due process rights.

At the heart of these changes to the voluntary interview process and the shift to conduct such interviews at the scene of an alleged offence, are technological material objects, the body-worn camera. The present research has two main implications in relation to this. First, this technology is fallible, as revealed by the findings about the optimal positioning of the camera, and knowing when to switch the camera on/off. As Lum et al. note,⁷² technology such as BWC is only going to be as good as the people using it. How they are used is mediated by human beings, who may make mistakes when using this technology, though they may also manipulate the technology to serve their own purposes, such as to avoid capturing informal conversations with suspects. Whilst such informal conversations also arise in police custody,⁷³ they are even less reviewable when they arise before/after VASIs, by virtue of where these interviews take place. The use of BWCs for VASIs are therefore far from a panacea to the challenges of contemporary police work, and especially not for citizens given the way their use has expanded from holding the police to account to holding citizens to account for potentially criminal actions.

This highlights the second implication of the research in relation to the material and technological aspects of BWCs when used for VASIs. In this context, BWC have had a structuring effect on the police and their interaction with citizens and may even be an “actant”

⁷² Lum, C., Stoltz, M., Koper, C.S. and Scherer, J.A., (2019). Research on body-worn cameras: What we know, what we need to know, *Criminology & Public Policy*, 18(1), 93-118.

⁷³ Skinnis, L., (2011) Police custody: legitimacy, governance and reform in the criminal justice process. Cullompton: Willan Publishing, pp123-4; Dixon (2006) “A Window into the Interviewing Process?” The Audiovisual Recording of Police Interrogation in New South Wales, Australia, *Policing & Society*, 16:4, 323-348; Choongh, S. (1997) *Policing as social discipline*. Oxford: Clarendon, pp169; McConville, M., Sanders, A. and Leng, R., (1991). *The Case for the Prosecution*. London & New York: Routledge pp58-9.

in the way Diphoorn notes.⁷⁴ Without the possibility of conducting VIs outside police stations afforded by BWCs, would VASIs ever have been introduced? In particular, would VASIs have been introduced so rapidly without guidance or rules to inform their use? It would seem therefore that the introduction of VASIs has arisen largely because the police *can* do them (as a result of BWCs), and so they have. This has combined with organisational factors (e.g. the existence of BWCs in all forces in England and Wales) and cultural factors (e.g. the can-do pragmatism and crime control mind-set), as well as with pressures stemming from a decade of austerity, which has left the police with diminished workforces, and managerialist demands for improved efficiency. The police have therefore welcomed rule- and guidance-free technological solutions which they see as speeding up the investigatory process, an approach which has been mirrored in other areas of police work, such as automated facial recognition, albeit that this was ruled unlawful in August 2020. This suggests a need for a more strategic approach by government to overseeing and producing guidance and legislation on police use of emerging technologies.

BWC technology, in combination with the aforementioned managerialist impulses, may be having a similar structuring effect on the wider criminal justice process. Though non-existent at the time Packer was writing,⁷⁵ technology like BWCs may be encouraging a further drift toward a dominant role for crime control values in the English and Welsh criminal justice process. The findings presented in this paper clearly demonstrate how, in their current form, VASIs facilitated by BWCs over-emphasise efficiency whilst undermining due process rights, in ways that forget their hard-won nature in the wake of the RCCP, and the introduction of PACE and the RCCJ. For example, arresting officers found themselves in a burdensome tripartite role, few suspects had solicitors or AAs and all admitted guilt, even when the police questioning of them was poorly planned and executed. Furthermore, speeding up the investigative process and reducing demands on police officer's time were often reasons given for wanting to use BWCs for VASIs now and in the future. As Packer's model shows us, speed does not necessarily achieve fair justice. Instead, it only serves to emphasise crime control values. However, as the analysis presented here also demonstrates, VASIs using BWCs may also undermine this emphasis on crime control due to the practical challenges and legal prohibitions on collecting biometric data from suspects in such circumstances. This illustrates

⁷⁴ Diphoorn, T. (2019). 'Arms for mobility': policing partnerships and material exchanges in Nairobi, Kenya, *Policing and society*, 30(2), 136-152.

⁷⁵ Packer, H.L., (1968). *The Limits of the Criminal Sanction*. Oxford: Oxford University Press, pp159-60.

that, though crime control and due process are often conceptualised as in need of balance, this is rarely as straightforward as it seems.⁷⁶ This uneasy balance can also be seen in relation to the use of VASIs for vulnerable suspects. Because they are not at the police station, VASIs are likely to be of most benefit for such groups, yet they are also the ones who are most at risk of having their rights and entitlements overlooked or eroded, especially outside the police station. As such, the police station (though less so police custody) can be seen as a ‘necessary evil’, if we are to ensure that there are adequate safeguards for vulnerable suspects during VIs.

Inevitably for a small exploratory study of the kind presented in this paper, it poses as many questions as it answers. There is therefore a need for further research in this area, not only about VASIs involving BWCs, but VIs more generally, which could be done in-house by the police and also by external independent researchers, in an era in which police forces are, on the whole, more receptive to research evidence which can be used to inform police policies and practices.⁷⁷ Given the dearth of policy or guidance on the use of BWCs for VASIs, timely and robust research in this area could be useful for shaping its future direction at the national level by the College of Policing/Home Office and local level by individual forces. As a starting point, research should examine how many and which forces are currently using BWCs for VASIs, and, then within those forces that do use the technology for this purpose, research might look at the circumstances in which it is used and its impact on suspects’ rights and entitlements. An obvious way to do this would be to tap into the swathes of digital data collected during VASIs, notwithstanding any ethical challenges around confidentiality and anonymity. Police forces might review VASI footage on a quarterly basis to monitor practices, to inform training and raise standards, and to provide additional transparency and accountability, which is much-needed given the relative novelty of BWCs for VASIs. However, additional independent academic research (e.g. observation of operational officers using the technology) is also required to explore the crucial moments before and after the camera is switched on or off and the potential for informal conversations to shape whether a VASI takes place and to influence the outcome for the suspect. As the effects of VASIs on criminal justice outcomes are unknown, this is a further avenue for future research. This might explore how VASIs impact on suspect decisions to exercise their right to silence, confession rates and on the already high guilty plea

⁷⁶ Dixon, D., (1997). *Law in Policing: Legal Regulations and Police Practices*. Oxford: Oxford University Press, pp47.

⁷⁷ Bacon, M., Shapland, J., Skinns, L. and White, A. (2020) Fragile alliances? Developments in police-academic partnerships, *Evidence & Policy: A Journal of Research, Debate and Practice*. DOI: doi.org/10.1332/174426420X15808911426311

rate,⁷⁸ and the way that the evidence from the VASIs is used in out of court disposals and also at court. Also, far too little is known about VIs as a whole. Therefore, any future research on VASIs should be done in a way that compares them to VIs held at the police station. Such research could be used to inform the development of guidance about where and when VIs should take place (e.g. the circumstances in which a VI at the police station is preferable to one at the scene of an alleged offence, taking into account the needs of the volunteer) and the kinds of offences for which VIs at the police station and VASIs are appropriate.

To conclude, citizens' due process rights are not just legal technicalities, to which only lip service should be paid or, worse still, collateral damage in the roll-out of popularised forms of technology like BWC during VASIs. They are the cornerstone of a fair criminal justice process. These rights were hard-won in the 1980s and 1990s and the spectre of the miscarriages of justice that prompted them must not be forgotten. The findings presented here hopefully challenge the institutional amnesia that seems to have crept in, which is allowing PACE safeguards of suspects' rights to be eroded by the use of BWCs for VASIs. We therefore recommend that: where ever possible, VIs be conducted by appointment at the police station (though not necessarily in police custody) in order to afford suspects in VIs the fullest access possible to their PACE rights and entitlements and with minimal delays to all parties; where BWCs continue to be used for VASI that this is only for the most minor offences (e.g. traffic offences) and definitely not for offences which could result in a prison sentence; that officers be encouraged, if not required, to record their encounters with suspects from beginning to end, rather than only during the VASI, with the suspect also being required to confirm in the recording that no previous discussion has occurred with the officer prior to the recording being switched on, and so that the recording can be used to fully assess whether there has been proper administration of suspects' due process rights; and that street-based operational officers, like their colleagues in police custody, be trained on and then routinely reminded of the relevant due process protections enshrined in PACE and the reasons why they exist.

⁷⁸ In the last quarter of 2019, the guilty plea rate in the Crown court was 68% - just a slight drop since 2015. See: Ministry of Justice (2019) *Ministry of Justice Criminal court statistics quarterly*, England and Wales, October to December 2019, online at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875838/ccsq-bulletin-oct-dec.pdf [Accessed 12 June 2020].