

Digital legal rights

Can digital systems benefit suspects in the police station?

Michael Zander considers some of the legal issues

Digital systems could help in the provision of legal advice for suspects in police stations according to Dr Vicky Kemp of the University of Nottingham, writing in February's issue of *Criminal Law Review*. Dr Kemp has been involved in police station research for over two decades (see 'Digital legal rights: exploring detainees' understanding of the right to a lawyer and potential barriers to accessing legal advice' [2020] *Crim. L.R.* 129-147).

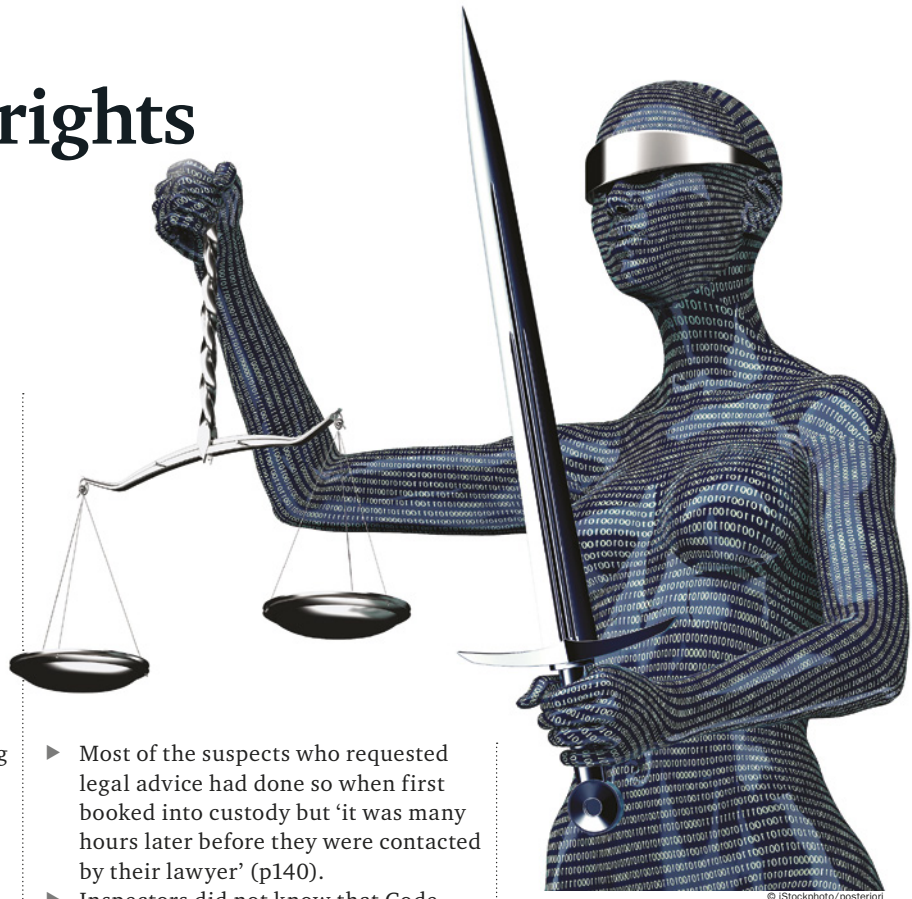
Many of the issues and problems regarding access to legal advice are well known:

- ▶ suspects with a poor understanding of why legal advice might be beneficial;
- ▶ the police failing to comply with the PACE rules enabling legal advice;
- ▶ difficulties for solicitors to get through to clients on the phone;
- ▶ solicitors reluctant to come to the police station until the interview; and
- ▶ the telephone used by suspects to speak to solicitors physically sited so that the conversation can be overheard by custody staff.

App-ealing

Dr Kemp's current project based on semi-structured interviews with 100 detainees in two large modern custody suites investigated the potential of an app providing information about being detained. The findings included:

- ▶ Detainees who declined legal advice were not told by the custody officer that they had a right to speak to a lawyer on the phone, as required by PACE Code C (para 6.5).
- ▶ Some who asked to speak to a solicitor on the telephone were told they could not do so until the interview.
- ▶ To achieve cost-saving, interviews were being conducted by investigating rather than by arresting officers. 'With investigating officers not working overnight, and with too few officers available to conduct the number of interviews required, custody officers complained that the reorganisation was leading to long delays' (p141). The average length of detention in these two suites based on 3,000 custody records was over 17 hours.



- ▶ Most of the suspects who requested legal advice had done so when first booked into custody but 'it was many hours later before they were contacted by their lawyer' (p140).
- ▶ Inspectors did not know that Code C (para 6.6(d)) requires that they review a suspect's change of decision from wanting, to not wanting legal advice.

'Most respondents commented positively on the potential for an app to help improve detainees' understanding of their legal rights, particularly if used by children and young people, and those brought into custody for the first time.' Police concern that the tablet hosting the app could be used destructively would be avoided if the app were displayed on a TV monitor embedded in the cell wall. Suspects could then speak to their lawyer in confidence in a secure virtual link which would help in providing early access to lawyers, thereby increasing the take-up of legal advice.

'[T]here were concerns raised by a number of respondents over the remoteness of lawyers in police custody, mainly because they are not visible. This remoteness discourages some detainees from having legal advice, particularly when they are also of the view that lawyers are the main cause of delays. It was surprising to note what difference it made to some detainees when asked if they would change their mind, and have a lawyer, if they could have a virtual conversation with them through a TV monitor in their cell. With such ease of access (which would need to be managed by custody officers), a number of respondents having declined legal advice said that they would change their mind and have

a lawyer. A video-link into police custody could also assist lawyers in challenging the police where there are breaches of PACE, particularly in cases with long delays. It would also assist the defence in engaging with the prosecution at the police investigative stage of proceedings' (p146).

Comment

Dr Kemp suggests that the move toward virtual courts and plans to have pleas entered online, should be matched by use of the same technology to involve defence lawyers early on in cases. 'By requiring a full-blooded adversarial role for lawyers in the police station, this would help to improve access to legal advice, but it could also lead to system efficiencies and cost savings. This could be achieved, for example, by avoiding weak and ill-considered cases going to court unnecessarily, to increase the number of early guilty pleas, and to reduce the number of trials, and/or the number of issues considered at trial' (p147).

The technology should also be used, she believes, to address the fact that too often the PACE rules are not complied with: 'With advances in technology, this provides an opportunity for policy makers to review PACE and to ensure that the safeguards intended in law are available in practice' (p147).

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