

# Procedural justice in custody

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Long read: How procedurally just are custody sergeants? A three-month study of interactions between custody sergeants and detainees at three custody suites

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## Introduction

How we treat people when they come into custody can be the difference between life and death. As Head of Custody, I wanted to know how detainees were being treated by sergeants who authorise their detention. Skinnis and others (2017) describe custody as the 'ultimate place' for teachable moments, where detainees can learn about the law and legal authorities.

## Literature review

This study draws from broader criminological work on legitimacy (Beetham, 2013; Bottoms and Tankebe, 2012, 2017) and the concept of procedural justice (PJ). This concept was first introduced by Thibaut and Walker (1975), who discovered that satisfaction with the legal system was influenced not only by the outcome of the trial, but also by the way in which it was conducted (see also Tyler and Folger, 1980).

Similarly, the Milwaukee Domestic Violence Experiment showed that if arrested suspects believed that the police had acted in a procedurally just manner, their reoffending rates decreased to the same extent as suspects who had been given a warning (Paternoster and others, 1997).

PJ refers to people's subjective experiences of the quality of interactions that they have with power holders, like police officers. It is a multi-dimensional judgement comprising respect, neutrality, trustworthy motives and participation. PJ does not prescribe non-enforcement. It is about 'how, not whether, police authority is exercised' (Worden and McLean, 2017).

PJ research has often involved surveying citizens following an encounter with the police (Mazerolle and others, 2013). Other research has involved 'ride-alongs', where researchers assess interactions first-hand (Worden and Mclean, 2017; McCluskey and others, 2019). However, these

studies struggle to overcome the Hawthorne effect, which is the possibility of people changing their behaviour if they know they are being watched. Nawaz and Tankebe (2018) addressed this in their stop and search research by basing their analysis on body-worn video recordings.

This study extends this methodological innovation by coding CCTV footage of encounters between custody sergeants and detainees, aiming to answer questions that include the following.

- How closely do custody suite encounters between detainees and custody sergeants match the PJ standards for decision makers treating people who are subject to their authority?
- To what degree does measurement of PJ displayed by custody sergeants vary across detainees, custody sergeants and custody suites?
- Is there a correlation between PJ scores and the age and length of service of custody sergeants?

## Data and methods

The data was collected from three months of custody CCTV recordings (June to August 2020) at three police custody suites. All were graded 'good' when inspected in 2018.

CCTV footage availability dictated the selection of the three months for the study, although the encounters assessed during that period were randomly selected. Given that custody CCTV records constantly, the entire booking-in process was captured.

A complete sampling frame of interactions was developed, with 50 interactions selected from each suite providing a total sample size of 150. Detainees were only included if they went through the whole booking process, if they cooperated and if they were not under the influence. Of the 35 full-time custody sergeants, 34 were included through this method of selection. Due to the low throughput of detainees at one suite, and because there were only two female custody sergeants, all records from there with a female sergeant were coded.

## Measuring procedural justice

Jonathan-Zamir's validated instrument for measuring PJ was used to develop a framework for coding PJ elements in relation to interactions between detainees and custody sergeants (Jonathan-Zamir and others, 2015).

All elements were treated with equal importance and given a binary score to allow for comparisons to be made. This provided an overall assessment of legitimacy and fairness for these interactions.

It took approximately 30 minutes to view and code each encounter and capture additional qualitative data, which equated to over nine days' work.

The PJ coding framework derived from Jonathan-Zamir is as follows.

- Voice (or participation) – whether the detainee had been allowed to express their views by being asked for information, whether the detainee had been allowed to respond without being interrupted or rushed, and whether the sergeant listened to them.
- Trustworthy motives – whether the sergeant was motivated to do what was good for the person, and whether the sergeant explained why they were authorising detention and what would happen next, even if the person had been in custody before.
- Dignity and respect – whether the sergeant was respectful and courteous, and whether they used a respectful tone of voice.
- Neutrality – whether the sergeant acted in a transparent and impartial manner based on facts, not prejudice.

## Findings

There was a negative association between trustworthy motives and an officer's length of service and experience in custody. In other words, as officers gained more experience, trustworthy motives declined. Police subculture literature reports that police officers sometimes develop cynicism on the job, which affects the quality of their interactions with some of the community, especially offenders (Reiner, 2010).

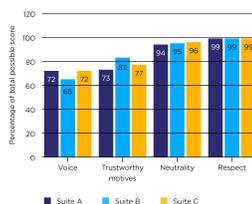
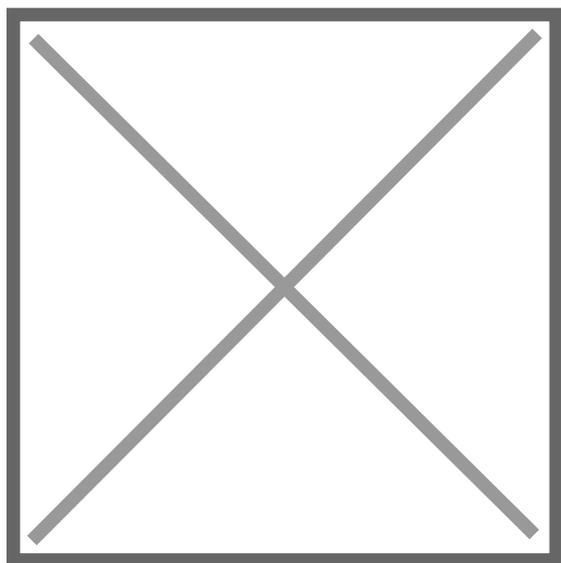


Figure 1. Procedural justice scores linked to PJ elements by custody suite.



The evidence shows parity in procedural justice across the three custody suites. The chart shows that suite A scored lowest for trustworthy motives (73%). Suite B had the lowest score for voice (65%). There was only a marginal difference between the level of respect and neutrality shown at each of the three suites.

The sections below offer some examples and context for the scores given for each element.

## Voice

High PJ framework scores were awarded where sergeants made comments like, 'Let me know if you have any questions, I know it can be a bit daunting' to a detainee who hadn't been in custody before. Some sergeants asked detainees if they had any questions and gave them the opportunity to ask them. Lower PJ framework scores were given where a detainee was rushed or interrupted. One detainee said, 'What, attempt murder?' when the officer was relaying the reason for arrest to the sergeant and was told to 'Let him [the arresting officer] speak, please'.

## Trustworthy motives

Over half of the sergeants observed showed motivation to do what was good for the detainee. Examples include saying, 'We'll look after you' and 'If you start to feel unwell, you'll need to let us know.' A detainee who asked, 'If I feel anxiety in your cell, what do I do?' was told, 'You need to tell us'. In another high-scoring interaction, a sergeant asked an immigration detainee how long he had been travelling from his home country, reassuring him that he would be placed in a cell, but 'You will be safe here'.

High-scoring interactions included good explanations about how things worked, like cell buzzers if a detainee needed something and reassurance about what would happen: 'When you are sober, you will be able to go back to your mum. If we get you sobered up quickly, you can leave'.

One sergeant said to a suspect for an alleged sexual assault: 'These are not very nice allegations to have said about you, I would be feeling devastated too.' When asking whether the detainee had taken any drugs in the last 24 hours, the sergeant also said, 'I'm not trying to trick you.' They explained, 'What will happen now is my colleague will do your hand swabs and then we will get you a drink and make you as comfortable as we can'.

There was a good use of humour between sergeants and detainees, particularly at suite C, with a sergeant responding to a detainee who said that he had consumed five pints by saying, 'Nice day for it too'. This can help to build rapport and encourage compliance (Skinns and others, 2015).

Less positive and lower-scoring PJ framework interactions sometimes took place where there was a history between the officer and detainee. One sergeant told the detainee to get back from the desk, saying, 'Last time, we ended up putting you on the floor. You're the making of your own issues really'.

## Neutrality

A sergeant at suite A said he always advised detainees to have a solicitor, as it was in their best interests, a fact that was observed by the researcher. Others showed their high-scoring impartiality: 'Just because you are here doesn't mean you are guilty, and I won't look at you like that'. When a detainee said, 'I'm really sorry guys,' the officer replied, 'I'm not here to judge you'.

Generally, officers remained calm, even if the detainee was agitated and shouting. However, officers sometimes displayed behaviour that scored low on the PJ coding framework. One officer ignored a detainee who had been arrested to prevent a breach of the peace. When the detainee said he could go to his daughter's house, the officer said that, 'I'm not calling anyone, you had your chance'. This detainee stood with his back to the officer, prompting them to say, 'Turn round, I'm talking to you'.

This sort of low-scoring 'parent-child' interaction was observed in other encounters. One sergeant said, 'You haven't learned, have you?' to someone who had been arrested for drink-driving a second time. This detainee also stood with his back to the officer, with his hands in his pockets and head down when answering the risk assessment questions.

## Respect

There was evidence of sergeants showing respect to detainees and for their rights. Some high-scoring examples included a sergeant at suite A who explained the role of a solicitor to a detainee. Another outlined the difference between being arrested on suspicion of an offence and being charged for one. When explaining that a right had been delayed, a sergeant said, 'You get an extra right if you are a non-UK national,' and added that, 'The inspector has put a delay on your right to have someone told of your arrest, sorry about that'.

Less positive observations and lower-scoring interactions included dismissive or rude comments like, 'I've no idea what you are talking about'. One sergeant asked, 'Do you normally have an appropriate adult when you are here?', then rushed through the detainee's rights. When the detainee asked if his rights could be explained, the sergeant said, 'They are written here,' although the detainee said he had difficulties reading.

## Discussion

Custody officers at all three suites showed high levels of neutrality and respect in their interactions with detainees. This respectful treatment of citizens supports findings by Skinns and others (2017), who found that custody officers were polite and non-judgemental. PACE Codes of Practice and the authorised professional practice (APP) for custody specify how custody should operate, with much of this reflected in question sets used when booking detainees in. This may account for high scores

for neutrality and respect.

Sergeants at the suite with the highest throughput showed the highest trustworthy motives, possibly because they knew that if they gave good explanations, detainees wouldn't need to ask questions and could be processed quicker. Time pressures on processing detainees may account for voice being the lowest scoring element of PJ.

## Research implications

This study identified that custody sergeants deliver high levels of respect and neutrality, regardless of which custody suite they worked in and whom they interacted with. However, the coding identified that as the shift wears on, the level of respect decreases, possibly because detainees are under the influence of drink or drugs and are less compliant, or because sergeants are tired from working shifts and are less tolerant. If the latter is the case, police managers should review custody shift patterns with a view to ensuring that EU directives are being complied with and that shifts are being adequately staffed. Improvements in neutrality might be linked to reduced throughput, with detainees given more opportunity to have their say and sergeants showing greater impartiality.

Police forces should consider introducing PJ training for custody officers – particularly for long-in-service sergeants – that focuses on improving trustworthy motives and giving detainees a voice beyond risk assessments. Custody sergeants should also ask all detainees, not just those new to custody, whether they have any questions about the process. In addition, checklists could remind them of good practice.

It might be possible to design a PJ tracking standard for systematic random auditing of interactions, with the potential to provide continuous monitoring and identification of officers at risk of not using PJ.

## Limitations and future research

Due to the small sample size, there is limited scope for generalising the findings of this study. Future studies that sample from the entire population of arrests over 12 months would help to address this. By analysing recordings from police body-worn cameras from the point of arrest to arrival in custody, future studies could also address the lack of data on the impact of interactions

that take place before the booking-in process.

Notwithstanding these limitations, findings from this study have important practical implications, raising the possibility of tracking PJ standards demonstrated by custody officers to detainees, not just in the police areas covered but nationally. This could form part of the auditing processes carried out by police custody inspectors with a view to improving interactions. PJ is also important in terms of police legitimacy and will assist in improving public trust and confidence in policing.

- This article was peer reviewed by Chief Inspector Michael Cox, West Yorkshire Police.

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