



Article

# Children and police questioning: A rights-based approach

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## Abstract

Under the United Nations Convention on the Rights of the Child, children in conflict with the law are entitled to dignity and respect for their rights within a youth justice system adapted to their age and circumstances. The United Nations Convention on the Rights of the Child recognises the necessity of ensuring that children's rights are protected during the criminal process, emphasising the importance of legal advice, information and support to enable their participation in the process. Police questioning can be a particularly difficult experience for children, given their vulnerability and immaturity and yet it can have very serious consequences for children. This article examines the rights of the child during police questioning, from the perspective of children themselves. Presenting the findings of a study of children's experiences of their rights when being questioned by the police (An Garda Síochána) in Ireland, the article highlights the need to adapt police questioning processes to the needs and circumstances of the child, while emphasising the powerful case for greater involvement of children in research about criminal justice and policing so that their experiences of their rights can be better understood.

## Keywords

Child justice, children's rights, Ireland, police questioning, UN Convention on the Rights of the Child, youth justice

## Introduction

Under the United Nations Convention on the Rights of the Child (CRC), children in conflict with the law are entitled to dignity and respect for their rights in a youth justice system adapted to their age and circumstances (Article 40; see further Committee on the

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Rights of the Child, 2019). The CRC recognises the necessity of ensuring that children's rights are protected during the criminal justice process, and these rights have been further elaborated by the Committee on the Rights of the Child ('CRC Committee') (Committee on the Rights of the Child, 2019: paras 41, 49 and 106). Police questioning can be a particularly difficult experience for children, given their vulnerability and immaturity (Gooch and von Berg, 2019). The legal significance of this process and its potentially lifelong impact explains why international children's rights standards articulate both the rights to which children are entitled in this setting, and the duties on police officers to ensure those rights are protected.

According to the CRC Committee, states should regularly evaluate their child justice systems, involving children themselves in this process (Committee on the Rights of the Child, 2019: paras 114–115). Children themselves are increasingly becoming 'a powerful force for improvements and reform, and for the fulfilment of their rights', strengthening the case for involving children in research about their rights (Committee on the Rights of the Child, 2007: para 12). Only by listening to children relating their experiences of their rights can we learn how best to ensure that those rights are sufficiently protected. Ensuring that children's views and experiences are taken seriously, on their own terms, is thus a key feature of a children's rights-based approach to researching these questions (Lundy and McEvoy, 2012a). In light of this approach, this article examines the rights of the child during police questioning, from the perspective of children themselves. Presenting the findings of a study of children's experiences of being questioned by the police (Garda Síochána)<sup>1</sup> in Ireland, the article demonstrates the unique perspective children themselves bring to our understanding of the process of police questioning.<sup>2</sup> Contrasted with the perspectives of other actors in the questioning process – police and lawyers who represent children – the unique importance of hearing children's views is laid bare. Substantively, the study highlights the need to adapt police questioning to the needs and circumstances of the child, while making a powerful case for greater involvement of children in research about criminal justice and about policing more specifically. The article begins with an introduction to the literature on children's experiences of police custody before setting out the international children's rights standards that apply during this process. The main body of the article presents children's experiences of how these standards are enjoyed in practice<sup>3</sup> and, contrasted with the views of police officers and lawyers, the article concludes with some recommendations as to how this practice can be improved and a reflection on the importance of involving children in research that considers their experiences of their rights.

## **Research on children's experience of police questioning**

The international standards are clear that when children are questioned by the police, particular care must be taken to ensure the process is fair and conducted in a way that protects their rights, in light of their particular needs, circumstances and vulnerabilities. International research has identified that children's vulnerability and particular characteristics can place obstacles in the way of their effective participation in the criminal justice process and in police questioning in particular (Cleary, 2014; Feld, 2013; Gooch and von Berg, 2019). Children's participation in the criminal process raises a myriad of

complex issues (McDiarmid, 2013) and children's decision-making during police questioning can be challenged by their capacity to make evaluative judgements and anticipate the future consequences of those decisions (Arthur, 2016). Children may also struggle to understand what is being said during police questioning, making it difficult to form appropriate and coherent responses (Anderson et al., 2016; Lount et al., 2018; Viljoen and Roesch, 2005). Compared to adults, children's limited capacity to anticipate the future consequences of their actions can result in poor decision-making during police questioning (Monahan et al., 2015) and in the United States (which has not ratified the CRC), research has found that children under 16 years had less competence in legal processes than those who were older (Viljoen et al., 2005; Viljoen and Roesch, 2005), with children often prioritising short-term perceived benefits over long-term considerations related to their legal interests (Cleary, 2017; Schmidt et al., 2003). These problems can be compounded where children have additional communication difficulties (Johnston et al., 2016; O'Leary et al., 2013), a cohort over-represented in many youth justice systems (Howard et al., 2020a; Snow, 2019; Winstanley et al., 2019).

### **International children's rights standards on police questioning**

In acknowledgement of the particular circumstances of children, the CRC recognises that children in conflict with the law have a right to be treated in a manner consistent with their age and needs. Article 40 of the CRC recognises the importance of age-appropriate treatment and requires states parties to ensure that children enjoy due process rights, including procedural protections during the investigation process regarding, for instance, the right to be informed promptly and directly of the charges against them and to have legal or other appropriate assistance in the preparation of their defence (Committee on the Rights of the Child, 2019: paras 47–53). Article 40(3) of the CRC requires states to promote the 'establishment of laws, procedures, authorities and institutions' specifically applicable to children alleged or accused of having infringed the penal law and according to the CRC Committee, these standards require the 'continuous and systematic training of professionals' including police officers (Committee on the Rights of the Child, 2019: para 39). The Committee has noted the vulnerability of children to violence in the child justice system and highlighted the need to ensure that children are protected from harm in such settings (Committee on the Rights of the Child, 2007: para 13). With respect to the requirement that the child's treatment should reinforce their respect for the rights of others, the Committee has explained that if the 'key actors in the juvenile justice system, such as police officers . . . do not fully respect and protect these guarantees, how can they expect that with such poor examples the child will respect the human rights and fundamental freedom of others?' (Committee on the Rights of the Child, 2007: para 13). In this respect, the CRC Committee draws attention to the duty on police officers to uphold the standards associated with the child's right to a fair trial, while clearly reinforcing the broader need to ensure that the child is treated with respect for their rights and their dignity. Broadly then, on account of their vulnerability, children subjected to police questioning enjoy both associated due process rights and legal safeguards, while their

special circumstances require the adoption of a rights-based approach that reflects their vulnerabilities and circumstances.<sup>4</sup> More precise standards relevant to children during police questioning are set out in the relevant sections below. The next section sets out the Irish legal framework to place the research in context.

## **The legislative framework for police questioning in the Irish youth justice system**

The Children Act 2001 provides the legislative basis for the Irish youth justice system, and Part 6 of the Act is concerned with the treatment of child suspects in Garda Síochána stations. Section 55 is a particularly important provision of the Act as it requires members of the Garda Síochána to act

with due respect for the personal rights of the children and their dignity as human persons, for their vulnerability owing to their age and level of maturity and for the special needs of any of them who may be under a physical or mental disability . . .

The legislation also requires the notification of parents or guardians (s. 58 and s. 62), in relation to the information to be given to the child and their parent or guardian on arrest (s. 57), and it sets out the entitlement to consult a solicitor (ss. 60 and 61). Separately, the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 set out duties that the ‘member in charge’ must perform to safeguard the interests of persons in Garda custody.

Although the legislation contains some important protections for children, there are also some gaps, including the absence of an explicit requirement to ensure that information given to a child is understood, lack of provision setting out explicitly the role of parents or appropriate adults during police questioning and the right to have a solicitor present during police questioning (though this is allowed as a matter of policy and practice) (Kilkelly and Forde, 2020). To date, there has been little research into the operation of Part 6 of the Act and limited explicit consideration of how children experience their rights during police questioning (Kilkelly, 2006); while previous studies have explored experiences of police custody in Ireland generally (Skinns, 2019), there have been no studies of children’s experiences specifically. In its Concluding Observations on Ireland’s progress in implementing the CRC, the CRC Committee has recommended that the mandate of the Ombudsman for Children should include investigations relating to children held in Garda custody (Committee on the Rights of the Child, 2006: paras 13–14). However, it has not explicitly commented on issues relating to children’s rights in the process of police questioning. As such, this is the first study to explore the rights of children during police questioning in Ireland and to explore how children experience the protections of the legislation in practice.

## **Methodology**

This study set out to understand from children themselves how they experienced their rights during police questioning in line with the available research and international

children's rights standards. A children's rights-based approach to research requires that the research itself aims to realise children's rights, that the approach of the research is informed by the standards set out in the CRC and that 'children are engaged throughout in ways which build their capacities to assert their rights and the capacity of duty-bearers is increased to fulfil their obligations' (Lundy and McEvoy, 2012a: 89). Aiming to adopt a rights-based approach (Lundy and McEvoy, 2012a), the study involved children in the design and implementation of the study which was granted ethical approval by the Social Research Ethics Committee of University College Cork as well as permission from the Garda Research Unit with respect to the involvement of members of the Garda Síochána. The study involved four cohorts: children with experience of being interviewed by the police; members of the Garda Síochána with experience of interviewing children; lawyers with experience of advising and representing children in the context of questioning; and parents/guardians or other adults present during police interviews with children. The study comprised individual, semi-structured interviews which were designed to enable participants to speak freely, in line with the question frame. In total, 20 children aged between 14 and 18 years were interviewed (described as Child 1, 2, 3, etc.) and all but one was male. Participants were identified through community and youth justice organisations, came from different parts of Ireland and had varying experience of police questioning, ranging from one-off to multiple experiences.

Nine members of the Garda Síochána (described as Garda 1, 2, 3, etc.) took part, identified in co-operation with the Garda Research Unit to include those with varying levels of training and experience of interviewing children. Four solicitors (lawyers) (described as Lawyer 1, 2, 3, etc.) took part, identified through law firms who represent children in criminal proceedings. Three parents and other adults acting in a supportive role took part in the study, identified through facilitator groups working with children in conflict with the law. However, due to the small number of participants in this cohort, only a small number of the perspectives shared by adults in a supportive role (Carer 1, 2, etc.) are discussed within this piece. In total, 36 interviews were conducted across the 4 cohorts. All interviews proceeded on the basis of informed consent and confidentiality and were completed in compliance with ethical approval and child safeguarding procedures.

In seeking to engage children in the formulation and direction of the research, a Children's Research Advisory Group (CRAG) was established to inform researchers both about the questions to be explored and the methods through which children's views could be best elicited. In line with similar research, children who were part of the CRAG were not research subjects themselves, but provided guidance on the research process to ensure it took account of and met the needs of the children involved (Lundy and McEvoy, 2012b). The role of the CRAG was thus to assist researchers in understanding which questions would be most pertinent to children and to advise on the research processes most suitable to support children to express their views (Lundy and McEvoy, 2012b). For this study, a CRAG, made up of four children under 18 years with varying to no experience of the justice system, was established in collaboration with a local non-governmental organisation. Prior to consultations with the CRAG, draft question frames for the interviews were formulated based on the desk-based research of international standards and literature. These question frames were designed based on the analysis of the CRC

standards and related international guidelines such as the commentaries of the CRC Committee through relevant General Comments (see further Lundy and McEvoy, 2012a). Input from the CRAG was elicited over two group sessions undertaken with researchers. Information about the study and its aims was provided and draft question frames were introduced to help the CRAG understand how the researchers might go about seeking children's views. During the process, the CRAG provided input on a number of aspects of the study. They made suggestions about the issues which might be most important to children in that situation and on the draft question frames for the interviews with the children. They also reviewed and provided feedback on the information about the study which was to be provided to the child participants and on the practical steps necessary to maximise participation of the children. Separately, an International Expert Advisory Group, made up of scholars with expertise in the area of police questioning of children, provided feedback on the methodology and the study as a whole.

The study had a number of limitations. First, due to the small number of participants, the findings are not representative of all children's experiences. In addition, difficulties were experienced recruiting girls for the study due in part to the small number of girls with experience of police questioning. This means that further research into girls' experiences is required. Further study is also required to understand the experiences of police questioning on other groups of children, including children from ethnic and racial minorities, children with disabilities, and children who have experience of state care. Consistent with a rights-based approach, the views and experiences of each individual child were viewed as uniquely important and valid (Lundy and McEvoy, 2012a).

Second, while attempts were made to ensure diversity of experience across all participant groups, the nature of the selection process meant that an element of participant bias was likely among the lawyer and Garda Síochána participants. In addition, difficulties identifying parent participants resulted in a very small cohort of just three participants, clearly limiting the significance of this perspective in the study.

Despite these limitations, the study is important insofar as it provides a unique and original insight into children's experiences of their rights during police questioning in Ireland. Contributing to existing literature in this area, it further illuminates the extent to which these rights are respected in practice, the barriers involved in promoting children's rights and how these barriers may be overcome.

The next section presents the findings of the research divided into two main sections: the first considers children's understanding of and participation in the process with reference to their rights to access information, legal advice and support and the second details their treatment during the process, including their experience of custody and at the hands of individual police. Each section presents a summary of the international standards, presenting these as a benchmark against which children's experiences of their rights are measured.

## **The research findings**

### *Children's understanding and participation*

The CRC and the European Guidelines on Child-friendly Justice are clear that children have a right to understand and participate in the criminal process. Building on the right

to age-appropriate treatment, they set out the procedural rights of children, including the right to be informed about the charges against them, to have access to legal or other appropriate assistance, and to have their parents or guardians provided with information and to be present during proceedings (Liefgaard, 2020). Children must have access to appropriate information and professional support to enable them to participate in the process and to ensure their awareness of the consequences of their decisions (Committee on the Rights of the Child, 2019: paras 47–48). Those involved in the process – including police officers and lawyers – must use language that is appropriate to the age and circumstances of the child, and the environment in which children are questioned should also be suitable (Committee on the Rights of the Child, 2019: para 46).

*Access to appropriate information.* The provision of reliable information to children in a manner that they can fully understand is an ‘essential starting point for stimulating meaningful participation’ (Stalford et al., 2017: 210). Multiple international instruments require that information about the charges, the procedures and the rights to which children are entitled should be provided to the child as soon as possible after first contact, in language they understand (Article 40(3)(ii) of the CRC; Committee on the Rights of the Child, 2019; Guidelines on Child-friendly Justice). The standards also emphasise the supports that need to be in place to help children to understand this information and according to the CRC Committee, providing a written document is insufficient; an oral explanation must be given, with a duty on the authorities to ensure the information is understood (Committee on the Rights of the Child, 2019: para 48).

Although it can be challenging for the police to ensure that the child understands the substance of the information provided to them and its significance, particularly when working under time pressure (Zelle et al., 2015), police interviewed for this study recognised the need for information given to the child to be ‘pitched at a level that they fully understand’ (Garda 1). With regard to their right to being provided with details of the alleged charge against them, the children interviewed explained that the amount of information provided prior to interview varied. While some children considered that they had enough information about why they were being interviewed (Child 7, Child 17), this was not always the case. For instance, some children reported being advised only that Gardaí wanted to speak to them about ‘an incident’ (Child 5), with others saying that more detailed information was only provided during the interview (Child 1).

For children to be able to exercise their legal rights effectively, it is necessary that they should understand the significance of those rights (Feld, 2006). Research has shown that a child’s stage of cognitive development can impact their ability to understand the information they are given, including warnings about their rights (Viljoen and Roesch, 2005; Zelle et al., 2015) and children in such situations may not fully understand their rights and may be more inclined to comply with authority figures (Cleary, 2017; Monahan et al., 2015). Even where children understand the language used in informing them about their rights, they may not understand the relevance of this information, and the potential consequences of waiving their legal rights (Kohlman, 2012; McLachlan et al., 2011; Rogers et al., 2014).

Reflecting these themes, the members of the Garda Síochána interviewed were aware of the challenges associated with accommodating children’s understanding, and of the

need to adapt their approach to children's circumstances. For example, one participant explained the need to 'break it down for people . . . in ordinary language' (Garda 6) and in general there was an appreciation of the need to modify language. Gardaí spoke of using 'simple, ordinary language' (Garda 7), of trying to 'explain it in laymen's terms' (Garda 5) and of 'tailoring the language, the terminology . . . and checking their understanding throughout the process' (Garda 2). This was particularly the case in relation to the legal caution, and police participants appeared to understand the need to try to ascertain how well a child understood the substance of their rights. As one Garda explained, 'the legal caution (has) to be explained, and explained in ordinary language', but the importance of continuously checking for understanding was also highlighted (Garda 7). At the same time, participants acknowledged that this was not straightforward and that a child's relative lack of maturity may lead to them 'not understanding the gravity of what's happening with them' (Garda 1) or the potential consequences of the interview.

Despite Garda awareness of the need to modify their approach, it was clear from the children's interviews that this had varying levels of success. While a number of children reported that their experience was 'straightforward' (Child 5, Child 14, Child 17) and that they had no difficulty understanding what was said to them during the police interview (Child 9), others had not fully understood everything. For instance, one child said that Gardaí used 'too big words' (Child 10), while another explained that he 'kept getting confused' (Child 3). Technical language ('law words') caused particular difficulties (Child 6).

On some occasions, clarity of meaning was provided when sought by the child, either by the Garda or the guardian present (Child 2). While the Gardaí reported finding another way to explain the information where the child's understanding was lacking, they also reported relying on others involved in supporting the child to understand both information about their rights and the questions they were being asked. Lawyers played a particularly important role in this regard and those interviewed were keenly aware of their responsibility to help children understand the process and the potential consequences for them (Lawyer 2). Interestingly, Gardaí also referred to the presence of a lawyer as a 'safety net' for children during the interview process (Garda 4). Similarly, parents could also play a supporting role where a child had difficulty understanding the process. For instance, one Garda explained that they sometimes seek the parent's support to help their communication with the child (Garda 5). At the same time, consistency was clearly a concern and participants acknowledged that much 'comes down to the person who's dealing with them, how well they explain it' (Garda 6).

Despite these efforts, the true state of the child's understanding was not always evident and some children interviewed reported that even if they hadn't understood everything, they would not always seek clarification. This could be because their priority was to try to get the interview finished with as quickly as possible. As one child explained,

. . . I wouldn't understand it but . . . you just want to answer it all and get out of there. (Child 1)

Some children clearly did not want to acknowledge their lack of understanding. As one lawyer explained, some children 'don't understand the question and they will never



admit that they don't know', saying that this was a 'massive problem, especially with the boys' (Lawyer 4).

These difficulties can be compounded where a child has a learning difficulty or experiences other barriers to understanding (Johnston et al., 2016; McLachlan et al., 2014; O'Leary et al., 2013). Lawyers interviewed confirmed that this is an issue in practice too, arising on a regular basis. As one lawyer commented, '. . . the majority of kids do have learning difficulties' (Lawyer 2), requiring a process to check their understanding. Other difficulties could arise where a child has attention deficit disorder, for instance, which could result in inappropriate or nervous laughter which might be misunderstood and 'antagonise' the police (Lawyer 3). Gardaí interviewed showed an awareness of this issue, explaining that in such cases, they would seek support from other sources, speaking to parents or to 'a doctor or . . . an agency that might be dealing with that specific learning difficulty' to get an understanding of how to deal with the issue if it arises (Garda 6). Lawyers interviewed also described seeking access to 'a child psychologist or getting a psychiatrist report' if there was a significant concern (Lawyer 2), a step that might result in the interview being halted (Garda 8).

Clearly, difficulties arise in practice when trying to assess the child's level of understanding and identify any barriers to effective communication. While Gardaí spoke about the need to 'constantly [look] for vulnerability or for their cognitive understanding' (Garda 1), it is notable that no professional supports are currently available to assist this process.

*Access to legal advice.* Enabling children to fully understand and participate in the process may require access to appropriate legal assistance. International law provides that all children have a right to access legal advice as part of their right to a fair trial, and according to the CRC Committee, this right must be respected from the investigation stage of the criminal process (Committee on the Rights of the Child, 2019: para 49; Guidelines on Child-friendly Justice). This study highlights that the need for this advice is especially critical for a child who has difficulty comprehending information provided or questions asked during the police interview.

In this study, the children reported being advised of their right to consult with a lawyer prior to being interviewed and Gardaí explained that they placed significant emphasis on the desirability of children accessing legal advice, to the extent of 'overemphasising' its importance (Garda 8). Gardaí recognised that having a lawyer present was an important safeguard that allowed them to concentrate more on the interview (Garda 1), whereas others spoke about the transparency it brought to the process, with a decreasing likelihood of the process of police questioning being challenged subsequently in court (Garda 8).

At the same time, a number of the children interviewed chose not to exercise their right to consult with a lawyer prior to being questioned, a finding that broadly mirrors the results of other studies (Cleary, 2014; Feld, 2006; Kemp et al., 2011). Given the small-scale nature of this study, it is difficult to say with certainty how often children waive their right to consult with a lawyer in Ireland. For instance, one Garda advised that in their experience that 'it's rare these days that they don't' [consult a solicitor] (Garda 4). However, this was not the universal experience and one lawyer reported that children 'will regularly refuse the right to consult with a solicitor' (Lawyer 4). This seemed to be

borne out by the children themselves, who reported that they had not always chosen to speak to a lawyer before interview, despite being advised of their right to do so (Child 4).

Research suggests a myriad of reasons why children choose not to consult a lawyer, including eagerness to leave the police station as quickly as possible, the perceived seriousness of the offence and the lack of availability of a solicitor (Skinns, 2019). Studies have also found that children may not fully understand how a lawyer can help them during police questioning (Kemp et al., 2011; Peterson-Badali et al., 1999). Children often choose to take decisions that will hasten the end of the questioning process (Cleary, 2017; Kemp, 2013). Reflecting these findings, in this study, one child commented that ‘. . . it takes time for them [a solicitor] to come and it’s just a whole lot of hassle . . . I just want to get home as quick as I can’ (Child 11). The time it takes for a solicitor to attend was also identified as a reason for a child choosing not to wait, with one carer describing the scenario as follows:

They’re in the station, an hour’s a lifetime’s struggle and they’d do anything to get out. So, they’re likely to speak, talk, do anything. Solicitor is the last thing on their mind. (Carer 2)

Other reasons why a child may not seek legal advice may include their failure to appreciate the seriousness of their situation (Lawyer 4) or their perception that they did not need a lawyer because they already felt able to respond to questioning without support (Child 2, Child 5, Child 16, Child 17). At the same time, those children who did seek legal advice prior to the interview spoke positively about this experience (Child 14), noting that it was particularly helpful to have someone ‘fighting the case with me’ (Child 15) and being ‘on your side’ (Child 9). For other children, a lawyer was an important source of information, with a number of children saying that solicitors had provided them with information about the interview (Child 7, Child 10). In addition, children referred to the benefits of legal advice in helping them to navigate the questioning process (Child 12, Child 14) and, in some cases, felt that the police would treat them differently and ‘try to intimidate you if your legal advice isn’t there’ (Child 7).

Some adult participants questioned whether children should be able to waive their right to access legal advice (Lawyer 2, Lawyer 4). Interestingly, a number of child participants who had waived their right to consult a solicitor indicated that they would make a different decision with the benefit of hindsight (Child 2, Child 19). Indeed, one child suggested that children should not be able to be questioned without first getting legal advice:

I think that a solicitor should be mandatory because when you’re younger you’re just going to say, ‘no I don’t want a solicitor, I just want to get out of here’. (Child 1)

In conclusion then, although Garda participants were supportive of children’s right to access legal advice, other factors clearly impact on children’s exercise of this right. Overall, and notwithstanding the challenges (e.g. delay) that would need to be addressed to make this procedural safeguard effective, this study adds strength to the argument that the right to access legal advice should be mandatory for children.

*The role of parents in the questioning process.* In addition to support from lawyers, other support from adults is also necessary to fully protect children's rights. International instruments highlight the important role parents play in providing support and assistance to children in conflict with the law. In addition to the duty on parents to support children's exercise of their rights (Kilkelly, 2020), more specific standards require that notice of the criminal charge against the child should be given promptly to their parent/guardian and that contact with a parent/guardian should not be delayed due to resource issues (Committee on the Rights of the Child, 2019: para 47). The CRC Committee has recommended that states should legislate for the maximum involvement of parents throughout the proceedings including the questioning process (Committee on the Rights of the Child, 2019: para 57), emphasising the importance of the emotional and psychological support they can provide (Committee on the Rights of the Child, 2019: paras 56–57).

However, the role of parents in police questioning of children is not clear-cut and problems can arise where it is difficult for parents to attend the police station (Broeking and Peterson-Badali, 2010) or their presence is not constructive either to the police investigation or to the child's exercise of their rights. These issues emerged during this study also with Gardai highlighting that in some cases it was difficult to secure a parent/guardian's attendance. This could be caused by multiple issues; for instance, one Garda commented as follows:

Sometimes . . . their heart is broken with a child. They just don't want anything to do with it . . . it can be logistical too . . . having to mind other children. (Garda 7)

Difficulties can also arise where the presence of a parent/guardian is considered unsuitable for some reason. In some cases, a child may not want their parent present and may prefer another adult (Garda 8), while in others, a parent may be a co-accused (Garda 2). In these cases, Garda participants reported asking another adult from the child's family or from the community to sit in on the interview (Garda 4).

The legal basis for this approach is set out in the Children Act 2001, which requires notification to a parent, guardian, adult relative or 'other adult' when a child is to be questioned. Although the Treatment of Persons in Custody Regulations refers to an 'adult relative or some other responsible adult', however, Irish law does not indicate who this 'responsible adult' might be. As such, there is no established system of 'appropriate adults' – such as that established by statute in countries such as England and Wales – who can be called upon where a parent or guardian cannot attend a police interview (see further, for example, Dehaghani, 2022; Dehaghani and Newman, 2019; Pierpoint, 2006). Instead, in Ireland, a range of individuals, including Peace Commissioners – who have no specific training to support children during police interviews – can be called upon (Skinns, 2019). Nor, by contrast with jurisdictions such as New Zealand, does Irish law indicate what role this 'adult' might play (Forde, 2022).

Some of the children in this study attached importance to the support of having their parent/guardian present during the questioning process. One child explained that they 'felt safer' with their parent present (Child 17), with others noting that the police would 'always treat you well when your parents are there' (Child 2). Other children referred to the sense of comfort they derived from having a parent present (Child 18, Child 19),

noting that a parent could give them ‘a bit of guidance’ (Child 14). However, this was not the universal experience. Some children did not find it helpful to have their parents with them (Child 5); such as where their relationship was not good (Child 16), or where they did not want their parents involved given the nature of the offence. As one child explained, ‘you don’t want your Ma to hear some of the details’ (Child 13). In most circumstances, children favoured having a parent or trusted adult present to offer support, conscious of the clear benefits this provided.

A number of other issues also arise in relation to the attendance of a parent/guardian or ‘other adult’ at police interviews. One issue that arises is the lack of clarity regarding the role of a parent in this situation. For instance, some participants commented that parents typically played ‘no active role’ in the interview process (Garda 3), beyond being present (Lawyer 3, Child 1). This might arise from the fact that the role of the parent/guardian is not defined in Irish law and they receive no written guidance in advance of the interview process and no information about what is involved. Research indicates that the absence of a clearly defined role for parents/guardians and other adults during police questioning of children can result in confusion (Broeking and Peterson-Badali, 2010). Studies have noted that parents can be a problematic or disruptive presence, or a supportive one during this process (Cleary and Warner, 2017). This concern resonated in this study also, with participants noting that when asked to attend a Garda station, parents’ reactions ‘all vary so much’ (Lawyer 2), and in some cases could complicate the process (Lawyer 1, Garda 2). For instance, a parent might volunteer to the police, prior to the interview, information prejudicial to the child (Lawyer 2). In light of these issues, some study participants expressed the view that it may be better in certain instances for someone, other than a parent/guardian, to fulfil this supportive role (Lawyer 2, Garda 8).

Other research has also drawn attention to the complexity of the role parents and guardians are expected to play during child questioning by the police. On the one hand, parents are expected to look out for a child’s interests, and, on the other hand, they may be expected to encourage the child to take responsibility for wrongdoing and to act as a moral influence (Cavanagh and Cauffman, 2017; Cleary and Warner, 2017; Cohen, 2020). Often, parents will not have the necessary knowledge about the questioning process and about children’s rights within that process to advise them adequately (Cleary and Warner, 2017; Woolard et al., 2008), and it is arguably unfair to place parents in such a position of conflict (Cleary, 2017) given that in some situations, they may not be capable of providing impartial support (Quinn and Jackson, 2007).

Notwithstanding the concerns highlighted above, Gardaí acknowledged it as important that the child ‘has somebody that they can talk to or lean towards or somebody that is in their corner’ (Garda 7). Nevertheless, as noted above, it is a gap in the Irish framework that there is no formal system to ensure that appropriately qualified and trained individuals are available to act in this role (Pierpoint, 2000, 2006) and the lack of clear statutory requirements as to the role the individual is expected to play have the potential to lead to inconsistent and unsatisfactory approaches (Dehaghani, 2016; Dehaghani and Newman, 2019).

## *Children's treatment during police questioning*

Article 40 of the CRC makes it clear that all children in conflict with the law should be treated in an age-appropriate way and in a manner consistent with the promotion of their dignity and worth. Where a child is being questioned by police, often in unfamiliar and intimidating surroundings, under arrest or under caution, they may be held in police custody for a time while waiting to be formally interviewed. Article 37 of the CRC requires that significant attention be paid to children's treatment in these circumstances in light of their heightened vulnerability. Research has highlighted that children's characteristics and stage of development can make them particularly vulnerable during police questioning (Cleary, 2014; Feld, 2013; Gooch and von Berg, 2019). In other jurisdictions, this has given rise to concerns about unreliable confessions or statements being made by children due to an inclination to co-operate with authority figures (Feld, 2013). This section considers children's experiences of the process of police questioning in light of these issues.

*Vulnerability and ill-treatment.* The vulnerability of children during police questioning emerged very strongly from the study in line with previous research (Cleary, 2017; Kilkelly, 2011). In recognition, Irish law provides that a 'member in charge' of the Garda station has responsibility to ensure the child is looked after and children in this study acknowledged that it was 'kinda helpful' to have this individual checking in on them while they were in the police station (Child 11).

Research has documented that the experience of being detained in a police station or being held in custody overnight can have a significant impact on children's experiences of being questioned (Gooch and von Berg, 2019). The inadequacy of facilities for children who are detained in Garda custody and their unsuitable nature were commented upon both by Gardaí and by lawyers interviewed in this study (Garda 6, Lawyer 1). Some children had been detained for some time in a police cell, which was a particular concern for children arrested late at night or at the weekend (Child 2, Child 3, Child 7, Child 9, Child 10, Child 14). Many children reported negative experiences of being held in Garda cells, commenting that the cells were 'not the best' (Child 14), 'crappy' (Child 13) and 'freezing' (Child 3), conditions that clearly increased physical discomfort making the experience more difficult.

A further, more serious concern arose in respect of eight children who reported, unprompted during the study, that they had been assaulted by the police either during the course of an arrest, or while they were being held in Garda custody.<sup>5</sup> Children described being 'bet by a Garda in the cell' (Child 7) or that 'sometimes you get arrested and they beat you like' (Child 8). The severity of this experience is highlighted here:

I had an incident that was in the cell, two Gardas came in on top of me, one of them stuck their knee in me head and asked me did I do a load of burglaries and it wasn't me. (Child 9)

Another child described ill-treatment as follows:

When your Mam's not there, they kick you under the table. Like they'll give you a boot under the table. (Child 12)

These issues clearly raise serious concerns about police ill-treatment of children, and while some of the children had formally complained, one child reported that 'nothing ever came of it' and that he felt that this meant members of the Gardaí 'can do what they want' (Child 1). Although inquiry about the children's trust in the police complaints process was outside the scope of the study, it is clearly a matter that warrants more careful consideration.

The other serious concern that arose during this study related to children being questioned by Gardaí 'under the influence of drugs' (Child 15) or when 'really heavily intoxicated' (Carer 1). Children's vulnerability during police questioning can be further increased when they are under the influence of drugs or alcohol, fatigue or stress (Cleary, 2017), and the impact of this on some children interviewed was clear from this study too, with one child stating that they did not remember much of the interview because 'half the times that I have been interviewed, I've been always on drugs' (Child 4). Another child stated their opinion very clearly that 'they shouldn't be allowed interview you then if you're stoned' (Child 12). This has an impact not only on children's procedural rights and their ability to participate effectively but also on the rights of children related to their well-being and dignity.

*Children's experiences of the questioning process.* Police questioning can clearly be a stressful process for children, and this can have an impact on young people's ability to reason effectively (O'Leary et al., 2013). In addition, it is important that young people's perception of time is different to adults – even a relatively short period of time can be perceived as 'an eternity' to children who are in a police station being questioned (Cleary, 2017: 121). In this context, the experiences of children interviewed for this study spanned a broad spectrum. A number of children reported that the experience was uneventful, describing them as 'pretty straightforward' (Child 17) and 'grand' (Child 20). However, other experiences were more difficult, and a number of children in this study commented that they had felt like Gardaí were trying to 'trick' them (Child 1, Child 12, Child 19).

Some very negative experiences were also reported, with one lawyer commenting that the behaviour they had witnessed fell 'below the standards of how a young person should be treated in a Garda station' (Lawyer 3). Children themselves reported being called names by Gardaí (Child 1) or being shouted at during the course of questioning (Child 2, Child 17). These negative experiences can have a long-term impact on young people (Parent 1) with one child explaining that the experience had stayed with them for a long time afterward and that he had felt 'shook for about 3 or 4 months' (Child 16).

Notwithstanding the small number of participants in this study, it is stark how varied the experiences were between individual children. Furthermore, individual children reported very variable experiences during the different times that they had been questioned. In this respect, much depends on the approach of individual members of the Garda Síochána. One child summed this issue up succinctly:

I've been interviewed by the Gards a load of times so it's kind of normal at this stage but there's definitely nicer Gards and there's worse Gards, I can tell you that much like. Like they can definitely do it a nicer way or a worse way. (Child 6)

Lack of consistency in the treatment of children during police questioning thus emerges as a serious concern. On the one hand, some Gardaí were very aware of the impact of their approach and emphasised the importance of treating children with respect (Garda 8). Equally, others were acutely aware of the stress children may be under during questioning and described taking steps to minimise its negative impact so as to lessen its intimidating character (Garda 2, Garda 7, Garda 8). However, awareness of this concern clearly varied from one Garda to the next (Lawyer 3), with one lawyer commenting 'I've had things that have absolutely blown up simply because of the way the Gard handled it' (Lawyer 2). While good practice clearly exists, therefore, the diversity of children's experiences highlights the importance of promoting consistency in practice in order to ensure that all children have their rights respected and upheld in practice.

These issues can be compounded by a lack of specialist training and the absence of mainstream supports for police who engage in police questioning of children. In Ireland, Gardaí use the Garda Síochána Interview Model (GSIM); while this is not tailored to the needs of children, Gardaí who took part in this study were positive about the ability of the model to be adapted to make it appropriate for children (Garda 6). Internationally, little research has been conducted on the availability of training for police specifically in relation to interviewing children (Cleary and Warner, 2017), with some research indicating that there is little specialised training available in some jurisdictions (Gooch and von Berg, 2019). The lack of specialised training that is specific to children is also an issue in Ireland, and while Gardaí receive training on vulnerability in a general sense, they do not receive training specific to children or their specific developmental needs (Garda 6). Lack of training among lawyers is also an issue; while lawyers who participated in this study had undertaken training on an ad hoc basis through attendance at seminars, there is no formalised and specialised training required for lawyers who wish to work with children in this context. Both members of the Garda Síochána and lawyers working with children emphasised the need for further training in both professions (Garda 3, Lawyer 2, Lawyer 3, Lawyer 4).

## Discussion

A number of important themes emerge from this analysis of children's experiences of their rights during police questioning in Ireland despite its small scale. Many of these findings echo other research on children's exercise of their right to legal advice, difficulties in supporting children's understanding and a lack of clarity relating to the role of parents/guardians or other supportive adults.

Most importantly, the study underscores the critical importance of ensuring that research on police questioning hears directly from children with experiences of these processes. Children's contributions in this study highlighted a number of significant matters relating to the implementation of their rights and, in some cases, raised important issues which had not been anticipated by researchers ahead of the interviews. In addition,

conducting research both with children and with Gardaí, lawyers, and parents and guardians allowed some insight to be gained into the divergence of experience and perspectives between adults and children on some issues. In that sense, the study is a strong vindication of the importance of hearing directly from children so that their perspectives on how to develop more rights-compliant approaches to the questioning of children can be better understood. The contrasting perspectives that emerged from the adults in the research reinforced the value and importance of hearing directly from children themselves.

While there are a number of limitations inherent in this research, and further research is needed both with greater numbers of children and with specific cohorts of children (such as girls, children in care and children from minority backgrounds), four key pieces of learning can be taken from the current study.

First, there is a need for child-specific police questioning policy informed by children's perspectives and experiences in order to ensure that practice develops in line with the requirements of international children's rights standards. Research elsewhere has shown that both professionals and policy-makers can play a significant role in bringing local and national practice into line with the international children's rights requirements set out under the CRC (Rap, 2016). Chiming with the views of the CRC Committee in relation to the importance of including children's views in research and evaluation of the operation of the youth justice system (Committee on the Rights of the Child, 2019: para 115), reforming law, policy and practice in line with children's views should lead to the introduction of greater safeguards of children's rights during police questioning. A key aspect of a rights-based approach is that the research should aim to fuller realisation of children's rights and enhance the capacity of both children to claim their rights and professional stakeholders to work towards greater respect for children's rights (Lundy and McEvoy, 2012a). Implementation of human rights standards in practice has a significant impact on perceptions of legitimacy of the youth justice system as a whole, and as such, both the practical implementation of children's rights standards and children's lived experiences need to be considered in assessing national law and policy (Bernuz Beneitez and Dumortier, 2018). Given the insights that can be gained from listening to children, and in light of the fact that interactions that police have with children can have long-term consequences for the child involved (Kilkelly, 2011), it is essential that children's views and experiences are taken into account in the development of new approaches.

Second, one of the most striking themes to emerge from this study is the diversity of children's experiences during police questioning and the significance of the approach of individual Gardaí to the realisation of children's rights. In this study, this had clear implications for children's ability to understand information given to them, their safety during the questioning process and how they felt they had been treated. Research has demonstrated that professionals who children find easy to talk to, and who were able to build interactions based on trust and familiarity, were perceived by them as facilitating better communication and more positive interactions and outcomes overall (Lount et al., 2018). While it is also clear from this study that some Gardaí make significant efforts to ensure that their approach is appropriate for children, there is a lack of consistency across the board, and good practices need to be identified and mainstreamed. In order to achieve this, professionals working with children in this context need resources and supports, and



specialised training. Scholars in this area have advocated for increased training for police officers in relation to young people's development, so that they are equipped to deal with young people in a manner that is appropriate to their age and development (Monahan et al., 2015). Lack of adequate training has also been identified as an issue for lawyers, both in the current study and in other jurisdictions (A'Court and Arthur, 2020). The CRC Committee has emphasised the importance of specialised training for all professionals working with children in the youth justice system (Committee on the Rights of the Child, 2019: paras 39, 112). As such, systematic training programmes are needed for all members of the Garda Síochána and for all lawyers who work with children in these settings.

There is further potential for professionals working in this context to be supported through the development of resources that support children's understanding and that help professionals to communicate more effectively with children. In other jurisdictions, methods have been developed that aim to improve children's ability to participate in legal processes. In countries such as New Zealand, the introduction of communication assistance has been viewed extremely positively by professionals, who regard this type of initiative as a critical step to ensuring that the youth justice system functions better (Howard et al., 2020a; see further Howard et al., 2020b).

Third, specific steps need to be taken to address issues of concern relating to mandatory legal advice, the ill-treatment of children in Garda custody and the development of a panel of appropriate adults. While it is not possible to determine the prevalence of these issues from this study, it has raised a number of concerns which require attention. The first of these relates to whether children should be able to waive their right to legal advice prior to being questioned. Some scholars have questioned whether it should be possible for children to waive their right to legal advice, given that children may not fully appreciate the ramifications of decisions that they make in this context (Broeking and Peterson-Badali, 2010; Cohen, 2020; Gleason, 2019). This issue needs careful consideration given the implications for children's autonomy, as well as the consequences of any delay that might result if the questioning process had to await the arrival of a lawyer. The availability of resources, particularly in relation to legal aid, can impact the way in which legal advice is provided (A'Court and Arthur, 2020). While these issues undoubtedly need to be worked through, given the benefit children can derive from accessing legal advice, this suggestion is worthy of serious examination. At a minimum, efforts need to be made to communicate with children the ways in which lawyers can assist them during questioning and helping them to understand the potential consequences of waiving this right. The second concern that arose during this study relates to ill-treatment. Steps need to be taken to strengthen supervision, training and monitoring mechanisms and to review children's access to complaint mechanisms, to ensure that the rights of children to be protected from this kind of ill-treatment are effectively upheld. Finally, under this heading, consideration should be given to the development of an independent, trained and police vetted panel of adults in order to support children without parental support during questioning. Research has already recommended that if an 'appropriate adult' is called upon to provide a child with support during the questioning process, the roles and duties that they are expected to play need to be clearly demarcated (Quinn and Jackson, 2007). A clear legislative definition of the 'appropriate adult' is therefore required, with clear

delineated responsibilities, along with the establishment of a panel of appropriate individuals who are willing and trained to act in this capacity to ensure that children are properly supported during police questioning.

It has been argued in the context of police diversion in Ireland that fairness and respect should be the guiding principles in interactions between members of the Garda Síochána and children (Kilkelly, 2011). These principles of fairness and respect are equally necessary in the context of police questioning and are essential requirements to a rights-based approach. Respect for children's rights needs to be a key benchmark against which investigative processes are measured in cases involving children, and sustained attention is needed from independent inspectorates and national children's rights institutions to consider the impact of the implementation of law and policy on the realisation of children's rights. The development of a tailored system for monitoring practice against children's rights standards would be welcome.

Finally, it is vital that further research is needed to develop a fuller understanding of children's experiences of police questioning in Ireland and indeed in other jurisdictions. In addition to broadening the range of children's experiences studied, it is important to study the experiences of particularly vulnerable children – those seldom heard or who may be additionally vulnerable to breaches of their rights. In this regard, there is clear value to establishing partnerships between academic researchers, policy-makers, professionals working in the youth justice sphere and children with lived experiences of these issues to enhance opportunities to identify innovative and practical solutions to further develop the effective relation of children's rights in practice in Ireland.

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### **Notes**

1. The Irish police force is known as 'An Garda Síochána'. Members of the Irish police force are referred to throughout this article as 'members of the Garda Síochána', 'Garda' (in reference to a single individual) or 'Gardaí' (in reference to more than one individual).
2. This study was funded by the Policing Authority (Ireland), and the full details of the study were published by the Policing Authority as follows: Kilkelly U. & Forde, L, Children's

- Rights and Police Questioning: A Qualitative Study of Children's Experiences of being interviewed by the Garda Síochána (Dublin: Policing Authority, 2020) available at [www.policing-authority.ie](http://www.policing-authority.ie)
3. In line with the language adopted by the Committee on the Rights of the Child in General Comment No. 24 on children's rights in the child justice system, we refer to the cohort of young participants who took part in this study as 'children' throughout. Although, as detailed in the 'Methodology' section, some of the young participants who took part in this study had reached the age of 18 by the time of interview, given that the experiences they discussed took place while they were under the age of 18, the term 'child' is adopted throughout to emphasise their status as children at the time of the events under discussion. This terminology is also adopted to aid overall readability and consistency, and to prevent possible confusion through the use of different terms for the same cohort.
  4. United Nations Convention on the Rights of the Child (Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49); UN Standard Minimum Rules for the Administration of Juvenile Justice (Adopted by General Assembly resolution 40/33 of 29 November 1985); UN Committee on the Rights of the Child, *General Comment No. 24 on the rights in the child justice system* (18 September 2019) (CRC/C/GC/24); Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies); Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.
  5. These matters were reported in line with the ethical approval granted for this study.

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