

Miscarriages of justice helped to change investigating



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Investigative interviewing is of paramount importance in every legal system in the world. The development of Investigative interviewing has led to the hope that positive reaction would be received from witnesses and reliability of evidence would be achieved. However, various cases of miscarriages of justice has occurred causing lack of confidence in the criminal justice system. The purpose of this study is to learn more about how cases of miscarriages of justice have helped to change investigative interviewing practices for the better. It is hoped that information from this study may be useful in identifying the improvements in investigative interviewing as a result of cases of miscarriages of justice.

' One area of policing that involves considerable face-to-face interaction with members of the public and where expectations of both police and public are likely to be influential and where relations of trust and confidence are vital is when police officers interview witnesses of crime' (Roberts, 2010). In the past, police officers lacked confidence in themselves and their abilities, and they constantly assumed that every suspect was guilty therefore failing to extract accurate and reliable evidence, had poor interviewing skills and where unprofessional in the approach in which they carried out their interviews.' In any police inquiry, police officers may be interested in only a proportion of the information that a witness can provide' (Robert, 2010). They resorted to violence and verballing during interviews and this resulted in false confessions from suspects. ' In the past, investigators in both the public sector and the police saw interviews as a means of gaining a confession, rather than gathering accurate information and a full account' (Shawyer and Walsh, 2007). Confessions could vary from voluntary

confession where there is no existence of external factors, coerced compliant confession such as aggressive questioning and coerced internalized confession where the interviewee believes he committed the crime due to pressure and stress put on them during the interviewing process. Vulnerable suspects such as children and people with physical or mental challenges are prone to coerced internalized confession thereby resulting to miscarriages of justice. Miscarriage of justice arose as a result of police malpractice and incompetence, inadequate prosecution processes, problematic trial practices and failure of authorities to protect citizens from known dangers (Adler and Gray, 2010).

Fishers inquiry 1977 showed wrongly convictions of three youths who confessed to the murder of Maxwell Confait. His report highlighted that two of the youth were vulnerable suspects and that there were tendencies for the confessions to be achieved by violence, hectoring or bullying. There was no evidence to show that the replies of these suspects were said freely and accurately recorded. Fisher recommended that a Royal commission examine the law and procedure relating to the prosecution of offenders and thus creating a better framework regulating custodial questioning of suspects by the police. ' The Royal commission on criminal procedure commissioned a series of research studies including one that examined the police role in the investigation of offences' (Adler and Gray, 2010). The Royal Commission on Criminal Procedure believed it was essential that the public have confidence in the method of investigation by the police in order to enhance co-operation.

In 1975 the ' Guildford Four' were jailed for life for bombing pubs in Guildford. The case was abolished after the four men had spent 15 years in jail. The case against them was found to be flawed and the credibility of the notes of interview was undermined as being not written up immediately. In 1974, The ' Birmingham Six' were also convicted IRA bombers accused of killing 21 people and injuring more than 160. They spent 16 years in jail before being released in 1991 after the forensic evidence which had formed much of the basis for the case was found to be questionable. Further the ' Maguire Seven' (1976) including six members of the same family were imprisoned for handling explosives. The scientific evidence which formed the basis of the case was later discredited and the case overturned in 1991(Green, 2009). All these miscarriages of justice emphasized the flaws in the criminal justice system. This brought about the introduction of Police and Criminal Evidence Act (PACE), 1984. The act provided a Code of Practice which covered various areas such as detention, treatment and questioning by police and tape recording of interviews. The code of practice gave detainees the right to notify someone of their arrest, access to a free legal advice, no change to the rights to remain silent. It also emphasized the improvement in the area of note taking and tape recording, the presence of an appropriate adult when a vulnerable suspect is interviewed, the treatment of the suspect in custody and regulations on which the interview would be based on. It set out the right balance between the power of the police and the freedom and rights of the public. ' The secrecy of police stations was challenged: officers became used to seeing solicitors, social workers, family members and researchers in custody areas' (Dixon, 2010).

The purpose was to introduce the use of tape recording during interviews
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and eradicate the use of violence and verballing to get a confession.

However, adequate training was lacked in the use of tape recording by police officers therefore creating grounds for them to continue interviewing without tape recorders hence interrogation took place in an environment which increases the vulnerability of the suspects and maximizes the authority and control of the police (Green, 2009). The court became aware of officers lack of compliance to PACE and increased pressure in order to ensure compliance by making the investigators listen and review their performance. The use of such inappropriate tactics, however, was found to decrease after the introduction of PACE (Irving and Mckenzie, 1989). However, police interviewing was still poor even after the PACE was introduced and this was due to inadequate training in interviewing. Police officers have the mentality that interviewing skills cannot be acquired in class but in practice and therefore tend to act like their mentors who hardly portray the correct skills. Police officers training was more on taking reports rather than gathering information.

In the case of Cardiff 3, who were alleged with the murder of Lynette White in 1988 spent four years in prison before it was admitted that they were victims of miscarriage of justice. Although the police officers used tape recording and a solicitor was present during the interview it was observed that the approach taken by the officer was one of hostility and intimidation to the suspect. The development of DNA science and pressure placed by Satish Sekar helped to identify the actual murderer and proved their innocence. In the case of Thomas Henron who was on trial for the murder of a young girl, this was not a miscarriage of justice but rather a failure in

investigative approach. The investigation was based on pressurizing the suspect, offering of unreasonable incentive and falsification of the witness evidence. ' These provided a background of distrust of police and shaken confidence in beliefs about the matchless superiority of English justice' (Dixon, 2010). These cases emphasized the need for improvements in the interrogation of suspects and the Association of Chief Police Officers (ACPO) published the first national training for interviewing known as the PEACE approach to investigative interviewing which was introduced in 1992 which was aimed at ensuring that investigators developed adequate skills in order to conduct interview with integrity and ensure interviews conducted are in line with the law.

' Following a series of miscarriages of justice in the UK where police interviewing methods were severely criticized an ethics-based approach to interviewing was devised that aimed to minimize the risks of unreliable evidence and negative reactions from witnesses' (Robert, 2010). ' An investigative interview is a structured conversation with a party to a crime with the aim of recording that person's account of events' (Green, 2009). ' Investigative interviewing was developed by a group of psychologists and police practitioners' (Dixon, 2010). The role of investigative interview is to approach interviews with an open mind and fairness (even if questioning has to be persistent) in order to obtain accurate and reliable information from suspects, witnesses and victims with the aim of discovering the truth and testing the information received against what the officer already knows or has reasonably established and also bearing in mind that vulnerable people, whether victims, witnesses or suspects must be treated with particular

consideration at all times (National Crime Faculty, 1996, p. 18) . PEACE is an acronym for P-Planning and Preparation, E-Engage and Explain, A-Account, C-Closure, and E-Evaluation. PEACE was a five day training organized to improve investigative interviewing.

Planning and preparation aids in understanding the essence of the interview and the impact on the investigation. The officer should highlight areas to focus based on points to prove and possible defences. These points should be compared with evidence received. All evidence received in favor of the interviewee should also be highlighted as the investigator has a duty to be open-minded. Adequate knowledge of PACE also helps the officer to be ready prior to the interview. Planning and preparation is essential as it helps the officer prepare and plan for an interview before the commencement hence achieving the aim and objective of the interview.

The investigator explains the purpose and expectations of the interview to the suspect thus creating the right atmosphere. During this stage it is essential to create a rapport with the suspect as this makes the suspect comfortable with the investigator. In order to achieve rapport the investigator has to pay adequate attention to the process of social skills cultivates an active listening strategy habit.

There are three classes of witnesses, the compliant witness, reluctant witness and the hostile witness. ' Compliant witnesses are individuals who wish to cooperate fully with the police and are keen to pass information to them. Reluctant witnesses may not wish to interact with the police and may not be forthcoming with information. Hostile witnesses are individuals who

may be overtly hostile to the police, may refuse to give information, and may even attempt to disrupt interviews' (Robert, 2010). In order to get substantive and quality account an investigator could either use the cognitive interview or the free recall interview but in a situation where the suspect is being difficult the investigator could use conversation management. Free call allows the interviewee to fully articulate their account followed by probing to obtain uncontaminated detail. Conversation management on the other hand is usually with suspects or uncooperative interviewees who require free recall followed by probing and challenges where appropriate. Cognitive interview is a full cognitive reinstatement with a compliant interviewee who is willing to cooperate fully (Green, 2009).

When closing the interview the investigator ensures that accurate account has been received thereby creating a positive impression to the public and preventing negative emotional reactions such as anger and anxiety. The investigator also has to maintain rapport in order to minimize the witness anxiety and distress and maximizes the disclosure of useful information.

Evaluating the quality of the information received performance of the interviewer in terms of self evaluation and identifying other information that would be needed for the interview.

Training was organized for all police officers in order to educate them on the PEACE model. The facilitators of the training were majorly inexperienced trainers rather than qualified investigators. The police officers did not embrace the PEACE model at first and this affected the purposed role of the model.

Clarke and Milne (2001) conducted a national evaluation of PEACE by examining interviewer's investigative skills when conducting interviews with suspects and witnesses. They found a great gap in the interviewing skills of both the trained and untrained officers of the PEACE model. However, improvements were noted in the area of legal requirements, ethical approach and questioning skills rather than the communication aspects of the interview or the structural development of the interviewees account. Instead of the police to focus on the verbal and non- verbal actions of the interviewee and using that as a base for the next question their focus was on statement taking and this therefore caused poor recording of account and interviewing. They also observed poor interviewing skills as officers were using less of cognitive interviewing and less conversation management. This caused officers to be frustrated and allowing them return to the old ways of interviewing. The original PEACE model was rigid as it assumed that all interviewees would be co-operative with the interviewer and this was not the case in most interviews. Although the PEACE model was generally accepted as it offered an excellent framework for investigative interviews and its principles were sound it was still obvious that a reform was needed (Green, 2009). ' In the years following the implementation of PEACE certain forces recognized that the ' one size fits all' model was not sufficient to cater for all needs' (Griffiths, & Milne, 2005). Crimes which were regarded as serious such as murder required a more effective and ethical interview process.

Clark and Milne (2001) made 19 recommendations and the focus was on interview guidance, supervision and training. They recommended an interview supervisor policy because they observed that the quality of the

interviews were better when supervisors were present. Supervision would enable efficient use of the interview guidance and help assess the skills of the officers thereby indicating areas where improvements are required. These recommendations were taken up by the Association of Chief Police Officers (ACPO) and further developed into the ACPO Investigative Interviewing Strategy: A national initiative. They also observed that the officers were bombarded with so much to learn when they had not grasped the earlier stage. A five tiered structure approach was introduced to improve the quality of investigative interviewing for various levels of officers. Tier 1 was meant for Foundation for probationers and it focused on basic investigation highlighting the importance of free recall and conversation management in obtaining account when carrying out an interview. Tier 2 focused on uniform investigators and detectives and enhanced cognitive interview was taught in this stage. Tier 3 was meant for specialists. This tier looks into enhanced cognitive interviews in advanced interviewing of suspects and specialist interviews that is, interviewing of vulnerable witnesses. Tier 4 was meant for interview supervisors who do not necessarily have to have the skills of the specialist but must at least be trained up to Tier 2 as these supervisors duty is to identify areas in which trainings are required, ensure ethical approach is used when conducting an interview and standards are maintained (Green, 2009). Tier 5 focuses on interview advisors, managers, coordinator for specialist interviews whose role is to advise senior investigative officers on essential interviewing strategies for serious and complex crime. ' Thinking of an investigation in this holistic way has brought great benefit to the overall strategy of a major inquiry some of which are highly complex long term investigations requiring intimate

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knowledge of detail and consistency' (Green, 2009). Association of Chief Police Officers (ACPO) and the National Policing Improvement Agency (NPIA) sponsored a program which is aimed at enhancing improvement in the area of professional capability and experience of investigators. This resulted in enhancement in the role of supervisors and interview advisors to ensuring officers conduct investigative interviewing at a professional level.

It is clear, therefore that poor investigative interviewing would lead to several cases of miscarriages of justice. The fact that most officers views on interviews where based on aggression and uncertainty rather than acceptance and enthusiasm caused a lot of problems in the legal system. Focusing on getting a confession in order to speedily apprehend an offender rather than obtaining accurate and reliable account from the suspects, victims or witnesses in order to achieve good quality information during an investigative process could be damaging in the sense that suspects, victims and witnesses especially vulnerable suspects would be prone to be apprehended for offenses which they did not commit. In order to minimize miscarriages of justice good questioning skills must be developed by investigators to attain an accurate and reliable account. Improvement in technology and Forensic evidence has helped in reducing cases of miscarriages of justice. For example the use of DNA which could help in determining the actual suspect, CCTV which shows a recording of what happened at a particular venue at a certain time and also the use of lie detectors which could be used to determine if the suspect is lying.

Investigators should also tend to be sensitive when interviewing a vulnerable suspect, victims and witnesses as this would go a long way in preventing

future miscarriages of justice. Above all, investigative interview has improved over the years through the introduction of different Acts such as The Royal Commission on Criminal Procedure (1978-1981) which brought about wide ranging protections for suspects. The Police and Criminal Evidence Act (PACE) focused on the use of tape recorders when interviewing a suspect with the aim of reducing the violence and verballing of suspects. The PEACE approach brought about preparing and planning an interview before commencement, engage and explain to the witness or suspect or victims the aim of the interview, expectations and the procedure in which the interview would be carried out, the process of account retrieval, maintaining rapport and preventing negative reactions from suspect while bringing the interview to a close and evaluating the product of the interview. Trainings were also organized for investigator in order to enhance questioning skill by using enhanced cognitive interviews, conversation management techniques. Interviewing supervisory policy was also introduced to aid increase in the quality of the information received during the interviews and identifies areas where improvements are required. This study has shown that investigative interviewing is of paramount importance in the legal system and in order to achieve these investigators must constantly improve in their interviewing skills. Improvements in investigative interviewing to be effective and ethical has helped to reduce the cases of miscarriages of justice