

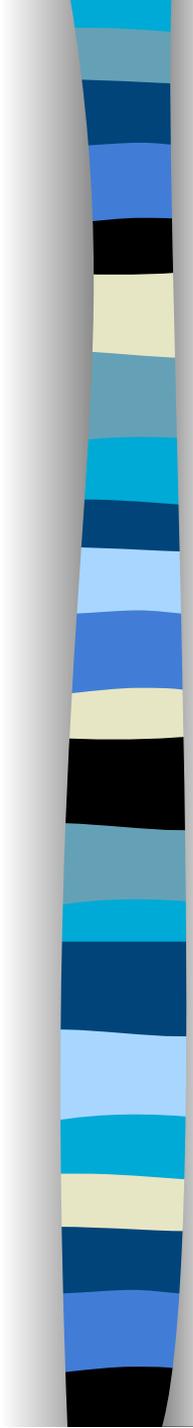
Self Help – Digital Legal Rights for Suspects

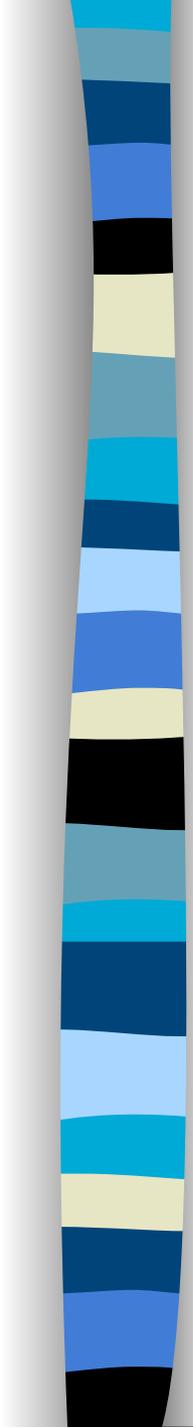
ILAG Conference – Johannesburg, 2017



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Overview

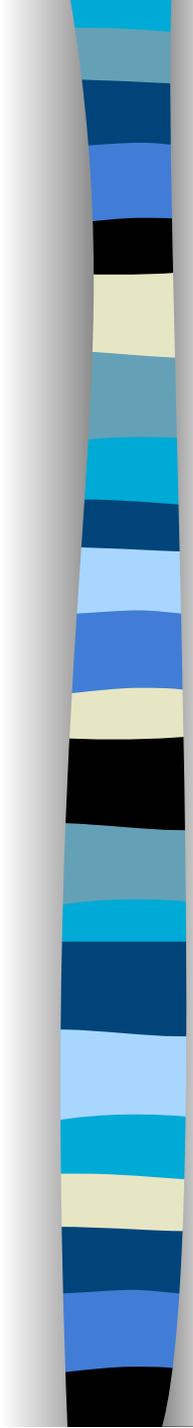
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- Technology and police station legal advice
 - Suspects' legal rights
 - Understanding of legal rights
 - The Police Station App
 - The 'Miranda App'
 - Communicating with children and young people
 - Self-Help and the Police Station App
 - Police station legal advice in six jurisdictions



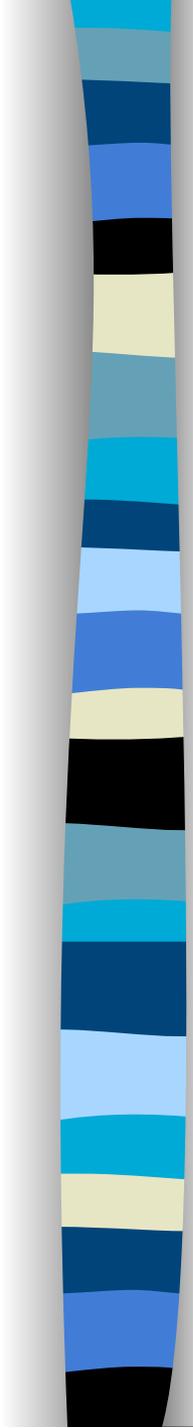
Technology and Police Station Legal Advice

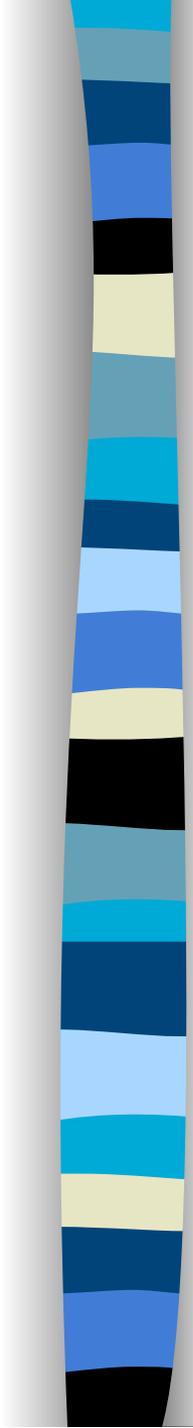
- ‘What is the role for technology in providing effective police station legal advice?’
- ‘Strategic foresight’ is required in looking to the future
- With technology, digital working and video conferencing we need to look forward to see what police station legal advice might look like in the future
- This led to the idea of the ‘Police Station App’ – to communicate to suspects information about their legal rights

Suspects' Legal Rights

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- In E&W the Police and Criminal Evidence Act 1984 (PACE) provides safeguards for all suspects detained by the police
 - This includes access to free and independent legal advice
 - Research has consistently identified problems with the police delivering to suspects' information about their rights
 - The main reason why suspects say they refuse legal advice is because they 'don't need a solicitor'
 - There is also a common perception among suspects that having a solicitor will lead to delays
 - A 'one size fits all' approach is adopted when reading to suspects their legal rights

Understanding legal rights – legal advice

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- There is no routine monitoring of the take-up of legal advice
 - Just under half (45%) of suspects request legal advice and around one-third (36%) receive such advice
 - From the age of 10 years it is the suspect who is required to say whether or not they want a solicitor – but what is a solicitor?
 - Children aged 10 to 13 years were the least likely of all age groups to request advice (39% compared to 45%)
 - There is no mandatory requirement for legal advice, although admissibility of evidence can later be challenged
 - A number of young suspects described the police interview as verbally and physically intimidating



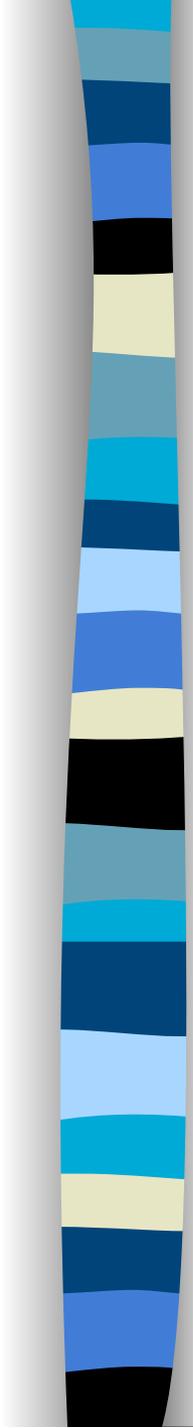
Policy Implications and the Police Station App

- From the outset the project required the support of policy makers, particularly the police
- Lord Carlile QC chairs the steering group – members include National Police Chief’s Council, West Midlands Police, Ministry of Justice, Law Society, the Legal Aid Agency as well as children’s rights groups and academics
- At the first meeting it was agreed that a prototype App should be designed and tested with users
- Horizon Digital Economy Research at UoN has developed a prototype of the App
- This has been tested with University students and from next week will be tested with suspects in police custody
- The next meeting will be held in July 2017 and proposals for a feasibility study will be presented for consideration

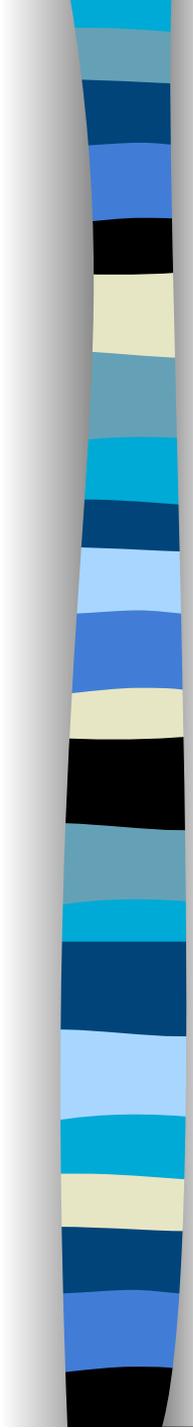
Developing the App

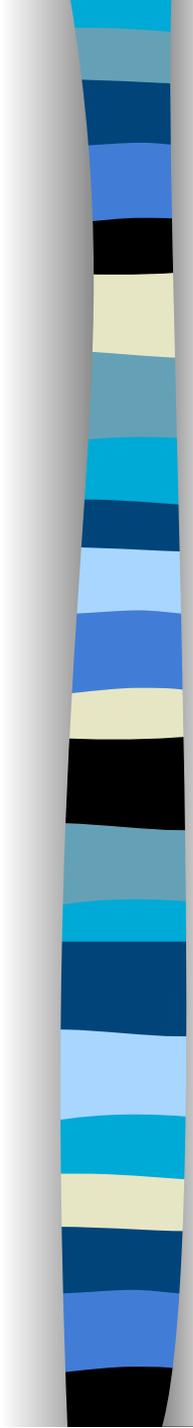
- An iterative process is to be involved in testing out the App –
testing → feedback → refining
- The App has the potential to replace the human interface of the police reading out to suspects their legal rights with digital rights – using hypertext, videos and graphics
- Comprehension tests of key concepts are to be designed to be incorporated into the App
- An assessment of vulnerability can also be undertaken and the findings used to inform increased safeguards
- Obtain feedback from suspects on procedural rights – how they were treated and the quality of decision-making
- Feedback could help to hold the police and defence lawyers to account

The Miranda App

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- Ferguson and Leo (2017) written a paper on the ‘Miranda App’ – Metaphor or Machine
 - Current Miranda practice is broken as it fails to reduce custodial pressure or adequately informs suspects of their constitutional rights
 - The Miranda process is an all-too-human drama – fraught with tension, conflicting incentives, and potential miscommunication
 - Once juveniles talk, they are especially at risk of offering false confessions: in 340 wrongful convictions, 42% of juveniles provided false confessions compared to 13% of adults
 - An App could bring Miranda into the 21st century

Creating the Miranda App

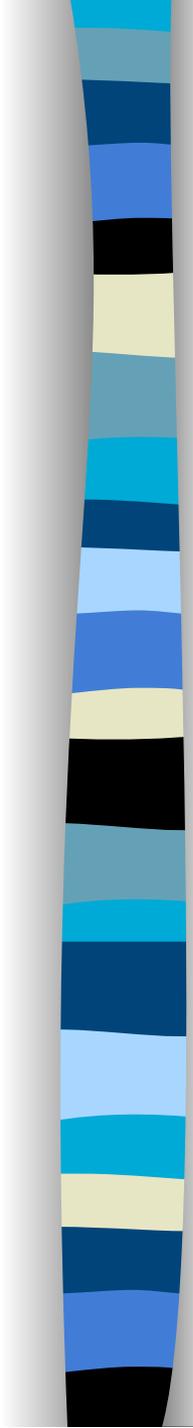
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- Each of Miranda's core warnings would be communicated via interactive digital graphics, animation, video and text – explanations would accompany each word and legal concept
 - Short comprehension tests would be built into the system to evaluate a suspect's general understanding of language and the law- additional clarification would be available to address confusion about terminology, process or rights
 - Assessments could be undertaken as to understanding and mental ability and be used to flag up issues where additional safeguards are required
 - The police would simply give the Miranda App to the suspect and hand off the responsibility to explain or advise suspects to the machine



Communication, Understanding and Language

- The Police Station App can help suspects better understand their legal rights
- Miranda warnings that have been rephrased to increase youth comprehension may, ironically, be even less accessible than the standard warnings
- This is the trouble with the App – drawing from information required under 11-page notice of rights
- Need children and young people to inform the way in which the information is presented and how it is presented
- Cartoons, avatars, videos – gamification – Grand Theft Auto – Public Legal Education Project – talk to children and young people

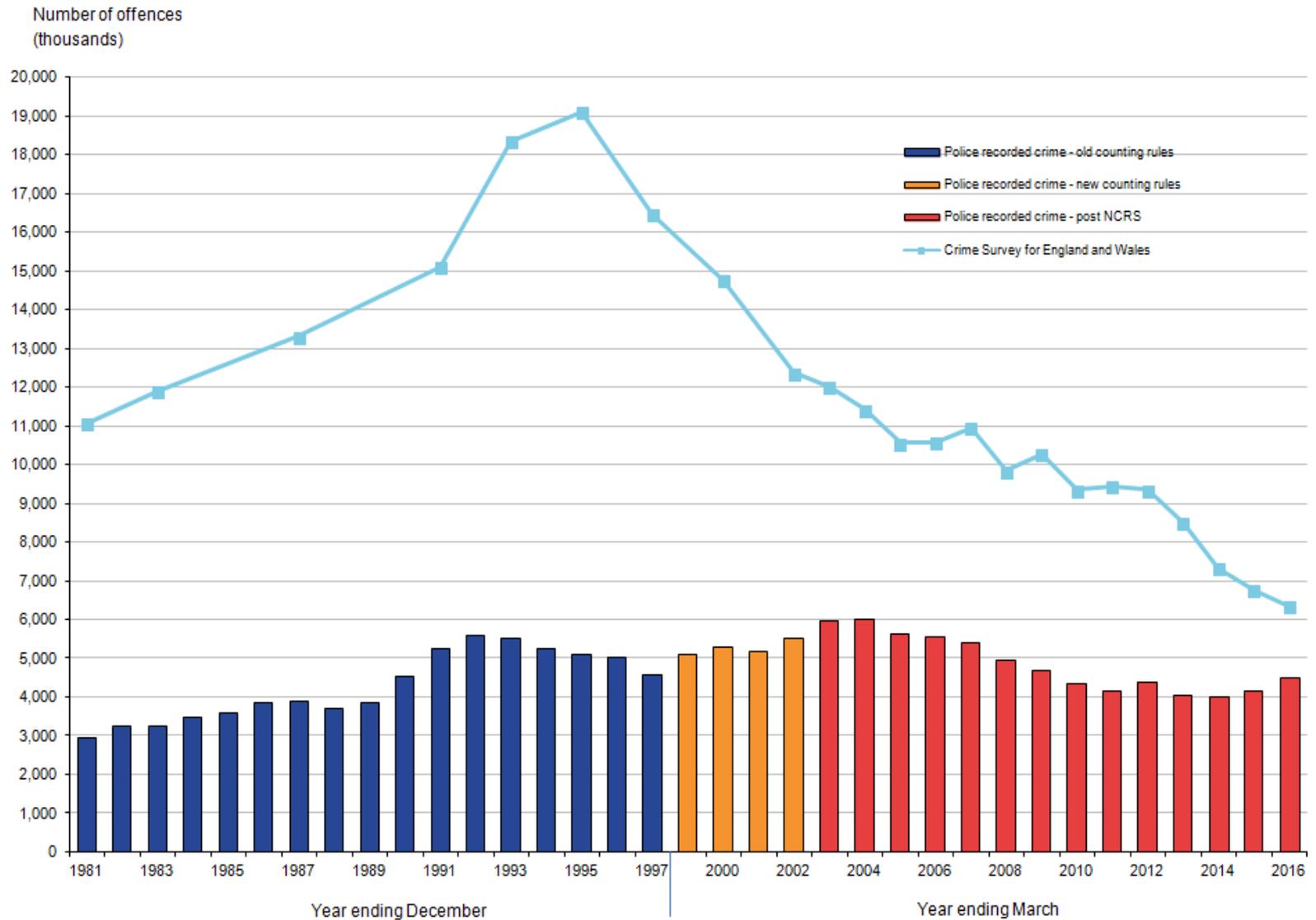
Capturing the Voices of C&YP

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- Professor Dawn Watkins, the University of Leicester - The Adventures with Lex - aimed at 8-11 year olds
 - Data was captured on a wide-range of law related issues – including children’s knowledge and understanding of the age of criminal responsibility (ACR)
 - 64% knew that ACR is 10 – but many tended to associate ACR with imprisonment
 - ‘It isn’t fair when you’re ten years of age you have to go to prison’
 - The police are seen as arbiters of justice – their role is seen to be a punitive one
 - 16.4% of children expressed the view that the police are allowed to hit children, and 23.2% of children were unsure whether or not the police are allowed to hit them

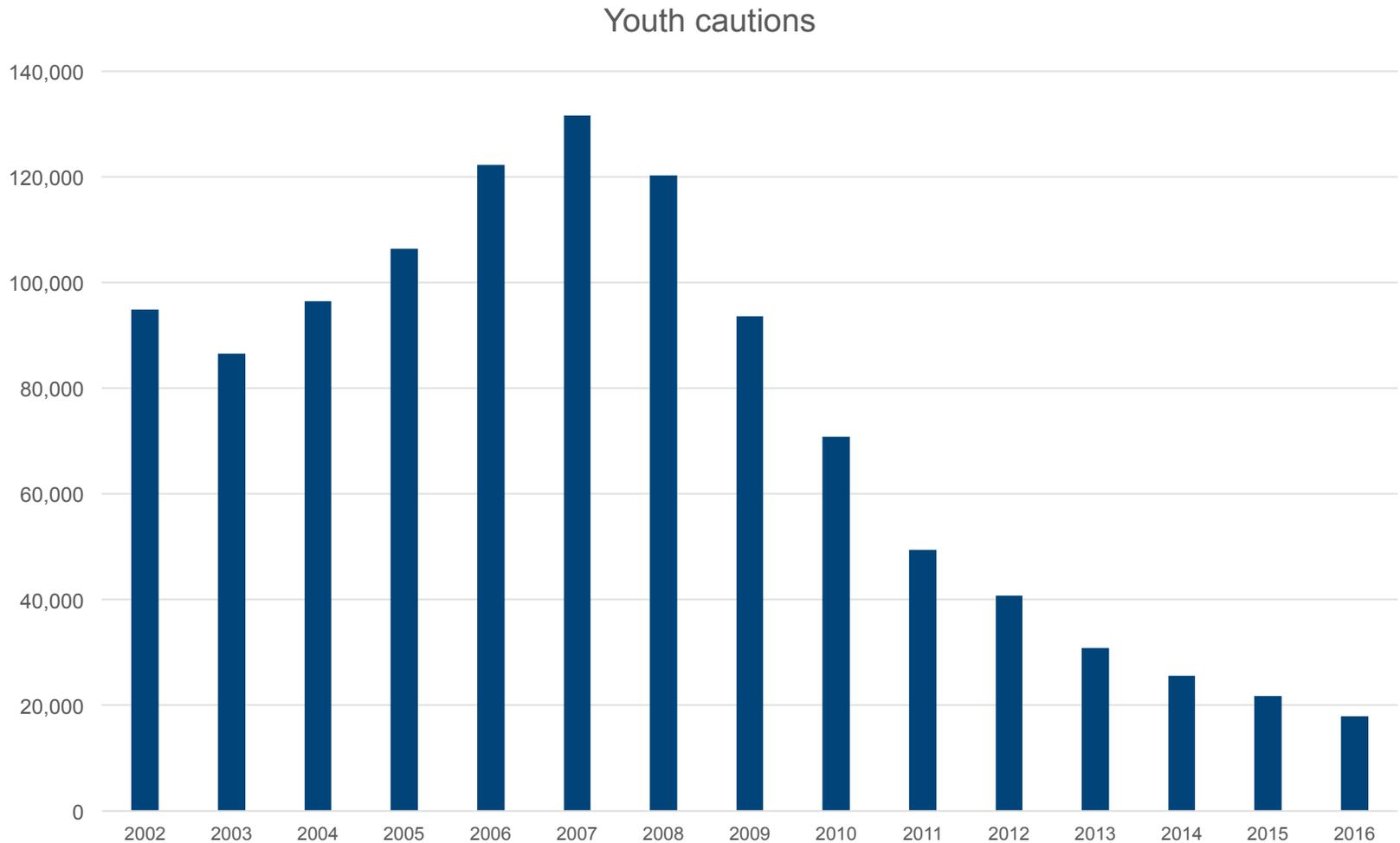
The Police Station App – Self Help

- The Police Station App cannot provide legal advice
- It can provide information to assist people making decisions which have legal consequences if without legal advice
- Out-of-court disposals – cautions – ZSM in the Netherlands
- In E&W a police target significantly increasing the number of out-of-court disposals from 2003-2007
- At a time when victims were reporting fewer crimes many more people, particularly children and young people were cautioned – seen as ‘easy hits’
- “It’s leading to the criminalisation of a section of society who should never have a criminal record”
- Where were the lawyers protecting people from cautions being imposed when the legal criteria was not met?

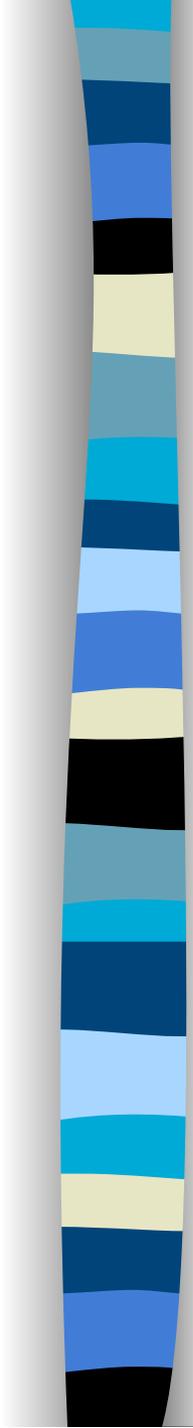
Trends in police recorded crime and CSEW 1981-2014



Young People Given a Youth Caution - 2002 to 2016



■ There was a decrease of 85% in the number of children and young people given a caution when comparing 2016 figures with 2006/07



Key Issues Arising in the Six Jurisdictions

- Defence lawyers and legal aid officials being interviewed in six jurisdictions – work in progress
- Remuneration not sufficient to provide a quality service
- ‘Swings and roundabouts’ seen to be unfair
- In Salduz jurisdictions changes as defence lawyers are allowed to become more interventionist
- In most jurisdictions police station legal advice has to be provided by a qualified lawyer – are there vested interests here or concerns at providing a quality service?
- Support for having a Police Station App but not if it replaces the presence of a lawyer in the police interview