

Scottish police station interview training

SUPRALAT - inspired
Strengthening suspects' rights in pre-trial proceedings through
practice-oriented training for lawyers

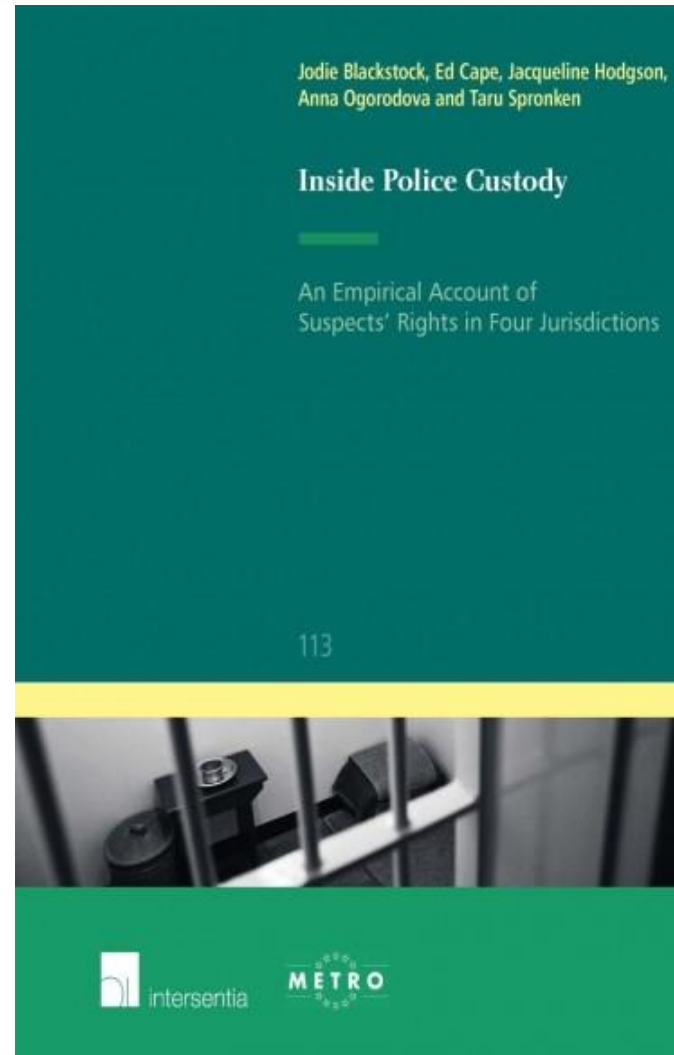


- SUPRALAT Ireland- training of Irish solicitors in a three day course
- Solicitors from Scotland invited to join 2017
- Training adapted by the Law Society of Scotland to a one day course
- Pilot delivered in January 2018 in Scotland
- “Train the Trainer” event in October 2018 – Badged solicitors to deliver training

The Criminal Law Committee has worked on delivery of a webinar on vulnerable accused and looking to undertake training with regard to interpreters.

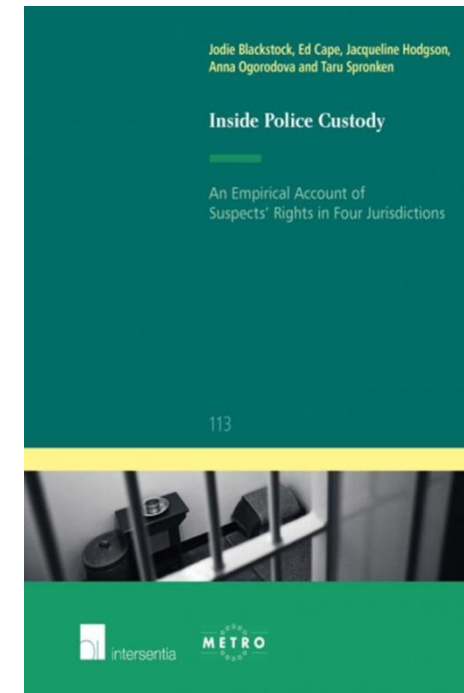
The Criminal law Committee has undertaken four training sessions with Police Scotland in 2019.

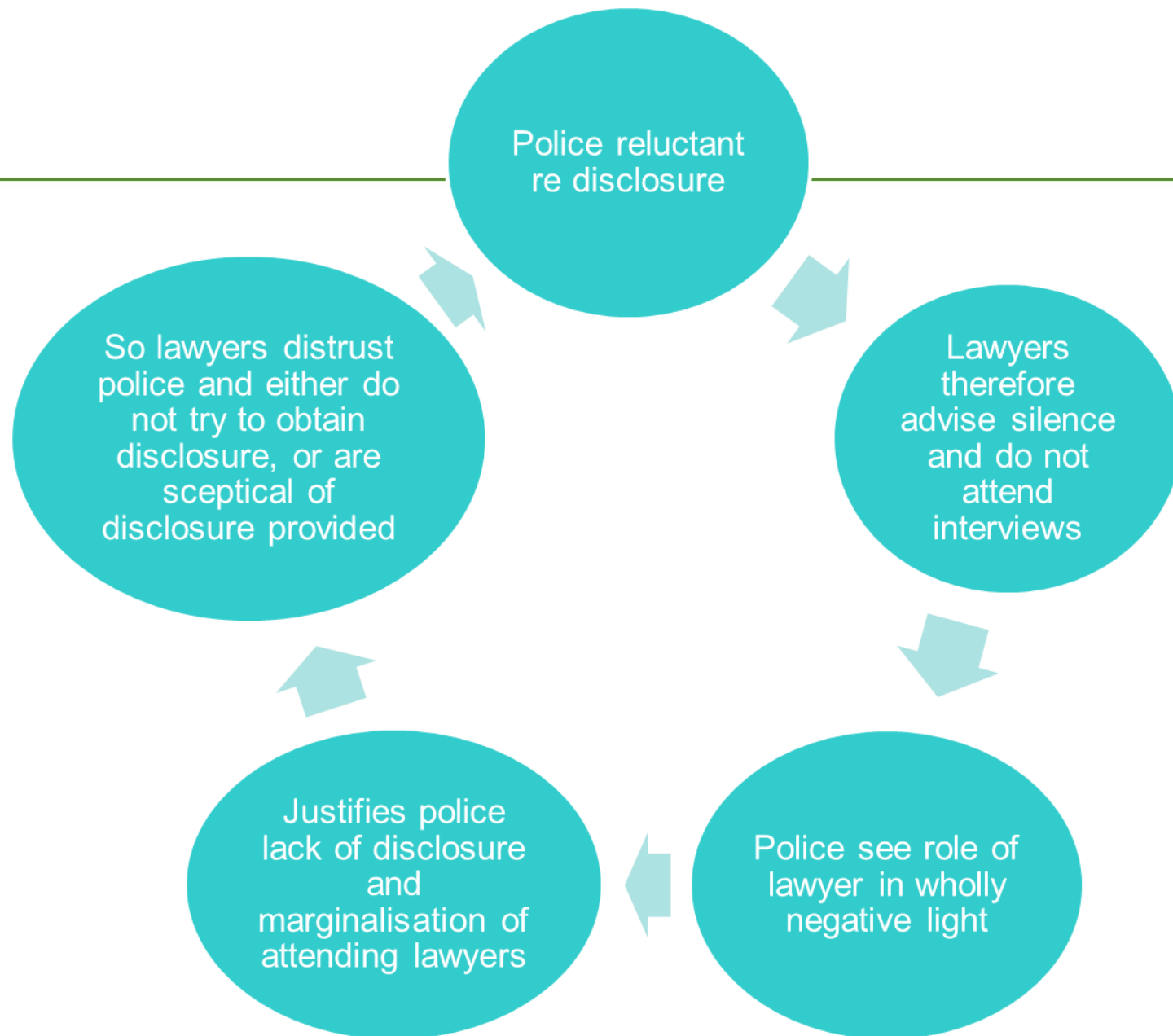
Inside Police Custody



Research shows...

- Inactive lawyers/solicitors at investigative stage
- Little time meeting clients
- Reluctance to attend interview
- Passive when in attendance
- Lawyers/solicitors focused on providing advice about interview— did little about other needs, e.g. welfare, conditions of detention, advice re other investigative issues
- Lack of imagination regarding the role of solicitor/lawyer

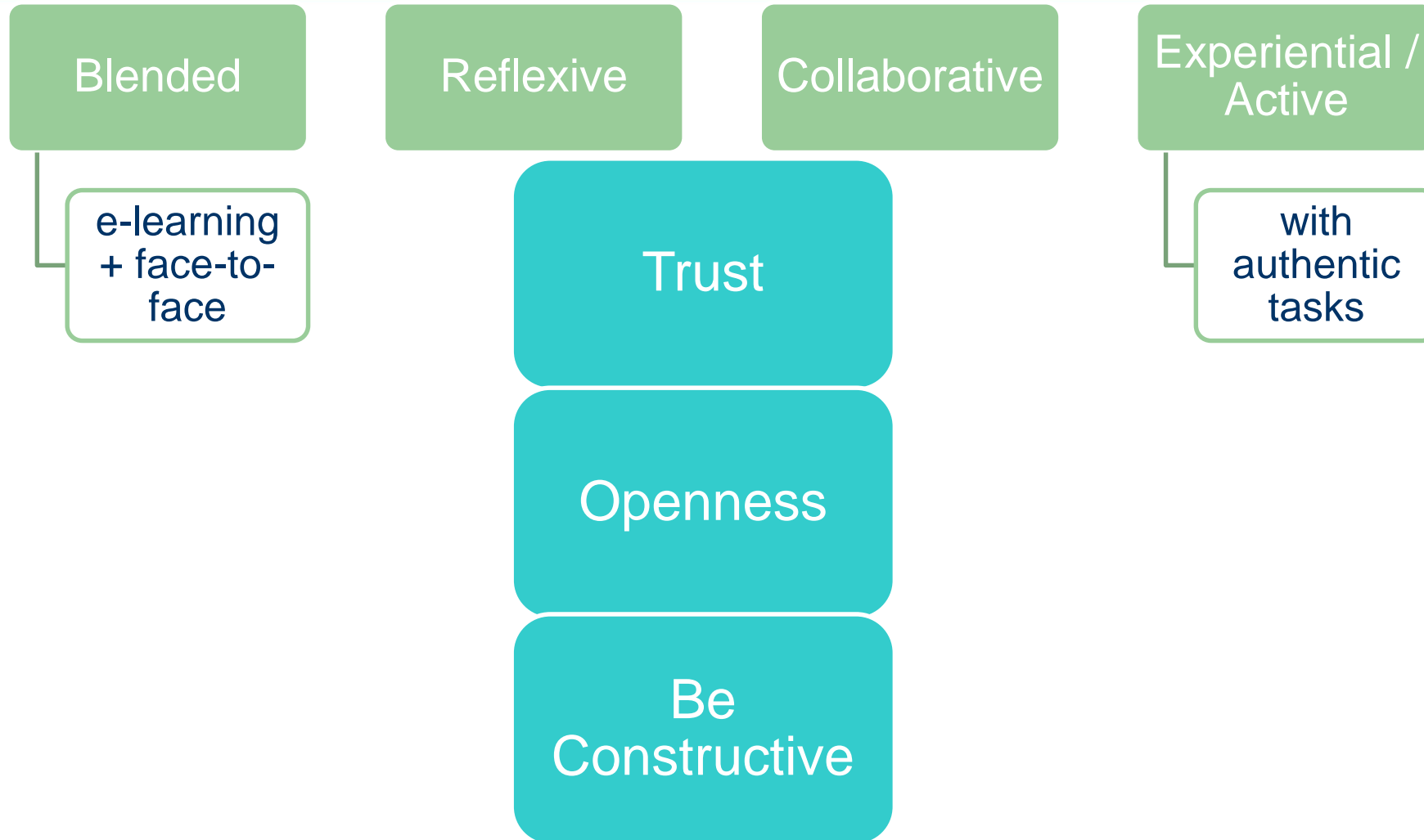




Aims and learning outcomes

- Overall aim: developing a more active and client-centred criminal defence practice
- Also:
 - Promoting a more reflective mindset in criminal defence practitioners
 - So as to enhance decision-making capabilities
 - “How does this align with my professional values?”
 - Raising awareness of the crucial communication skills necessary to effectively defend suspects at police stations
 - Interdisciplinary knowledge base
 - Training communication skills in context
 - Not just *what* you say, but *how* you say it

Pedagogical philosophy



Chatham House Rule

"When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed".

Schedule

9.15 – 11.00

- Session 1 – **Legal Skills/Role of Solicitor**
- Tea/coffee at 11.00

11.15 – 12.45

- Session 2 – **Communication Skills**
- Lunch from 12.45 – 13.15

13.15 – 15.20

- Session 3 – **Consultation Skills**
- Tea/coffee at 15.10

15.30 – 17.00

- Session 4 – **Interview Skills**
- 16.45 – Wrap-up – finished by 17.00 Remember post training questionnaire

Rabbits in the headlights?



hollyanissa

Session one

Legal skills and the role of the solicitor

Introductions

- Name
- Experience
- Favourite thing about being a defence solicitor
- What would you do if you were not a solicitor

How was the pre-course reading?



Role of the lawyer

- Do you think that detained suspects benefit from your presence during interview in a manner not covered by consultation only?
- What is the nature of your role during interrogation?
- What do you think the police view of your role is?

What do you think?

- The best interest of the client is paramount to the solicitor's role, and in principle the solicitor should not be required to take other interests into account
- Solicitors have a professional duty to act with respect and integrity towards other professional actors, including police
- Solicitors should provide moral and human support to their clients in detention, in addition to legal assistance (because often no one else will)

Scenarios for discussion

- Objective: identify motives and parameters of your role, not necessarily provide solutions to problems

First impressions

- The police tell you that they have arrested a suspect who is well-known to them for theft and housebreaking offences. They are being detained on suspicion of housebreaking, having attempted to sell some very expensive jewellery online
 - What is your gut instinct?
 - Does this affect how you speak to the police?
 - How you speak/listen to the detainee?
 - How long you spend advising them?
 - Whether you attend for the interview?
 - Could this harm their defence?

Change of heart

- Your client is mid-forties, suspected of having conned an elderly neighbour out of their (substantial) fortune.
- They deny any wrongdoing and seem composed.
- When you ask questions, you get all the 'right' answers: i.e. they confirm that they understand your advice, their story is consistent and sounds truthful.
- During the police interview, your client suddenly totally agrees with the police, understands their point of view, and their story turns into a *mea culpa*.
- What is going on? And how do you react?

Conflicting commitments

- You are on call on a Friday. You have consulted with your client late in the afternoon. Your client wants you to be present during the interview that will take place the next day (a Saturday), early in the morning. You need to take your child to a rugby match, which starts at 11.00. If all goes according to your expectation, you will be able to do both.
- The interview does not progress as you expected and it will not conclude on time.
- What does this do to you and does this affect your role during the interrogation?

- You meet your client, and they immediately annoy you: they do not listen to you and question your advice.
- How do you deal with this?
 - Do you question your communication skills? Do you try empathy? Do you dig your heels in?
 - Do you draw a line at some point?

Extent of your role

Your client has been detained on suspicion of committing a serious assault. You arrive one hour after their initial arrest. In consultation they deny any wrong-doing but they seem very anxious and unsettled.

They tell you that they are a single parent and that their 3-year-old daughter will need to be picked up from pre-school in an hour's time. They do not want to tell the police about this because they are constantly afraid of their child being taken away, as they were subject to a malicious allegation of neglect previously. They keep asking if you think the police will release them on time to pick the child up.

- What difficulties might any of this cause for your client at interview?
- What do you do?

Interventions and reactions

- During the police interview one officer says “Look at me!” when requesting an answer to his questions.
 - Do you intervene?
- During the police interview where your client is monotonously repeating “no comment” to each question, an officer says “Give us a smile!”
 - Do you intervene?
- During the police interview the investigating officer repeatedly asks the same questions.
 - Do you intervene?
- You *do* intervene and the police officer responds to tell you that “this is my interview and I will carry it out as I see fit”
 - How do you respond?

INTERVENTIONS and reactions

- The police officer says “Your client is not helping themselves; it will make it more difficult for them when the case comes to Court”
 - Do you intervene/respond?
- The officer tells you there will be a three-intervention limit in this interview.
 - How do you react to this?
- The officer says to your client “Your solicitor is only here to make money. The longer the interview and detention goes on the better.”
 - How do you react to this?
- The police officers interviewing in relation to house-breaking suddenly produce samples of drugs found in your client’s home
 - How do you react?
- The police officer tells your client that he is certain that they are lying and in his opinion your client is not to be believed
 - Do you intervene?

What do you think the Core Vales are?



Core values

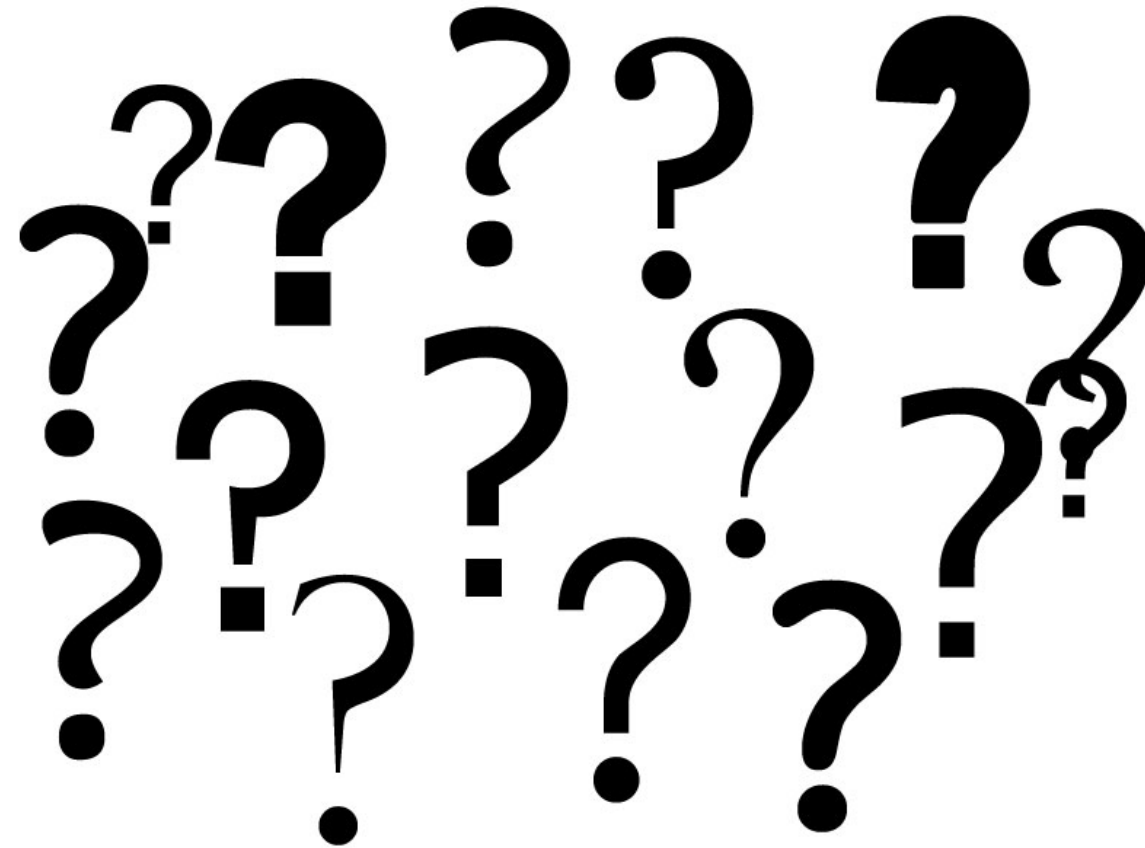
Integrity, Justice, Honesty, Fairness,
Inclusiveness, Social justice, Respect,
Service, Kindness, Patience, Open-
mindedness, Generosity, Faith,
Discipline, Diligence, Compassion,
Growth, Loyalty, Contribution

The Intention

- Developing a more active and client-centred criminal defence practice
- Core values



Mixed statements What do you know?



Section 261ZA

Section 261ZA Statements by accused

(1) Evidence of a statement to which this subsection applies is not inadmissible as evidence of any fact contained in the statement on account of the evidence's being hearsay.

(2) Subsection (1) applies to a statement made by the accused in the course of the accused's being questioned (whether as a suspect or not) by a constable, or another official, investigating an offence.

(3) Subsection (1) does not affect the issue of whether evidence of a statement made by one accused is admissible as evidence in relation to another accused.

Section 261ZA

<https://www.lawscot.org.uk/members/journal/issues/vol-63-issue-05/new-questions-over-statements/>

Right to lawyer directive

- Recital 25

Member States should ensure that suspects or accused persons have the right for their lawyer to be present and participate **effectively** when they are questioned by the police ...

Such participation should be in accordance with any procedures under national law which may regulate the participation of a lawyer during questioning of the suspect ... by the police ... provided that such procedures do not prejudice the **effective exercise and essence of the right** concerned.

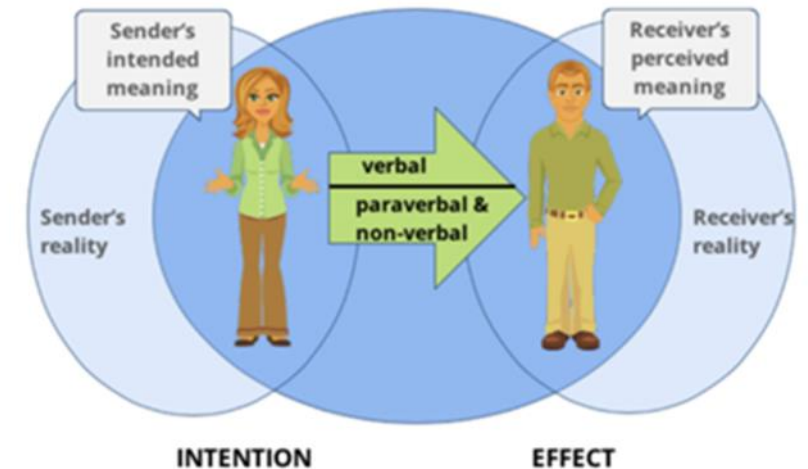
During questioning by the police ...of the suspect ... the lawyer may... **ask questions, request clarification and make statements**, which should be recorded in accordance with national law.

Session two

Communication skills

Communication Skills

- Variation of communication skills in order to provide and receive information.
- General rules in communications:
 - Intention versus effect
 - Open-minded
 - Compatibility (age, gender, culture, appearance etc) No presumptions
 - Being flexible
 - Keep emotions manageable
 - Building rapport / working relationship
 - Be careful with humour



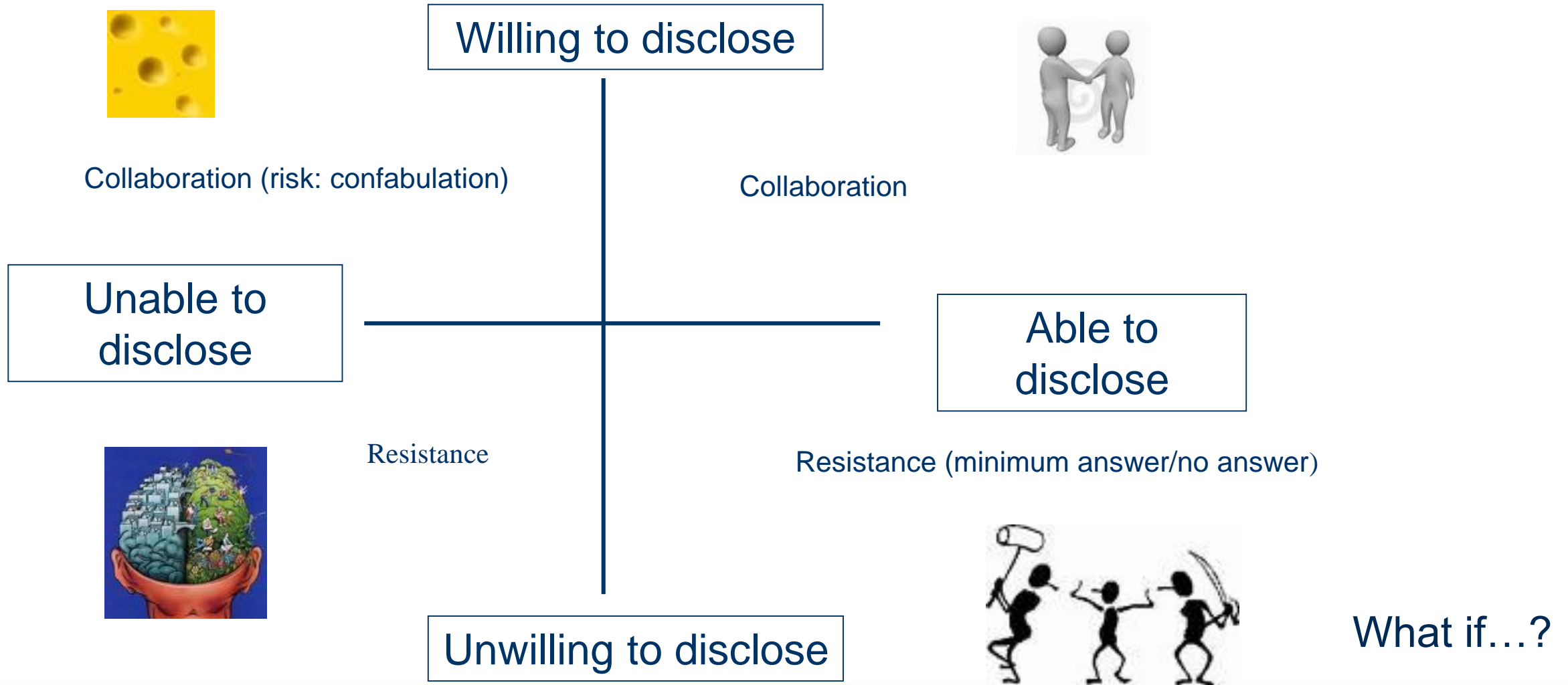
Aim of communication

- In this context:
 - build rapport
 - Create a working relationship
 - Call from station
 - Meet with investigating officer
 - Seek disclosure
 - Speak with duty sergeant
 - Maybe raising difficulties in the detention conditions
 - Meet with client
 - Vulnerable...
 - Represent client's interest during interview

Effective communication

- Providing information through clear communication:
 - Adapted language use
 - Adequate level of information
 - Check level of understanding
 - Ask client to repeat your advices back to you to ensure understanding
 - Solicitor repeat instructions back to client to ensure understanding

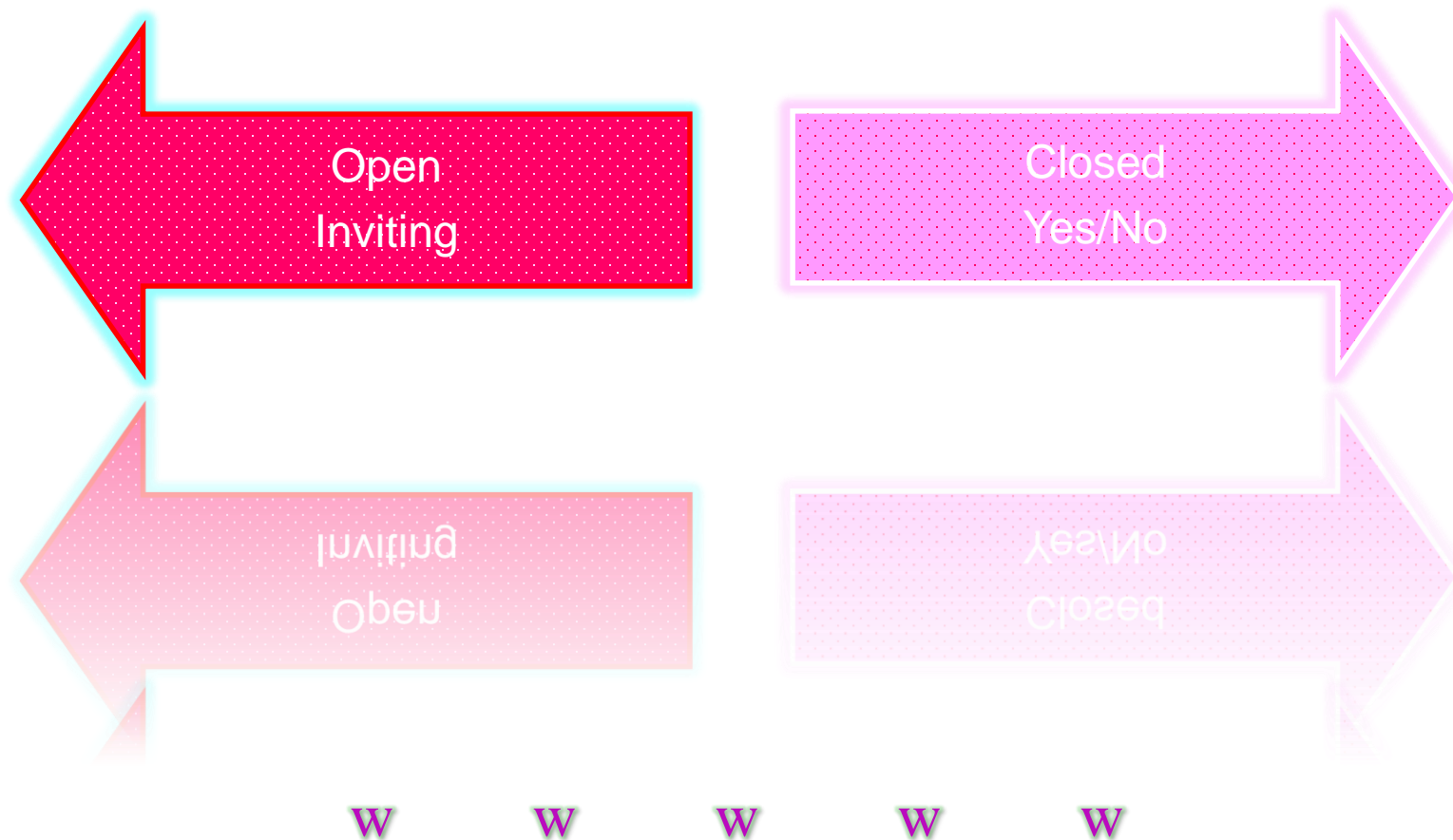
Receiving Information and possible outcomes



Effective communication

- First contact
 - Attention and engagement
 - Not overly-friendly
- Active listening
 - Verbal and non-verbal (not seeming impatient/distracted)
 - Respecting silences
 - Paraphrasing and synthesis
- Empathy
 - Empathy is not the same as sympathy, or approving of behaviour
 - Using other persons frame of reference
- Unconscious bias
 - Happens automatically, outside our awareness or control, making quick judgments or assessments of people and situations

Receiving information: Asking questions



Open questions

- More likely to get a narrative response
- Likely to get fuller instructions
- Feels less like *interrogation*

Exercise 2

- Exercise 2: “Pushover”
- 3 groups: 1 person to watch video, 1 person will ask questions to elicit the story of what happens (as from a witness) and will also summarise, 1 person take a minute of the summarised account, 1 person observe (with specific observation forms) and feedback to large group discussion
- Active listening, open questions, body language and communication skills, checking for understanding meaning...

Summary

- Different from courtroom communication
- Adaptive language
- Rapport-building
- Open questions
- Clarity of instructions and advice
 - Check understanding carefully
- Summarise and synthesise
- Good professional working relationships
- Not just what you say, but *how* you say it

Session three

Consultation

Aim of Consultation

- How long do you usually have for consultation?
- What do you view as the aim of the consultation?
- Is it important to build rapport during the consultation?
- Do you have a particular consultation strategy or approach?
 - Do you make presumptions about the client in adopting a particular approach?

- Assessment of client
- Informing about procedure and rights
- Decision on strategy
- Explain your role
- Preparation for interview

Models of legal counselling

- Lawyer centred
- Client centred
- Collaborative

Consultation and Communication

- You meet with your client for the first time at the police station and are told that you have 20 minutes for consultation, then the police want to start with the interview.
- How do you use your time?
 - Build rapport – is that important for you?
 - Get all the relevant information from your client – by asking open ended questions?
 - Inform of rights / explain how the interview will be conducted and what your role will be during the interview?
 - Decide what advice to give?

Exercise 2: Consultation video

- Observation forms
 - legal choices of the lawyer
 - communication skills of the lawyer
- What would you have done differently?
 - And **WHY?**

Exercise 2: Consultation video

Challenges in consultation

- What is the greatest challenge that you have faced to date in a consultation?
 - How did you deal with this?
 - What skills did you need to deal with this?
 - Why did you deal with it this way?
 - Were there other possible ways to deal with it?

Challenges in consultation

- You meet your client, and they immediately annoys you: they do not listen to you, questions your advice
- How do you deal with this?
 - Do you question your communication skills? Do you try empathy? Do you dig your heels in?
 - Do you draw a line at some point?
- How important is it for you that your client follows your advice?

Dos and do nots

Do	Do not
Denominate behaviour and validate	Disapprove
Ask for explanation	Accuse
	Confront
	Argue
	Label
	Misinterpret
	Give too much or too little guidance

Exercise 3: Consultation role-play

- 3 groups:
 - 1 lawyer
 - 1 client
 - 1 observer
 - 1 discussion leader
- Set up
- Role play
- Feedback and discussion in groups
- Feedback by discussion leaders to the full group

A good consultation
can lay the groundwork
for what happens
during the interview

Session four

Interview skills

Aim of interview

- What is the police aim in the interview?
 - Information-gathering
 - Accusatory model
- What is the client's aim in the interview?
- What is *your* aim in the interview?

Importance of communication skills

- Clearly the police objectives do not always align with yours or those of your client, and conflict may be unavoidable on occasion, but it is important to attempt, from the beginning, to communicate well, and to maintain respect for your individual roles.
- If conflict does arise, try to remain calm and clear, and to remember the importance for your client of your ability to effectively assist your client. It is not about winning an argument or point of principle, it is about effectively defending your client's rights.
- You cannot control how an individual police officer might act, but you can control your own behaviour and you can diffuse conflict by explaining the reasons for your actions or your questioning of their approach on the basis of supporting a collaborative approach to the investigation and protecting your client's legal rights.

Challenging effectively

- Good working relationship with police
 - Mutual respect for professional roles
- acknowledge your understanding of their perspective while at the same time raising your concerns
 - “Stop asking my client the same question, again and again” v “I appreciate that you view this is a relevant question, but my client has declined to answer it on a number of occasions now, so perhaps it might be best to move on.”
- Remain respectful, try to communicate effectively in a manner that will achieve results, rather than being confrontational, which hampers good communication.

Exercise 4: Interview video

- Watch in full group
- Instructions for all participants:
 - If you would intervene, raise your hand and shout “STOP!”
 - Trainer will pause the video and you explain why you would intervene
 - Others can comment on whether or not they would also have intervened
 - Video plays again, and repeat...
- When/why intervene?
- How to intervene effectively

Exercise 4: Interview video

Would you intervene? And why?

- “getting to know you” questions
- Manner in which suspect is addressed by police
- Police officer says “Your client is not helping himself it will make it more difficult for him when the case comes to court”
- Repetitive questions (where client giving no comment)
- Questions which seem irrelevant
- Questions about family members (and what they might think of the alleged offending, for example)
- Questions relating to undisclosed evidence in inference-drawing context
- Police officer says “Look at me!” when requesting an answer to questions

Exercise 5: interview role-play

- 2 groups
 - Four solicitors (to be altered every 10 minutes)
 - One client
 - One police officer
- All other participants observe (observation sheets)

Summary

- You can be an active lawyer, without necessarily being overly-interventionist at interview
- Clients do feel the value of your presence
- Communication skills are extremely important, as is the ability to remain calm in the pressurised environment of the police station

Conclusion

- Thank You!
- And **Post-Its!**
 - Your main “take home” message(s) from the training today
 - Any feedback

Thank you for attending

Please return your name badge to registration