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**AN EXPLORATORY STUDY
ON THE ROLE OF SCHOOL
EDUCATION IN INFORMING
CHILDREN ABOUT THE AGE
OF CRIMINAL
RESPONSIBILITY IN
ENGLAND AND WALES: A
CASE STUDY IN NORTH-
EAST ENGLAND**

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PhD

2022

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IN INFORMING CHILDREN ABOUT THE AGE OF CRIMINAL
RESPONSIBILITY IN ENGLAND AND WALES: A CASE STUDY IN
NORTH-EAST ENGLAND**

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University at Newcastle for the degree of Doctor of Philosophy*

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Abstract

This thesis takes a novel approach to critiquing the age of criminal responsibility in England & Wales by evaluating whether teaching practices in schools educate children on this responsibility, before and after reaching the minimum age of ten. It aims to critique the law by questioning whether children, regardless of age, can be held to such a legal standard, without receiving the necessary exposure to such information through mainstream curriculum subjects. To explore this, interviews were conducted with a sample of teachers who teach children between the age of 7-14 in schools, around the North-East of England. These interviews critically explored the topics and teaching practices presented by teachers in relation to the age of criminal responsibility. The curriculum content as discussed by teachers was investigated by conducting a document analysis of the key curriculum documents on subjects such as Personal Social Health Economic Education, British Values, Citizenship, Religious Education, and Children's Human Rights Education. The data collected was used to explore the role of the education system in teaching children about the age of criminal responsibility and to examine the extent to which it prepares them for this responsibility as seen with other minimum age limits. This study aims to highlight how the national and school curriculum provides limited education to children on the age of criminal responsibility. Therefore, this thesis questions whether it is fair for children to be held criminally responsible at the age of ten, without being given the opportunity to develop their knowledge and understanding of the law through education.

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List of Abbreviations

- ACR** – Age of Criminal Responsibility
- ACT** – Associate of Citizenship Teaching
- BAME** – Black, Asian & Minority Ethnic
- BV** – British Values
- CRC** – Convention on the Rights of the Child
- CRE** – Children’s Rights Education
- DfE** – Department for Education
- FGM** – Female Genital Mutilation
- FSM** – Free School Meals
- FTE** – First-time Entrants
- HE** – Health Education
- HRE** – Human Rights Education
- NATRE** – National Association of Teachers of Religious Education
- NC** – National Curriculum
- PSHE** – Personal, Social, and Health Education
- RE** – Religious Education
- RLE** – Relationship Education
- RQ** – Research Question
- RRSA** – The Rights Respecting Schools Award
- RSE** – Relationships & Sex Education
- RSHE** – Relationship, Health & Sex Education
- SACRE** – Standing Advisory Council on Religious Education
- SMSC** – Spiritual, Moral, Social & Cultural
- UK** – United Kingdom
- UN** – United Nations
- UNICEF** – United Nations International Children’s Emergency Fund
- YJB** – Youth Justice Board
- YJS** – Youth Justice System

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Declaration

I declare that the work contained in this thesis has not been submitted for any other award and that it is all my own work. I also confirm that this work fully acknowledges opinions, ideas and contributions from the work of others.

Any ethical clearance for the research presented in this thesis has been approved. Approval has been sought and granted by the Faculty Ethics Committee from 23/09/2019 to 31/05/2021.

I declare that the Word Count of this Thesis is 88,094 words.

Name: Malvika U Unnithan

Signature:

Date: 28/03/2022

Chapter One: Introduction

1.1 Overview of PhD

Since 1963, the minimum age of criminal responsibility (ACR) in England and Wales has been ten, and it remains unchanged to date. With this being significantly lower than the ACR in many countries around the world¹, there have been numerous calls for it to be raised. Research conducted in many different disciplines, including law, criminology, and neuroscience, have presented a wide variety of reasons why the ACR should be raised. However, the government has continued to maintain its position that children know right from wrong and can take responsibility for their actions under the law. One of the key reasons cited in support of this has been the provision of compulsory education to all children. This research aims to explore the role of school education in informing children about the ACR in England and Wales and examines the extent to which compulsory education prepares children between the age of seven to fourteen for such a responsibility. The first section of this chapter introduces the ACR and the issues around it, thus setting up the context of the research problem. Having established this, the gap identified in the literature will be explained, followed by an outline of my research aims, objectives and the questions used to meet them. Following that, Section 1.5 will highlight the significance of my research and the contribution it makes to this area of research before concluding with an overview of the structure of my thesis, where the purpose of each chapter will be explained.

1.2 Background to the Research Problem – the Low ACR

The ACR is the lowest age at which a young person is held criminally responsible and in England and Wales it is set at the age of ten.² This is

¹ Some examples include the ACR being set at age of twelve in Scotland, Canada and Netherlands, the age of fourteen in Germany, China, Romania, and sixteen in Poland, Argentina and Spain. For more examples, please see Table 2.1.

² Section 16 Children and Young Persons Act 1963

significantly lower than the average ACR in Europe, which is fourteen.³ The United Nations Convention on the Rights of the Child (CRC) currently recommends that the ACR in any country should not be lower than fourteen,⁴ and should be in line with other significant ages at which children obtain rights or are held responsible for their actions.⁵ When other arbitrary age limits within the English legal system are considered, there is a clear disparity between them and the ACR. For example, the age of consent for sexual activity is sixteen, the age at which a person can get a tattoo is eighteen, and the legal age to purchase alcohol is eighteen.⁶ These age limits seem to take a more protective approach based on children's evolving capacities.⁷ A wide range of inter-disciplinary research on the biological, neurological, and sociological development of children indicates that young people at the age of ten may not have the capacity to understand the consequences of their actions and the legal implications that follow it.⁸ Research on brain development in neuroscience and developmental psychology establishes that generally children aged eleven to thirteen have an underdeveloped capacity for abstract reasoning⁹ and have different rates for emotional, intellectual and mental maturity. Such factors have a significant effect on children's ability to make decisions and control their impulses.¹⁰ In addition to these issues with the current ACR, it has also been

³ Ido Weijers, 'The Minimum Age of Criminal Responsibility in Continental Europe has a Solid Rational Base' (2016) *Northern Ireland Quarterly*, 67 (3).

⁴ United Nations Committee on the Rights of the Child, *General Comment No.24: Children's Rights in the Child Justice System* (United Nations, 2019), para.39.

⁵ United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (the Beijing Rules) Rule 17.

⁶ Barry Goldson, 'Unsafe, Unjust and Harmful to Wider Society': Grounds for Raising the Minimum Age of Criminal Responsibility in England And Wales' (2013) 13 *Youth Justice*.

⁷ Rosalin Dixon and Martha Nussbaum, 'Children's Rights and a Capabilities Approach: The Question of Special Priority' (2012) 97 *Cornell Law Review* 549; See Raymond Arthur, 'Exploring childhood, criminal responsibility and the evolving capacities of the child: the age of criminal responsibility in England and Wales', (2016) *Northern Ireland Quarterly*, 67 (3).

⁸ Enys Delmage, 'The Minimum Age of Criminal Responsibility: A Medico-Legal Perspective' (2013) 13 *Youth Justice*; Hannah Wishart, 'Young Minds, Old Legal Problems' (2018) 82 *The Journal of Criminal Law*; Claire Bryan-Hancock and Sharon Casey, 'Young People and The Justice System: Consideration of Maturity in Criminal Responsibility' (2011) 18 *Psychiatry, Psychology and Law*.

⁹ Tim Bateman, 'Keeping Up (Tough) Appearances: The Age of Criminal Responsibility' (2015) 102 *Criminal Justice Matters*.

¹⁰ Royal Society, *Brain Waves Module 4: Neuroscience and the law*, December 2011, page 13.

found that a disproportionate number of children from working class and Black, Asian, Minority Ethnic (BAME) backgrounds are being drawn into the youth justice system (YJS).¹¹ This indicates that the ACR criminalises social need, thereby affecting children from a young age.¹² After nearly sixty years, despite numerous efforts made by academics, organisations, practitioners, and some politicians,¹³ the ACR remains the same.

Since 1998, when section 34 of the Crime and Disorder Act¹⁴ abolished the doctrine of *doli incapax* (defined as “incapable of guilt” in Latin)¹⁵, the government have maintained the view that the current ACR in England and Wales is appropriate as children “aged ten are able to differentiate between bad behaviour and serious wrongdoing”.¹⁶ The provision of compulsory education is one of the main reasons for this view and it contributed to the abolition of the rebuttable presumption that children below the age of fourteen are *doli incapax*.¹⁷ The first and more prominent of the two social arguments made by the court was that the presumption was established at a time when children did not have access to free, compulsory education and they also claimed that it was a time “when children did not grow up as quickly as they do nowadays”.¹⁸ Consequently, the view held by the government that children at the age of ten understand the seriousness and wrongful nature of their actions seems to be supported by the notion that compulsory education contributes to the development of such an

¹¹ Tim Bateman, 'The State of Youth Justice 2020: An Overview of Trends and Developments' (National Association for Youth Justice 2020) <<https://thenayj.org.uk/cmsAdmin/uploads/state-of-youth-justice-2020-final-sep20.pdf>> accessed 17 June 2021.

¹² Barry Goldson, 'Unsafe, Unjust and Harmful to Wider Society': Grounds for Raising the Minimum Age of Criminal Responsibility In England And Wales' (2013) 13 Youth Justice.

¹³ Age of Criminal Responsibility Bill [2013-14]; Age of Criminal Responsibility Bill [2015-16]; Age of Criminal Responsibility Bill [HL]' (*UK Parliament*, 2022).

¹⁴ Crime and Disorder Act, s34

¹⁵ Defined as 'incapable of guilt' and this applied to children under 10 and it was a rebuttable presumption for children between the age of 10-14. Raymond Arthur, *Young Offenders and The Law* (Routledge 2010) pg 48-51.

¹⁶ United Nations Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention* (Fifth Periodic Reports of States Parties due in 2014) (Geneva, 2015) Para. 248.

¹⁷ *C (a minor) v DPP* [1994] 3 All ER 190

¹⁸ *Ibid.*

understanding. Despite the strong implications of such claims, there has been little evidence presented in support of it.¹⁹

1.3 The Research Gap

As it stands, the current ACR attempts to set a standard and warn children by holding them criminally responsible from the age of ten. It acts as an “educator whose effects are deliberate and intentional”²⁰ by educating children found to be in conflict with the law through the rigours of the criminal justice system. The appropriateness of this type of education can be questioned as it has been found that contact with the criminal justice system has generally damaging effects on children.²¹ Hence, using the justice system in the role of an educator has worrying implications. On the other hand, the educative function of schools in relation to the ACR, as mentioned in the case of *C v DPP*²² and the pivotal *No More Excuses* report,²³ is one that is claimed to develop children’s understanding of right from wrong, therefore providing a justification for holding them criminally responsible at the age of ten. The validity of this claim, however, has not been challenged from an educational perspective. My review of the literature suggests that most arguments calling for the ACR to be raised have been focused on proving that the ACR is too low, rather than critiquing the reasoning behind the lack of change in the law, thus, revealing a gap in the research. This also presents a novel approach to evaluating the appropriateness of the current ACR.

¹⁹ The Northern Ireland Legal Quarterly Special Issue: The Age of Criminal Responsibility Vol. 67 No. 3 (2016) Autumn, and Youth Justice Special Issue: The Minimum Age of Criminal Responsibility: Clinical, Criminological/Sociological, Developmental and Legal Perspectives Vol. 13 No. 2, August 2013 are collections of journal articles on the ACR from world-leading youth justice scholars however, none of these articles were found to deal with the issues examined in this thesis.

²⁰ Brian Burge-Hendrix, 'The Educative Function of Law', *Law and Philosophy* (Oxford University Press 2007).

²¹ Jon Gunnar Bernburg and Marvin D. Krohn, 'Labelling, Life Chances, and Adult Crime: The Direct and Indirect Effects of Official Intervention In Adolescence on Crime in Early Adulthood' (2003) 41 *Criminology*. 1287-1318.

²² *C (A Minor) v DPP* [1994] 3 All ER 190

²³ Home Office, *No More Excuses – A New Approach to Tackling Youth Crime in England and Wales* (White Paper, Cm 3809, 1997).

1.4 Research Aims and Questions

To address the gap in the literature, this thesis explores the role of compulsory education in informing²⁴ children about the ACR. The aim of this research was to investigate what children are taught in schools about the ACR and examine the extent to which it prepares them for being held criminally responsible at the age of ten. To fulfil these aims, the objectives of this research were interpreted and enacted by three key research questions outlined below:

- *RQ1*: Does the current provision of compulsory education inform children aged 7-14 about the ACR?
- *RQ2*: To what extent do other topics within the basic curriculum contribute to children's understanding of criminal responsibility?
- *RQ3*: Having examined the extent to which schools educate young people about their potential for criminal responsibility, is it still valid to argue that the age of ten is rational by virtue of compulsory education?

These questions were used to guide my research process during both the literature review and the data collection process. I chose to conduct my case study in North-East England where I carried out semi-structured interviews with school teachers who work with children aged 7-14. The purpose of this was to learn about teachers' experiences in practice of what children in this age group are taught about the ACR in this region of England. In addition, document analysis was also carried out as part of this study to find out what children are taught on a national level in compulsory education and help better understand the curriculum context within which teachers work. Key curriculum documents and programmes of study from all subjects that could contain content about or related to the criminal responsibility were analysed to uncover what is included within the basic curriculum in relation to the ACR.

²⁴ The use of the word "inform" was to keep the term intentionally broad so that it can include both making children aware of the ACR and also, developing their understanding of criminal responsibility, by teaching them about what it means and how it applies to them.

Addressing the aforementioned research aims and questions, moves the debate on raising the ACR away from the legal, criminological, psychological, and neuroscientific arguments that have been previously discussed, and into the realm of education. Hence, an exploratory approach was taken to conduct a preliminary investigation examining the extent to which school education develops children's ability to be held criminally responsible at an age much lower than the minimum standards.

1.5 The Significance of my Contribution

The ACR is a contentious topic that has been researched widely over the years. It can be questioned as to why another study into this area is required when there is sufficient evidence showing that it is too low and should be raised. Furthermore, there has been a notable downward trend in children who were cautioned or sentenced, first-time entrants (FTE) and the number of children in custody,²⁵ with children between ten and fourteen constituting only 24% of all FTEs, therefore suggesting that fewer children around the ACR are affected by the law.²⁶ Although, this was something that I considered when I started my research, I did not feel satisfied with the lack of change and more prominently, with the reasoning supporting it. Since the argument that children understand right from wrong has been challenged with evidence on children's evolving capacities and brain development, I decided to take a novel approach to this claim by questioning the validity of the reasoning used to support it, namely, the role of education in informing children about the ACR.

My research starts by investigating the educative function of the law on criminal responsibility and how the education system supports this function as they do with other legal responsibilities, such as the age of consent. With the recent emphasis that has been placed on mandatory Relationship, Sex

²⁵ Tim Bateman, 'The State of Youth Justice 2020: An Overview of Trends and Developments' (National Association for Youth Justice 2020) <<https://thenayj.org.uk/cmsAdmin/uploads/state-of-youth-justice-2020-final-sep20.pdf>> accessed 17 June 2021.

²⁶ Ibid.

and Health Education (RSHE), children between the age of eleven and fourteen are being taught about the law on consent, and criminal offences related to it, as part of this subject.²⁷ The rationale behind introducing this content into the school curriculum was to reduce the impact of risky and exploitative sexual behaviours which are known to have harmful effects on individuals and society in general.²⁸ When drawing a comparison between the law on consent and the ACR, a similar rationale can be used in favour of educating children about criminal responsibility as knowledge of the ACR could act as a protective layer through awareness of the law. It would make children more conscious of the impact of law on their lives and as a result could contribute to their understanding of how to be law-abiding citizens. Since the abolition of the *doli incapax* doctrine, there are no defences available for children,²⁹ hence exploring how they are taught and informed of their legal responsibilities as citizens of England and Wales is important; their awareness of what is expected of them by the law may be the only defence they have. Without equipping children appropriately with such knowledge, the government's justification that children know right from wrong would be weakened, therefore bringing into question the appropriateness of the current ACR.

This study also presents an argument for how education can help to reduce the effects of a low ACR on the most vulnerable children in our society. Despite the downward trend in youth offending statistics, there have been other factors that have raised concerns about children's well-being and their vulnerability to criminal activity. With the recent Covid-19 pandemic and increasing living costs, many families are predicted to experience financial struggles resulting in an increase in child poverty levels.³⁰ An indicator of this is the increasing number of children eligible for Free School Meals

²⁷ 'Relationships And Sex Education (RSE) And Health Education' (GOV.UK, 2019) <<https://www.gov.uk/government/publications/relationships-education-relationships-and-sex-education-rse-and-health-education>> accessed 20 October 2021.

²⁸ *ibid*

²⁹ Section 34 Crime and Disorder Act 1998

³⁰ Joseph Rowntree Foundation, 'UK Poverty 2022: The Essential Guide To Understanding Poverty In The UK' (Joseph Rowntree Foundation 2022) <<https://www.jrf.org.uk/report/uk-poverty-2022>> accessed 25 January 2022.

(FSM) with the January 2021 statistics showing that this represents one-fifth of all school children.³¹ It has been noted that children living in economically deprived areas are more likely to come into contact with illegal behaviour and therefore, experience more criminal activity and victimisation.³² As a consequence, children from these areas from working-class backgrounds, including children in care³³ and those from BAME backgrounds, are being disproportionately drawn into the YJS.³⁴ This inequality is further compounded by differential treatment between children from middle-class and working-class backgrounds for similar behaviour, as the decisions made by youth justice agencies have been known to be influenced by considerations which benefit children with “greater access to social and economic capital”.³⁵

With the increasing rate of children in care, those living in poverty and BAME children in need, there should be concerns about the greater risk of child offending as a result of these circumstances. Instead of considering children’s responses to their circumstances as inevitable, by placing the responsibility on them for their inability to resist risk factors, social need factors such as deprivation, unemployment, class, race, and poverty should be acknowledged, especially within schools.³⁶ With children from difficult backgrounds being most vulnerable to offending behaviour, the current

³¹ 'Schools, Pupils and Their Characteristics, Academic Year 2020/21' (*Explore-education-statistics.service.gov.uk*, 2022) <<https://explore-education-statistics.service.gov.uk/find-statistics/school-pupils-and-their-characteristics>> accessed 7 January 2022.

³² Ellie Bates, 'Does Place Matter?' (2015) 3 *Scottish Justice Matters* <http://scottishjusticematters.com/wp-content/uploads/SJM_3-3_November2015-Complete.pdf> accessed 30 August 2021.

³³ Department for Education, 'Children Looked After in England Including Adoption: 2020 To 2021' (National Statistics 2021) <<https://explore-education-statistics.service.gov.uk/find-statistics/children-looked-after-in-england-including-adoptions/2021>> accessed 14 January 2022.

- Children who are looked after were found to be significantly more likely than the general population to receive a formal youth justice disposal.

³⁴ Tim Bateman, 'The State of Youth Justice 2020: An Overview Of Trends And Developments' (National Association for Youth Justice 2020) <<https://thenayj.org.uk/cmsAdmin/uploads/state-of-youth-justice-2020-final-sep20.pdf>> accessed 17 June 2021.

³⁵ *Ibid.*

³⁶ Stephen Case and Kevin Haines, 'Risk Management and Early Intervention: A Critical Analysis', *Youth crime and justice* (2nd edn, Sage 2015) pg 100-119.

ACR seems to criminalise social need from the young age of ten.³⁷ Therefore, alternative solutions need to be considered especially from an educational context.

Therefore, my original contribution is an investigation into compulsory education by exploring what schools teach children about the ACR and the extent to which it helps facilitate children's understanding of criminal responsibility. By investigating this, one of the main reasons for effectively lowering the ACR through the abolition of *doli incapax* – compulsory education – will be critiqued. It will also review the role of school education in educating and empowering children with knowledge of the ACR so that they can act with awareness.

1.6 Structure of the Thesis

This thesis is organised into six chapters including the introduction and the conclusion.

Chapter two covers the literature review of this thesis and is split into two main sections. The first half of this chapter critically discusses the ACR, the meaning of criminal responsibility, and the main points outlining why the ACR in England and Wales is too low. This provides an overview of the arguments that have been put forward so far in support of raising the ACR, whilst also highlighting the gap found in the literature. At the mid-point of this chapter, the gap found is explained as the lack of research around how compulsory education informs children about criminal responsibility. This leads to the second half of this chapter where an outline of compulsory education in England and Wales is provided along with how it relates to children's right to education. The rest of this section is an overview of the National Curriculum (NC) and the subjects relevant to the ACR. General information about each of these subjects and its relevance to the ACR is mentioned here. This chapter ends by evaluating the priorities of the basic

³⁷ Barry Goldson, 'Unsafe, Unjust and Harmful to Wider Society': Grounds for Raising the Minimum Age of Criminal Responsibility In England And Wales' (2013) 13 Youth Justice.

curriculum and critiquing the hierarchy that exists amongst the subjects. The impact of this on teaching the ACR is then examined.

Chapter three provides an overview of the research processes and methods employed during my investigation into the role of education in informing children about the ACR. Here, I start by introducing the study and my background as the researcher carrying it out. This helps to set the scene of the investigation and explains the narrative tone of the chapter. Details about the decisions made during the research will also be given in relation to the research setting, sample group, sampling strategy used, and the methods used to collect the primary data. The two main methods used, namely semi-structured interviews with teachers and document analysis, will be outlined in a step-by-step manner, with each section ending with how the data was analysed.

Chapter four presents my findings from the data collected during the study, starting with the document analysis. The document analysis goes through each subject and reviews whether the ACR is included in the standardised curriculum provided. Where there were no materials on the ACR found, other topics that could contribute to children's understanding of the ACR are presented. The second part of this chapter focuses on the interview data by analysing teachers' experiences and perspectives on teaching the ACR.

Chapter five looks more deeply at the findings and relates them to relevant aspects of the literature review outlined in chapter two. It will also highlight the extent to which the current provision of compulsory education acknowledges and supports children's understanding of the ACR. Furthermore, the data found as part of this exploratory study is discussed in relation to arguments in favour of raising the ACR and puts forward a new one after considering the role of education in relation to it. This chapter concludes with recommendations on how a more child-centric and holistic approach to the ACR can be taken from an educational perspective.

Chapter six is the final chapter of this thesis where the conclusions from my study are outlined. This is followed by the original contributions to knowledge that are offered from my preliminary investigation into a novel approach to critiquing the ACR. It also presents limitations of the study and areas for further research based on my findings and experiences

1.7 Conclusion

This chapter has introduced key elements of this thesis such as the area of research, a gap found in the literature, the aims of this study, the methods used to achieve them, and most importantly, my contribution to knowledge. It has also provided an overview of the chapters within this thesis. I will now begin my literature review by providing a critical discussion on the ACR and the provision of compulsory education in England.

Chapter Two: Literature Review

2.1. Introduction

This thesis focuses on one significant legal responsibility placed on children namely, criminal responsibility and the age that it is set at. As a starting point, this chapter provides a critical analysis of the literature on the age of criminal responsibility (ACR) by exploring the background to the relevant law, how it came to be and what this responsibility entails. The current ACR in England and Wales has been an area of controversy for many years due to it being set at a low age in comparison to international standards.³⁸ To further understand the ACR and the issues around it, the dominant views on this debate will be synthesised thereby providing insight into the different areas of research that have been conducted on this topic. From evaluating the viewpoints in support of raising the ACR, the previous research conducted in this area reveals one particular gap which has been unexplored – that is the role of compulsory education and children’s preparedness to accept criminal responsibility. This gap is one of the main reasons formally cited for the lack of change in the law on the ACR, namely the provision of compulsory education for all children in the country. This was frequently cited as a rationale for the abolition of *doli incapax* which led me to question whether there is a coherent link between compulsory education and children’s preparedness to accept criminal responsibility. It is only through exploring whether compulsory education is providing children with knowledge and understanding of the ACR that the validity of this reasoning can be truly tested.

The second section of this literature review chapter investigates compulsory education in primary schools. This is considered in light of children’s right to education and the different aspects of education covered by this right as enshrined in the CRC. To further understand what

³⁸ Thomas Crofts, 'Catching Up with Europe: Taking The Age of Criminal Responsibility Seriously In England' (2009) 17 *European Journal of Crime, Criminal Law and Criminal Justice*; Neal Hazel, 'Cross-National Comparison Of Youth Justice' (Youth Justice Board 2008)

compulsory education comprises of within the English educational landscape, the NC and general educational policies affecting Key Stage 2-3 will be critically discussed in relation to how it prepares children to understand the implications of being held criminally responsible at the age of ten. The literature around this area suggests that the focus of the NC is on core subjects and the scope for including the ACR within these subjects is unlikely due to the nature of the content they cover. On the other hand, subjects which fall outside the “core”, known as “other” subjects, look to facilitate the “spiritual, moral, social and cultural” (SMSC) development of children, where “right and wrong” is concept that is commonly taught in order to prepare them for life inside and outside school. The difference in the emphasis, delivery, and assessment between these two types of subjects is explored to illustrate where priorities lie within the current education policy landscape. This elucidates the level of importance placed on topics that fall outside the core and foundational subjects of the NC, that contribute to the development of children’s legal consciousness and their empowerment, including the ACR, children’s rights and human rights.

2.2. Unpacking Age and Criminal Responsibility

Many scholars have argued that criminal responsibility should be understood as “a set of blaming practices that takes place in a (criminal) institutional context” making it “the product of a network of laws, processes, institutions and actors.”³⁹ This allows for the attribution of responsibility by imposing blame on those who are found to be threats adjudged undeserving of protection from the law.⁴⁰ To dissect this further, how responsibility is attributed and its implications on the offender and the criminal justice system, as a form of regulation, need to be considered.⁴¹

³⁹ Arlie Loughnan, 'Asking (Different) Responsibility Questions: Responsibility and Non-Responsibility In Criminal Law' (2016) 4 Bergen Journal of Criminal Law & Criminal Justice. See also, Nicola Lacey, *In Search of Criminal Responsibility: Ideas, Interests, And Institutions* (Oxford University Press 2016); Ronald Leifer, 'The Concept Of Criminal Responsibility' (1967) 24 ETC: A Review of General Semantics.

⁴⁰ Barry Goldson, 'Unsafe, Unjust and Harmful to Wider Society': Grounds For Raising The Minimum Age Of Criminal Responsibility In England And Wales' (2013) 13 Youth Justice.

⁴¹ Nicola Lacey, *In Search of Criminal Responsibility: Ideas, Interests, And Institutions* (Oxford University Press 2016).

This can be done by looking at the two main ways in which criminal responsibility can be conceptualised based on age.⁴² One understanding focuses on the principle of immunity from prosecution, as outlined in the law on the ACR, and the other considers the capacity of the child, as an agent in society, to be held criminally responsible. Underpinning these two conceptions are two key questions outlined by Loughnan; who is responsible under criminal law and what legal responsibility is for in criminal law.⁴³ Both these questions will be considered, starting with the former in light of the current law on the ACR in England and Wales, followed by the latter which will be considered based on the work of legal-philosophy scholars.⁴⁴

The minimum age of criminal responsibility establishes the age below which children cannot be arrested or charged with a crime.⁴⁵ The terms “minimum age of criminal responsibility” or “age of criminal responsibility” are both used when referring to this with the latter being the preferred term used in this thesis. In England and Wales, the age of criminal responsibility (ACR) is ten.⁴⁶ The law on the ACR states: “It shall be conclusively presumed that no child under the age of ten years can be guilty of any offence.”⁴⁷ McDiarmid explains this to be “an absolute cut-off point” which is represented by an age below which children are regarded as incapable of committing crime, thus constituting “a bright line signifying total criminal irresponsibility of the very youngest individuals.”⁴⁸ This means that criminal proceedings cannot be brought against a child who commits a crime below

⁴² Scottish Law Commission, *Report on Age of Criminal Responsibility* (Scot Law Com No 185 Stationery Office 2002).

⁴³ Arlie Loughnan, 'Asking (Different) Responsibility Questions: Responsibility and Non-Responsibility In Criminal Law' (2016) 4 *Bergen Journal of Criminal Law & Criminal Justice*; Nicola Lacey, *In Search Of Criminal Responsibility: Ideas, Interests, And Institutions* (Oxford University Press 2016).

⁴⁴ H. L. A Hart, *Punishment and Responsibility* (Clarendon Press 1968); Nicola Lacey, *In Search of Criminal Responsibility: Ideas, Interests, And Institutions* (Oxford University Press 2016); Victor Tadros, *Criminal Responsibility* (Oxford University Press 2010).

⁴⁵ 'Youth Crime | The Crown Prosecution Service' (*Cps.gov.uk*, 2017) <<https://www.cps.gov.uk/crime-info/youth-crime>> accessed 18 June 2021.

⁴⁶ Section 16(1) Children and Young Persons Act 1963

⁴⁷ Section 50 of Children and Young Persons Act 1933 amended and updated by Section 16(1) Children and Young Persons Act 1963.

⁴⁸ Claire McDiarmid, 'An Age of Complexity: Children and Criminal Responsibility In Law' (2013) 13 *Youth Justice*.

the minimum age, as children below this age are deemed to be *doli incapax*, meaning they are “incapable of committing an evil act”, thus preventing them from being held legally responsible for their behaviour regardless of their actions.⁴⁹ Instead, children under the age of ten can be issued with some civil orders such as the children curfew order or the child safety order.⁵⁰ The CRC, the most widely ratified human rights international human rights treaty which sets out children’s civil, political, economic, social and cultural rights⁵¹, defines a child as “a person below the age of eighteen, unless the laws of a particular country set the legal age for adulthood younger.”⁵² Similar to the CRC, the legal age for adulthood or the age of majority is eighteen in England and Wales.⁵³ Therefore, the ACR opens children between the age of 10-17 up to the criminal justice system.

Firstly, this raises the conception of criminal responsibility, which is concerned with immunity from prosecution, as from the age of ten children are conferred with an immense legal responsibility, in their childhood years, with potentially lasting implications for their future adult life. This raises concerns around whether it is appropriate to expose children of this age to the various mechanisms and processes of the criminal justice system to deal with their behaviour and actions.⁵⁴ As Maher states, ‘...age is important in the criminal justice system because it poses problems for the methods and processes the system uses to achieve its goals.’⁵⁵ Here Maher mentions age as a crucial consideration that can pose problems with the current youth justice system (YJS) and its processes, thereby impacting children and their lives in the future. As a result, this conception of criminal

⁴⁹ Raymond Arthur, *Young Offenders and The Law* (Routledge 2010) pg 43.

⁵⁰ Ibid. pg 62-74.

⁵¹ 'UN Convention on The Rights Of The Child (UNCRC) - UNICEF UK' (*Unicef UK*, 2022) <<https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>> accessed 27 November 2021; UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577.

⁵² Article 1 UN Convention on the Rights of the Child

⁵³ Section 1 Family Law Reform Act 1969

⁵⁴ Barry Goldson, 'Unsafe, Unjust and Harmful to Wider Society': Grounds For Raising The Minimum Age Of Criminal Responsibility In England And Wales' (2013) 13 Youth Justice.

⁵⁵ Gerry Maher, 'Age and Criminal Responsibility' (2005) 2 Ohio State Journal of Criminal Law.

responsibility presents a range of arguments in favour of raising the ACR in order to protect from the rigours of the criminal justice system which will be discussed in a later section. In light of this, alternative processes to the current ACR are put forward such as decriminalising children by treating them as “child first, offender second”, and introducing non-punitive solutions to deal with crime.⁵⁶

Secondly, the capacity to be held criminally responsible will be investigated by exploring the elements that form this responsibility as per the written theories of legal-philosophical scholars.⁵⁷ When understanding criminal responsibility, legal systems often use the concept of moral agents, defined as “those who may be held morally responsible for the actions that they have performed”, which within the criminal context follows a similar, adapted definition of a legal agent.⁵⁸ This assumes that individuals are capable of acting with some level of rationality⁵⁹ and that they act out of free will due to having “some appropriate degree of ownership, causation, and control of their choices and actions.”⁶⁰ Therefore, for an individual to be held either morally or criminally responsible for their actions there is a prominent assumption that they act autonomously according to their free will, making this an important element that forms responsibility. Cipriani argues that this assumption may be “based more on myth than reality” as it ignores factors that may limit the choices that an individual has and that “predisposes the decisions they will ultimately make”.⁶¹ It has been noted that legal systems give value to the assumption of free will in relation to an individual’s actions

⁵⁶ Kevin Haines and Stephen Case, *Positive Youth Justice* (Policy Press 2015).

⁵⁷ H. L. A Hart, *Punishment and Responsibility* (Clarendon Press 1968); Victor Tadros, *Criminal Responsibility* (Oxford University Press 2010); Arlie Loughnan, 'Asking (Different) Responsibility Questions: Responsibility And Non-Responsibility In Criminal Law' (2016) 4 *Bergen Journal of Criminal Law & Criminal Justice.*; R. A. Duff, *Answering For Crime: Responsibility And Liability In The Criminal Law* (Hart Publishing 2007).

⁵⁸ Don Cipriani, *Children's Rights and The Minimum Age of Criminal Responsibility* (Routledge 2016) pg 10.

⁵⁹ Stephen J. Morse, 'Immaturity and Irresponsibility' (1997) 88 *The Journal of Criminal Law and Criminology.*

⁶⁰ Don Cipriani, *Children's Rights and The Minimum Age of Criminal Responsibility* (Routledge 2016) pg 10.

⁶¹ *Ibid.* pg 12.

as it “could not operate if it did not embrace that myth”.⁶² This is where the differences between moral and legal responsibility become evident, as the legal system imposes its own threshold to determine criminal responsibility by truncating the inquiry into moral responsibility.⁶³ This is significant as the law employs a minimal standard of rational understanding where the cognitive threshold is simply “knowledge of ‘right from wrong’ – to establish criminal guilt”⁶⁴, unlike a moral inquiry where the circumstances relevant to the act provide context that may be sought for consideration.⁶⁵ Therefore, for criminal responsibility to be formed such rational understanding and knowledge are necessary elements to meet the minimum cognitive threshold.

Legally, for an individual to be convicted of a crime they must have carried out the criminal offence (*actus reus*)⁶⁶ and fulfilled the cognitive element (*mens rea*) which requires culpability.⁶⁷ English law considers children aged ten and above to have criminal capacity as they are deemed to be sufficiently competent in distinguishing right from wrong as derived from the conception of criminal responsibility that looks into capacity. To test an individual’s competence in this regard, Goldson outlines two main elements of capacity that need to be checked to form the *mens rea*, namely, the cognitive and the volitional elements. The cognitive element necessary to hold a child criminally responsible is their ability to understand what is required of them by law and the ability to perceive the nature of their actions and the consequences that could arise from it. The volitional element looks for the child’s capacity to exercise full control over their behaviour and actions and the required deliberative ability to act in accordance with the

⁶² James Q Wilson, *Moral Judgment: Does the Abuse Excuse Threaten Our Legal System?* (BasicBooks 1997) pg 40 in Don Cipriani, *Children's Rights and The Minimum Age of Criminal Responsibility* (Routledge 2016) pg 13.

⁶³ Don Cipriani, *Children's Rights and The Minimum Age of Criminal Responsibility* (Routledge 2016) pg 13.

⁶⁴ Barry C. Feld, 'Abolish the Juvenile Court: Youthfulness, Criminal Responsibility, And Sentencing Policy' (1997) 88 *The Journal of Criminal Law and Criminology*, pg 48.

⁶⁵ Don Cipriani, *Children's Rights and The Minimum Age of Criminal Responsibility* (Routledge 2016) pg 13.

⁶⁶ In very limited circumstances an omission can be actus reus.

⁶⁷ Dennis Baker., *Glanville Williams Textbook of Criminal Law* (4th edn, Sweet & Maxwell (UK) 2015).

law.⁶⁸ These elements outlined by Goldson hold true to an extent, however, he seems to present a more ideal test of capacity by suggesting that children's ability to understand what is required of them by law and act according to the law is what courts use to establish criminal responsibility. Upon reviewing old case law when the presumption of *doli incapax* existed, it was found that most cases simply looked for "something beyond mere naughtiness or childish mischief"⁶⁹ or an appreciation that their actions were "seriously wrong",⁷⁰ rather than knowledge of the law as Goldson suggests. Despite this, in court, the intentional commitment of a criminal offence remains the priority. Therefore, factors such as age, and maturity may only be subsequently considered during a re-examination of "mitigating factors for the degree of criminal liability and the sanctions imposed".⁷¹ From this conception of criminal responsibility, it is clear that the ACR is based on the assessment of children's normative moral competencies which in England and Wales deems children aged ten and above to have sufficient free will and autonomy to act in conflict with the law (*actus reus*) with intention, negligence or recklessness (which establishes *mens rea*) and to bear criminal responsibility. This simplified assessment of criminal responsibility and free will neglects children's developing moral agency, responsibility and capacity which evolves with time through their relationships with others in society.⁷²

Hart establishes that where these autonomous conditions do not exist, it is morally wrong to hold an individual criminally responsible. He explains that a person can only be convicted when he/she "has the capacity and a fair opportunity or chance to adjust his behaviour to the law."⁷³ This means arguments like the fact that the individual "could not have helped it", "could not have done otherwise", or did not have "a real choice" would mean they

⁶⁸ Barry Goldson, 'Unsafe, Unjust and Harmful To Wider Society': Grounds For Raising The Minimum Age Of Criminal Responsibility In England And Wales' (2013) 13 Youth Justice.

⁶⁹ *JM (A Minor) v Runeckles* (1984) 79 Cr. App.R. 255 p. 259

⁷⁰ *ibid*; *R v Gorrie* (1918) 83 JP 136; *R v JTB* [2009] UKHL 20.

⁷¹ Don Cipriani, *Children's Rights and The Minimum Age Of Criminal Responsibility* (Routledge 2016) pg 11.

⁷² *Ibid.* pg 13.

⁷³ H. L. A Hart, *Punishment and Responsibility* (Clarendon Press 1968), pg 152.

cannot be morally responsible.⁷⁴ Applying a simplified and truncated approach to the concept of free will and autonomy dilutes this understanding of the law on criminal responsibility. This allows for the punishment of the most disadvantaged and deprived members of society, who bear no blame for the larger circumstances that led to their crimes. This is especially true for children because adults often dictate many aspects of their life. Hence, this approach does not take into account factors beyond a child's actions that could limit their choices making them more vulnerable to offending behaviour. Shifting the focus away from general societal problems and attributing moral responsibility onto individuals ensures that collective moral responsibility is not discussed, thus legitimising social control over children in circumstances where their responsibility is questionable. Cipriani relates the concept of rights and responsibilities by drawing a "rough parallel" between the capacities necessary for liberty rights and moral agency. He suggests that as children are provided with liberty rights that respect and protect their choices, responsibility for those choices and actions will follow.⁷⁵ Therefore, when a person has met the threshold level of capacity for being held criminally responsible, society expresses its moral condemnation of those actions through the processes of the criminal justice system.⁷⁶

Tadros highlights a key aspect of criminal responsibility; the communicative element that conveys society's condemnation of wrongful actions through the criminal justice system.⁷⁷ This communicates moral indignation "publicly both about the act that the agent has performed, and about the agent in performing that act."⁷⁸ He outlines three main groups that form the audience of this communication and considers the implications of such communications. The first recipient of this communication is the offender.

⁷⁴ H. L. A Hart, *Punishment and Responsibility* (Clarendon Press 1968), pg 152.

⁷⁵ Don Cipriani, *Children's Rights and The Minimum Age of Criminal Responsibility* (Routledge 2016) pg 11.

⁷⁶ Ibid.

⁷⁷ Victor Tadros, *Criminal Responsibility* (Oxford University Press 2010)

Tadros' discussion of moral vice in relation to communication has been left out to keep the literature review focused on the aspects of criminal responsibility relevant to the ACR.

⁷⁸ Ibid. pg 71-75.

Being held criminally responsible for their actions can affect the way they see themselves, the perception of their relationship to the state and implications this has on their future life.⁷⁹ This is intended to illicit responses that lead to some positive consequences such as the moral improvement of the defendant and their rehabilitation after serving time to improve in the eyes of the community, however, the reality can often be very different. The second audience group to this communication are the criminal justice officials usually those involved in punishing the offender, such as the police. The communication of criminal responsibility in this context dictates their actions towards the offender. Here, the treatment of the offender in terms of punishment and the community, is determined by the criminal conviction.

The other main group that receives this communication is the community as a whole. As crime is considered a public wrong, the community usually takes an interest in it, because seeing convictions arising from at least some criminal offences helps to maintain their faith in the state and the criminal justice system. The level of communication varies based on the nature of the offence as some can be more serious, like murder and rape whereas, there are other regulatory offences which do not have as much social stigma attached to it. A prominent example of a case which exemplifies the effect of communication on social views is the killing of two-year-old James Bulger by two ten-year old boys.⁸⁰ This case was widely reported, and the waves it created⁸¹ continues to affect the views and approaches underpinning the YJS today.⁸² This further emphasises how the enforcement and communication of criminal responsibility is used to convey the importance of abiding by the law, and the consequences that could follow if this is not the case, thereby demonstrating the educative function

⁷⁹ Victor Tadros, *Criminal Responsibility* (Oxford University Press 2010) pg 72.

⁸⁰ Raymond Arthur, *Young Offenders and The Law* (Routledge 2010) pg 124-128; *R v Secretary of State for the Home Department ex parte Venables and Thompson* ([1997] 3 All ER 97).

⁸¹ *Venables and another v News Group Papers Ltd and others* [2019] EWHC 494; Gerry Rice and Terry Thomas, 'James Bulger – A Matter of Public Interest' (2013) pg 6; Mike Berry and others, 'Media Coverage and Public Understanding Of Sentencing Policy In Relation To Crimes Against Children' (2012) 12 *Criminology & Criminal Justice*.

⁸² Tim Bateman, 'Keeping Up (Tough) Appearances: The Age of Criminal Responsibility' (2015) 102 *Criminal Justice Matters*.

of the law. Therefore, it clearly shows that criminal responsibility is used as a system of regulation in criminal law that is applied to all individuals in English society aged ten and over.

2.3. Historical development of the ACR

In the pre-Norman Laws of Ine from the eighth century, ten was found to be the suggested ACR as it was recognised that children may lack the mental capacity to be held responsible. This was later increased to twelve in the tenth-century Laws of Athelstan as drafted by a bishop so that children at and above this age did not go unpunished. Bracton notes that during this time there was no specific ACR as we know it today because children were protected from the criminal law due to their “harmlessness of intention”.⁸³ This meant that children were understood to lack “intention to do harm” because this was equated with their “innocence of purpose” and therefore, they could not be deemed mentally culpable.⁸⁴ In the fifteenth century this was drastically lowered to the age of seven.⁸⁵ Prior to the 19th century the treatment of children and adults in the criminal justice system was not formally differentiated as it is today.

It was only at the start of the 20th century that child offenders were acknowledged as less responsible for their actions than adults and therefore, should not be subject to the rigours of the criminal justice system in the same way.⁸⁶ At this time, ACR was set at seven years by the Children Act 1908 however, a separate juvenile court was established to make the welfare of children the primary consideration.⁸⁷ In turn, Children and Young Persons Act of 1933 strengthened the requirements of the Children Act of

⁸³ Nigel Walker, *Aggravation, Mitigation and Mercy In Criminal Justice* (Blackstone Press 1999) pg 135-6 in Raymond Arthur, *Young Offenders and The Law* (Routledge 2010) pg 43-44.

⁸⁴ Ibid.

⁸⁵ Raymond Arthur, *Young Offenders and The Law* (Routledge 2010) pg 43-44.

⁸⁶ Justice Committee, *Written evidence from the Office of the Children's Commissioner*, (May 2012) accessed from <<https://publications.parliament.uk/pa/cm201213/cmselect/cmjust/339/339we09.htm>>.

⁸⁷ Dr Tim Bateman and Professor Neal Hazel, *“Youth Justice Timeline”* (Beyond Youth Custody, 2014)

1908 by permitting young offenders to be sent to “approved schools”,⁸⁸ where the regime was focused on “education and discipline rather than punishment” based on the welfare principle.⁸⁹ It also took Section 50 of Children and Young Persons Act 1933, with its focus on the welfare principle, to increase the ACR to eight. In 1956, the Ingleby Committee was established to review the operation of the juvenile court.⁹⁰ They accepted the Curtis Committee's finding⁹¹ that the needs of a neglected child and a young offender were very similar, as both were a consequence of “family failure.”⁹² This involved ensuring that the young person was treated as someone who may have been suffering from some kind of disturbance in their life which may need to be addressed rather than as a delinquent who has the ability to think rationally and understand the nature of their actions.⁹³ This issue informed much of the debate in the 1960s. As a result, the Ingleby Report recommended that the ACR be raised to the age of twelve.⁹⁴ In response to this report, eventually the ACR was raised to ten in the Children and Young Persons Act 1963, thus maintaining the perception of young people as a “threat” whilst simultaneously attempting to reconcile it with the notion that they are victims of “neglect”.⁹⁵ It has been more than half a century since this minimum age was set. Since then, there have been a few attempts to change this.⁹⁶

One prominent and ambitious attempt by the Labour Government to raise the ACR was seen in 1965 where they proposed for it be increased to

⁸⁸ Edward Tennant, 'The Rise and Demise of the Approved School System for the Rehabilitation of the Delinquent Children in England and Wales' (2004) *Criminal Law and Justice Weekly* (formerly *Justice of the Peace*) Issue 18 168 JPN 238

⁸⁹ Raymond Arthur, *Young Offenders and the Law: How the Law Responds to Youth Offending* (1st Edn, Routledge, 2010) pg 14.

⁹⁰ Home Office, *Report on the Committee on Children and Young Persons (Ingleby Committee)* (Cmnd 1191, 1960) HMSO

⁹¹ Home Office, *The Care of Children (Curtis Committee)* (Cmd 6922, 1946) HMSO

⁹² Raymond Arthur, *Young Offenders and the Law: How the Law Responds to Youth Offending* (1st Edn, Routledge, 2010) pg 15.

⁹³ Anthony Bottoms, 'On the Decriminalisation of English Juvenile Courts', *Youth Justice: Critical Readings* (Sage 2002)

⁹⁴ Home Office, *Report on the Committee on Children and Young Persons (Ingleby Committee)* (Cmnd 1191, 1960) HMSO

⁹⁵ Barry Goldson, "Unsafe, Unjust and Harmful to Wider Society': Grounds For Raising The Minimum Age Of Criminal Responsibility In England And Wales' (2013) 13 *Youth Justice*.

⁹⁶ Raymond Arthur, *Young Offenders and The Law* (Routledge 2010) pg 43-44.

sixteen.⁹⁷ Instead, The Children and Young Persons Act 1969 planned to raise the ACR from ten to fourteen.⁹⁸ The main aim of this Act was to decriminalise youth offenders by increasing the level of support and care available to them through the creation of new welfare provisions rather than punitive measures.⁹⁹ It also tried to replace criminal procedures for children aged 10-14 with non-criminal care proceedings and aimed to avoid court appearance by deciding on the “treatment” for the child with parents and social workers. There was a shift from authority and discretion in the hands of the police, magistrates and prison department towards local authorities and the Department of Health and Social Security.¹⁰⁰ The Magistrates Association did not believe that the Act served the best interests of the public as it created a “moral panic about the powerlessness of the juvenile court”.¹⁰¹ This disagreement with the Act was supported by the Conservative Party elected in 1970, even prior to the Act’s implementation. As a result, they decided against adopting many parts of the Act, especially raising the ACR to fourteen.¹⁰² Hence, this Act was never fully implemented and has resulted in the ACR remaining set at ten. From The Children Act 1908 through to The Children and Juvenile Persons Act 1969, the YJS has been primarily concerned with the welfare of young offenders, even though this time period coincided with the use of borstals.¹⁰³

In the 1980s the focus of law and policy was to divert children from court and custody. The Criminal Justice Act 1982 reflected this approach as it

⁹⁷ Home Office, *The Child, The Family and the young offender* (Cmnd 2742, 1965) London: HMSO

⁹⁸The Children and Young Persons Act 1969

⁹⁹ Raymond Arthur, *Young Offenders and the Law: How the Law Responds to Youth Offending* (1st Edn, Routledge, 2010) pg 15.

¹⁰⁰ D. Thorpe, D Smith; C J Green; J H Paley, *Out of Care: Community Support of Juvenile Offenders* (George Allen and Unwin 1980) as cited in Barry Goldson, “Unsafe, Unjust and Harmful To Wider Society’: Grounds For Raising The Minimum Age Of Criminal Responsibility In England And Wales’ (2013) 13 Youth Justice.

¹⁰¹ Marcel Berlins and Geoffrey Wansell, *Caught In The Act* (Penguin 1974) as cited in Raymond Arthur, *Young Offenders and the Law: How the Law Responds to Youth Offending* (1st Edn, Routledge, 2010).

The Magistrates Association was opposed to the Children and Young Persons Act as they blamed it for the increases in youth crime thus creating a moral panic about the powerlessness of the juvenile.

¹⁰² Raymond Arthur, *Young Offenders and the Law: How the Law Responds to Youth Offending* (1st Edn, Routledge, 2010)

¹⁰³ Ibid. pg 21.

aimed to provide juvenile courts with more flexibility with regard to their sentencing powers, which resulted in the introduction of new powers of disposal such as youth custody, care orders and community service.¹⁰⁴ The Act also allowed for greater use of detention centres which permitted the juvenile court to incarcerate young offenders for more than three years.¹⁰⁵ This had to be in line with section 1(4) of the Act, which stated that the court should not impose a custodial sentence on a young offender unless no other sentence would be seen as appropriate given the seriousness of the offence.¹⁰⁶ Although youth custody was still prominently used,¹⁰⁷ the 1982 Act moved towards looking for alternatives to incarceration which saw an overall reduction in the use of youth custody.¹⁰⁸ This was due to the emphasis placed on risk factors and interventions use to divert young people away from the justice system.¹⁰⁹ Unfortunately, the predominance of “risk thinking”¹¹⁰ increased public fears of the growing youth offending problem resulting in less welfare-oriented and more punitive responses in the 1990s.¹¹¹

In fact, this “punitive turn”¹¹² was exacerbated by the murder of James Bulger in 1993. This case involved the killing of a two-year-old named James Bulger after being abducted Robert Thompson and Jon Venables who were both ten years old at the time. The brutality and shocking nature of the case resulted in widespread media panic about the evil nature of young people in the country thus, arousing strong views on locking up these

¹⁰⁴ Raymond Arthur, *Young Offenders and the Law: How the Law Responds to Youth Offending* (1st Edn, Routledge, 2010) pg 21.

¹⁰⁵ Ibid. pg 21.

¹⁰⁶ The Criminal Justice Act 1982, S.1(4)

¹⁰⁷ Home Office, *Young Offenders* (Cmnd 8045, London HMSO, 1980) para 46 as cited in Julia Fionda, *Devils and Angels: Youth Policy and Crime* (1st Edn, Hart Publishing, 2005) pg 39.

¹⁰⁸ Raymond Arthur, *Young Offenders and the Law: How the Law Responds to Youth Offending* (1st Edn, Routledge, 2010) pg 21.

¹⁰⁹ Stephen Case and Kevin Haines, *Understanding Youth Offending: Risk Factor Reserach, Policy and Practice* (Willan Publishing 2009).

¹¹⁰ Patricia Gray, 'The Political Economy of Risk and The New Governance of Youth Crime' (2009) 11 *Punishment & Society*.

¹¹¹ Stephen Case and Tim Bateman, 'The Punitive Transition in Youth Justice: Reconstructing the Child As Offender' (2020) 34 *Children & Society*.

¹¹² John Muncie, 'The `Punitive Turn' In Juvenile Justice: Cultures of Control And Rights Compliance In Western Europe And The USA' (2008) 8 *Youth Justice*.

dangerous youths.¹¹³ The case illustrated how children in conflict with the law were not seen to represent childhood by the public and politics of that time.

Alison Young in *Imagining Crime*, describes how children are portrayed by the media as “configurations of child and non-child”.¹¹⁴ On the one hand there was two-year old Bulger who was often described as an “infant” and “toddler” whereas, the two boys who offended were commonly described as “demons” rather than children. These representations of childhood became widespread in the country. Young describes how Bulger in some newspaper photographs from that time “...looks attractive, according to the scales of visible ‘cuteness’ developed through the use of children in advertising” and “...more than this, he looks essentially child-like, an ideal child or an idea of a child.”¹¹⁵ This stood in stark contrast to images of Thompson and Venables in the papers which described how, “they did not look like ordinary boys, even before the murder.”¹¹⁶ Young further explains how Bulger’s innocence consists of the correspondence between “his image and his substance” whereas in the case of Venables and Thompson the dissonance between “image and substance” appears similar to representations of childhood in criminal law.¹¹⁷ In the criminal context, an individual under eighteen may be considered a child by “image” however, the “substance” of their actions determines whether not the image matches. This constructs the idea of a “non-child” as one who by appearance is a child, but is not perceived by the law and society to be one. The moral panic caused by this case and the media frenzy around it, fuelled the “evil” representations of children held by the public and led to consequent pushes for condemnation and punishment of young offenders.

¹¹³ Deena Haydon and Phil Scraton, 'Condemn A Little More, Understand A Little Less': The Political Context And Rights' Implications Of The Domestic And European Rulings In The Venables-Thompson Case' (2000) 27 *Journal of Law and Society*; Colin Hay, 'Mobilization Through Interpellation: James Bulger, Juvenile Crime And The Construction Of A Moral Panic' (1995) 4 *Social & Legal Studies*.

¹¹⁴ Alison Young, *Imagining Childhood*, (SAGE publications, London, 1996) pg 114.

¹¹⁵ Ibid citing *The Guardian* (3 November 1993) and *Daily Star* (25 November 1993)

¹¹⁶ Ibid citing *Independent on Sunday* (28 November 1993)

¹¹⁷ Alison Young, *Imagining Childhood*, (SAGE publications, London, 1996) pg 115.

This was further illustrated in the court proceedings of the Bulger case.¹¹⁸ The Judge's report to the Home Secretary on 29 November 1993 assessed the length of detention necessary to meet the requirements of retribution, and the suggested 8 year sentence was described as "very, very many years for a ten or eleven year old" until they would be "young men".¹¹⁹ Although, this was taken into account during the judgment, it was met by strong opposition from the public. There was a petition in place urging Michael Howard, the then Conservative Home Secretary, to take into consideration the belief "that they should not be released in any circumstances and should be detained for life."¹²⁰ As a result of this, Howard fixed a sentence of fifteen years in adult prison preventing review for twelve years after admittedly taking into account the petitions and correspondences from the public in order to "maintain public confidence in the system of criminal justice."¹²¹ During the case there were statements made which compared the boys' position to what would have happened if they were adults. Such statements did not suggest that the well-established fact that they were children was as strong a consideration as the crime and public outrage associated with it. These comparisons made to adults illustrate an earlier shift in the representation of childhood for the delinquent child towards adulthood.

Consequently, there was a push for harsher punishment for young offenders by both the public and the government, which saw the policies of the time taking a more retributive approach. The Prime Minister at the time, John Major stated that "society needs to condemn a little more and

¹¹⁸ See *R v Secretary of State for the Home Department, Ex parte V. and Ex parte T.* Judgments, House of Lords (12 June 1997) 2 and *T v. United Kingdom judgment*, Strasbourg (16 December 1999).

¹¹⁹ Lord Goff, *R v Secretary of State for the Home Department, Ex parte V. and Ex parte T.* Judgments, House of Lords (12 June 1997) 2 and Mr Justice Morland, cited in *T v. United Kingdom judgment*, Strasbourg (16 December 1999) para 19.

¹²⁰ Quoted in Deena Haydon and Phil Scraton, "Condemn a Little More, Understand a Little Less": The Political Context and Rights Implications of the Domestic and European Rulings in the Venable–Thompson case' (2000) 27(3) *Journal of Law and Society* 416, pg 432.

¹²¹ *Ibid.*

understand a little less”¹²², thereby fuelling the opinion that longer and tougher sentences need to be taken against young offenders.¹²³ Actions, such as the further extension of juvenile court power, exemplified the move away from the welfare principle to a great extent.¹²⁴

Following the James Bulger murder, Michael Howard described children who offend as “adult in everything except years”.¹²⁵ In light of this case, John Major announced a political initiative called “Back to basics” within which he proposed plans to take a more hard-line approach to youth offending.¹²⁶ This was in order to distance the party from a more liberal approach by repealing the most restrictive parts of the Criminal Justice Act 1993 and replacing it with the Criminal Justice and Public Order Act 1994. This Act gave the magistrates more power to use custodial sentences for young people and it also gave them a new power to imprison those who have offended under the age of 15 in Secure Training Units.¹²⁷ These Units provided vulnerable young people with a secure environment in which they could be rehabilitated and educated however, this was still part of the prison estate.¹²⁸ Following this, the Audit Commission Report entitled *Misspent Youth* critiqued the Youth Justice System in England and Wales by concluding that:

“The current system for dealing with youth crime is inefficient and expensive while little is being done to deal effectively with juvenile nuisance. The present arrangements are failing young people who are not being guided away from offending to constructive activities.”¹²⁹

¹²² Donald Macintyre ‘Major on crime: ‘Condemn more, understand less’ *The Independent* (21 February 1993) <https://www.independent.co.uk/news/major-on-crime-condemn-more-understand-less-1474470.html> > accessed 19 October 2018

¹²³ Raymond Arthur, *Young Offenders and the Law: How the Law Responds to Youth Offending* (1st Edn, Routledge, 2010) pg 22.

¹²⁴ Ibid.

¹²⁵ Barry Goldson, ‘Children In Trouble: State Responses To Juvenile Crime.’, *‘Childhood’ in ‘Crisis’?* (UCL Press 1997), pg 130.

¹²⁶ John Major, ‘Leader’s speech’ (Blackpool, 8th October 1993) <<http://www.britishpoliticalspeech.org/speech-archive.htm?speech=139>> access 5th January 2022.

¹²⁷ Criminal Justice and Public Order Act 1994

¹²⁸ Raymond Arthur, *Young Offenders and the Law: How the Law Responds to Youth Offending* (1st Edn, Routledge, 2010) pg 22-23.

¹²⁹ Audit Commission, *Misspent Youth: Young People and Crime* (London, 1996)

The Audit Commission, as an independent public body that looks into whether public money is being spent effectively, suggested that a new approach was needed.¹³⁰ The New Labour government responded to this with their consultation paper *No More Excuses – A New Approach to Tackling Youth Crime in England and Wales*.¹³¹ This consultation paper focused on taking action through the proposed “root and branch” approach with an emphasis on getting “a fair deal for the victims.”¹³² It intended to design a more efficient and cost-effective youth justice system that would deliver welfare and justice speedily.¹³³ The consultation paper also stated that “children above the age of criminal responsibility are generally mature enough to account for their actions and the law should recognise this”.¹³⁴

The proposals set out by the New Labour government in *No More Excuses* were later enacted through the Crime and Disorder Act 1998 with the intention to be “tough on crime, tough on the causes of crime.”¹³⁵ Fionda describes the approach taken by the New Labour government to be “a melting pot of principles and ideologies” using both welfare and punitive models which had proven to be incompatible with each other to fulfil the main aim of preventing offending.¹³⁶ On the one hand, it established the Youth Justice Board (YJB) of England and Wales to manage youth offending teams and report on their plan to improve the system. Yet it also provided a range of orders for early-intervention such as the anti-social behaviour order, the child safety order and the child curfew which did not

¹³⁰ Ibid.

¹³¹ Home Office, *No More Excuses – A New Approach to Tackling Youth Crime in England and Wales* (White Paper, Cm 3809, 1997).

¹³² Labour Party, *Safer Communities, Safer Britain: Labour’s Proposals for Tough Action on Crime* (London, Labour Party, 1995) pg 4.

¹³³ Home Office, *No More Excuses – A New Approach to Tackling Youth Crime in England and Wales* (White Paper, Cm 3809, 1997).

¹³⁴ Ibid.

¹³⁵ As cited from Deena Haydon and Phil Scraton, ‘Condemn A Little More, Understand A Little Less’: The Political Context And Rights’ Implications Of The Domestic And European Rulings In The Venables-Thompson Case’ (2000) 27 *Journal of Law and Society*.

¹³⁶ Julie Fionda, ‘New Labour, Old Hat’ [1999] *Crim LR* 36 at 46.

require an individual to be convicted of a criminal offence.¹³⁷ Another key aim of the Act was to abolish the presumption of *doli incapax* via section 34, which “shielded the child from the damage that might otherwise be done by being absorbed into the criminal justice system”.¹³⁸ *Doli incapax* offered a means to protect children between the age of 10-14 from “suffering the full extent of the law” by requiring that they knew beyond reasonable doubt that their actions were seriously wrong as opposed to being naughty or mischievous.¹³⁹ This meant that children presumed *doli incapax* were deemed incapable of the criminal intent necessary for prosecution as “using criminal penalties to punish a child who does not appreciate the wrongfulness of his or her actions lacks moral justification”.¹⁴⁰ However, the doctrine was heavily criticised as the New Labour government found it “contrary to common sense” and that it is “not in the interests of justice, or victims or of young people themselves.”¹⁴¹ Moreover, in reality very few children actually benefited from the presumption.

In the case of *C (A Minor) v DPP*¹⁴², similar views were expressed by judges and the High Court ruled that the presumption of *doli incapax* was “no longer a part of the law of England”.¹⁴³ For example Laws J argued that: “...whatever may have been the position in an earlier age, when there was no system of universal compulsory education and when perhaps children did not grow up as quickly as they do nowadays, this presumption at the present time is a serious disservice to our law.”¹⁴⁴

¹³⁷ Raymond Arthur, *Young Offenders and the Law: How the Law Responds to Youth Offending* (1st Edn, Routledge, 2010) pg 27.

¹³⁸ Sue Bandalli ‘Abolition of the presumption of *Doli Incapax* and the Criminalisation of Children’ [1998] *The Howard Journal* Volume 37 No.2 pg.118; Kate Fitz-Gibbon, ‘Protections for Children Before the Law: An Empirical Analysis Of The Age Of Criminal Responsibility, The Abolition Of *Doli Incapax* And The Merits Of A Developmental Immaturity Defence In England And Wales’ (2016) 16 *Criminology & Criminal Justice*.;

¹³⁹ Raymond Arthur, *The Moral Foundations of the Youth Justice System, Understanding the Principles of the Youth Justice System* (1st edn, Routledge, 2017) pg 24.

¹⁴⁰ Penal Affairs Consortium the Doctrine of ‘*Doli Incapax*’. (London: Penal Affairs Consortium, 1995) p.5.

¹⁴¹ Home Office, *No More Excuses – A New Approach to Tackling Youth Crime in England and Wales* (White Paper, Cm 3809, 1997).

¹⁴² [1994] 3 All ER 190

¹⁴³ *Ibid.*

¹⁴⁴ *C (A Minor) v DPP* [1994] 3 All ER 190, 196.

He also claimed that the *doli incapax* was “out of step with the general law”, “full of disturbing, even nonsensical implications”, and can give “rise to risk of injustice”.¹⁴⁵ Lord Lowry also confirmed issues with the doctrine by stating that the doctrine needs further examination as it appears to have to have been inconsistently applied and which is certainly capable of producing inconsistent results¹⁴⁶ However, in response to LJ Laws, he claimed that:

“It is true that there is (and has been for a considerable time) compulsory education and, as the judge said, perhaps children now grow up more quickly. But better formal education and earlier sophistication do not guarantee that the child will more readily distinguish right from wrong.”¹⁴⁷

This raises the question of whether the provision of compulsory education for children in England and Wales is an adequate justification for having a low ACR.

Following this case, the Home Office’s Consultation Paper entitled *Tackling Youth Crime*, proposed to abolish the doctrine of *doli incapax* as children aged ten and above are deemed able to distinguish right from wrong in an age where compulsory education is provided to children from the age of five.¹⁴⁸ This was further elaborated in the White Paper, *No More Excuses*, which emphasised that the presumption might have been relevant and justified at a time when children did not receive compulsory education however, now with such provisions, children grow up much faster both mentally and physically and they therefore, know the difference between “naughtiness and serious wrongdoing”.¹⁴⁹ This link made between compulsory education and knowing right from wrong has been a prominent reason for the abolition of *doli incapax*, which subsequently resulted in a solidification of the ACR at ten. This means children aged ten and above

¹⁴⁵ *C (A Minor) v DPP* [1994] 3 All ER 190, 196.

¹⁴⁶ *C (A Minor) v DPP* [1995] 1 AC 1, 71.

¹⁴⁷ *Ibid* 53.

¹⁴⁸ Home Office, *Tackling Youth Crime: A Consultation Paper* (Home Office 1997).

¹⁴⁹ Home Office, *No More Excuses – A New Approach to Tackling Youth Crime in England and Wales* (White Paper, Cm 3809, 1997).

are not presumed to lack the capacity to understand the nature of criminal conduct and therefore can be held legally responsible for their actions. Academics like Bandalli argued that this eroded the status of “child” that those between the age of 10-17 have and it is “symbolic of the state’s limited vision in understanding children, the nature of childhood or the true meaning of an appropriate criminal law response”¹⁵⁰ Likewise, a similar line of argument is also expressed by others like Fionda and Elliot who asserted that the abolition of *doli incapax* failed to effectively consider children’s capacity by recognising the limitations that come with youth.¹⁵¹ Arthur explains that this “coupled with the low age of criminal responsibility places England and Wales further out of step with most jurisdictions in the rest of Europe.”¹⁵² Thus, raising concerns about the current law on the ACR that holds a child who is ten, legally responsible for their actions similar to an adult.

It is noteworthy that the last few attempts to raise the ACR have been unsuccessful such as the lack of implementation of the Children and Young Persons Act 1969, Lord Dholakia’s Age of Criminal Responsibility Bill in 2013-14 and 2015-16 which did not make it past the first reading¹⁵³ and the latest one 2019-21 which passed the first reading however, it will make no further progress due to the proroguing of the 2019-21 Parliament session.¹⁵⁴ As a consequence, the most notable change to the ACR has been the abolition of the doctrine of *doli incapax* by Section 34 of the Crime and Disorder Act 1998. This lowered the ACR to an absolute level of age ten without any safeguard in place and thus the law currently “holds that a

¹⁵⁰ Sue Bandalli, ‘Children, responsibility and the new youth justice’ (2000) in Barry Goldson, *The New Youth Justice* (Russell House 2000). pg. 81-95, 94.

¹⁵¹ Julia Fionda, ‘Case Commentary: The Age of Innocence? – The Concept Of Childhood In The Punishment Of Young Offenders’ [1998] *Child and Family Law Quarterly*, 10(1): 77-87; Catherine Elliott, ‘Criminal responsibility and children: a new defence required to acknowledge the absence of capacity and choice.’ (2003) 75 *The Journal of Criminal Law*, pg. 289- 308.

¹⁵² Raymond Arthur, *Young Offenders and the Law: How the Law Responds to Youth Offending* (1st Edn, Routledge, 2010) pg.27.

¹⁵³ Age of Criminal Responsibility Bill [2013-14]; Age of Criminal Responsibility Bill [2015-16].

¹⁵⁴ ‘Age Of Criminal Responsibility Bill [HL]’ (*UK Parliament*, 2022) <<https://bills.parliament.uk/bills/2613/news>> accessed 14 January 2022.

person is completely irresponsible on the day before his tenth birthday, and fully responsible as soon as the jelly and ice cream have been cleared away the following day.”¹⁵⁵

2.4. Age, Development and Decision-making

Age is often used as a social and statutory indicator of childhood and development and within the ACR context this is understood to indicate a sufficient level of “competence” or “capacity” for being held responsible in criminal law.¹⁵⁶ These two terms have a specific significance in legal contexts, where the term “capacity” is explained in the Mental Capacity Act 2005 whilst, “competence” is understood using the *Gillick* case.¹⁵⁷ Delmage notes that both these terms are specific to decision-making and sets out the threshold for assessing whether a child possesses the competence and capacity to make a decision which “varies depending on the nature and perceived gravity of that decision.”¹⁵⁸ Delmage gives the example in medicine where the ability to consent to a major surgery requires a higher threshold to consent due to the consequent outcome. Extrapolating this to the criminal law context, the standard of evidence for attributing a higher requirement of responsibility for more serious offences should be higher in comparison to less serious offences. This would involve testing for whether a child understood the alternatives, immediate consequences and long-term consequences of what they had done.¹⁵⁹ Such testing would determine whether a minimum level of mental and physical capacity is met to establish culpability; otherwise an individual cannot be blamed for not understanding “the nature and significance of their conduct or [not having] basic control over it”.¹⁶⁰

¹⁵⁵ A.T.H. Smith, 'Doli Incapax Under Threat' (1994) 53 The Cambridge Law Journal.

¹⁵⁶ Barry Goldson, 'Unsafe, Unjust and Harmful to Wider Society': Grounds For Raising The Minimum Age Of Criminal Responsibility In England And Wales' (2013) 13 Youth Justice

¹⁵⁷ *Gillick v West Norfolk and Wisbech Area Health Authority* [1985] 3 All ER 402.

¹⁵⁸ Enys Delmage, 'The Minimum Age Of Criminal Responsibility: A Medico-Legal Perspective' (2013) 13 Youth Justice.

¹⁵⁹ *Ibid.*

¹⁶⁰ Peter Cane, *Responsibility in Law and Morality* (Hart Publishing: Oxford, 2002) pg 65.

Lord Dholakia in the 2015-16 ACR Bill argues that that although children of ten and eleven were capable of telling right from wrong, there was “overwhelming” evidence from international research that they had “less ability to think through the consequences of their actions, empathise with other people’s feelings and control impulsive behaviour”.¹⁶¹ This argument suggests that the level of cognitive development in children and how they act differs from that of an adult, therefore limiting their capacity. The Royal Society confirms how children are still developing mentally and physically at the age of ten in their 2011 report which concluded that at the age of ten children’s brains are developmentally immature and are undergoing important changes that affect their ability to regulate their own behaviour. Consequently, researchers are concerned that the ACR in the UK is “unreasonably low, and the evidence of individual differences suggests that an arbitrary cut-off age may not be justifiable.”¹⁶²

The report questions whether ten-year-old children have the maturity to understand the nature of their actions, the consequences that arise from it and subsequently regulate their behaviour whilst still undergoing “...changes in important neural circuits underpinning behaviour... until at least 20 years of age.”¹⁶³ Data in neuroscience has found that there are developmental differences between children and adults in the brain biochemistry and anatomy, that may restrict their “ability to perceive risks, control impulses, understand consequences and control emotions”.¹⁶⁴ In addition to the physical and mental development that children in this age group undergo, other biological factors such as the interplay between

¹⁶¹ Age of Criminal Responsibility Bill [2015-16]. HL Deb 29 January 2016, Vol 768, col 1554

¹⁶² Royal Society, Brain Waves Module 4: Neuroscience and the law, December 2011, pg 14.

¹⁶³ Ibid. pg 13.

¹⁶⁴ Raymond Arthur, 'Rethinking the Criminal Responsibility Of Young People In England And Wales' (2012) 20 European Journal of Crime, Criminal Law and Criminal Justice; Kathryn Lynn Modecki, 'Addressing Gaps in the Maturity of Judgment Literature: Age Differences and Delinquency.' (2008) 32 Law and Human Behavior; Jane Rutherford, 'Juvenile Justice Caught Between The Exorcist And A Clockwork Orange' (2002) 51 DePaul Law Review 715-742.

hormones and behaviour can also have an impact and contribute to delinquent behaviour.¹⁶⁵

Although, cognitive development and capacity presents important arguments in relation to the ACR as illustrated by the arguments relied upon by Lord Dholakia in the ACR Bills, this is considered to a limited degree as it can also have some counter-intuitive effects. Arguments that question the legitimacy of holding children criminally responsible based on their maturity, cognitive function and human development on the basis of their deficiencies, also tend to invoke “less welcome implications with regard to the realization of their wider human rights claims” which include children’s right to be heard, participate and have their agency recognised.¹⁶⁶ By focusing on their limitations, this presents children as “human becomings”, where children are seen as individuals in transition to becoming good, rational adults. According to Arneil, “becoming” is often decided by “by the end product and by the particular ‘being’ that one is to become” which in the case of a child would be becoming an adult.¹⁶⁷ This shifts their identity from “child” to “adults in the making” which automatically makes the discussion less child centric. Therefore, emphasising children as “human becomings”¹⁶⁸ and denying their responsibilities may act as a disservice to advocating children’s human rights, as children’s rights and responsibilities often correlate and follow on from the former to the latter.¹⁶⁹ Moreover, focusing on arguments related to children’s capacity limit the terms of the debate in this area to the legitimacy of the age in question. This brings up questions such as whether a set arbitrary age limit can satisfy the capacity

¹⁶⁵ Gerald R. Adams, Raymond Montemayor and Thomas P. Gullotta, *Psychosocial Development During Adolescence* (Sage Publications 1996).

¹⁶⁶ Barry Goldson, “Unsafe, Unjust And Harmful To Wider Society’: Grounds For Raising The Minimum Age Of Criminal Responsibility In England And Wales’ (2013) 13 *Youth Justice*.

¹⁶⁷ Barbara Arneil, ‘Becoming Versus Being: A Critical Analysis Of The Child In Liberal Theory’, *The Moral and Political Status of Children* (Oxford University Press 2002). pg. 86.

¹⁶⁸ *Ibid.*

¹⁶⁹ Children’s Rights International Network, ‘Juvenile Justice: Stop Making Children Criminal’ (Children’s Rights International Network 2013) <<https://archive.crin.org/en/library/publications/juvenile-justice-stop-making-children-criminals.html>> accessed 21 November 2021; Don Cipriani, *Children’s Rights and The Minimum Age of Criminal Responsibility* (Routledge 2016) pg 11.

test for all children and whether it can justify inter-jurisdictional variation in the ACR. Since, these questions fall outside the scope of this thesis they will not be considered. Instead, the arguments put forward in favour of raising the ACR will be critically evaluated to understand the wider contextual issues around it and examine whether informing children about their criminal responsibility features in these arguments.

2.5. Goldson's Framework

Having considered what the ACR in England and Wales is, how it came to be, what it entails and who it affects, the next part of the literature review is going to look at the issues with the ACR. In order to do this, I am using a prominent and widely cited article by Barry Goldson entitled, *Unsafe, Unjust And Harmful To Wider Society': Grounds For Raising The Minimum Age Of Criminal Responsibility In England And Wales* which was published in 2013.¹⁷⁰ Goldson, in this article, acknowledges the research literature on the developing physical and cognitive functions of children, their maturity and the significant role it plays in questioning the legitimacy of holding children aged ten to a similar standard of responsibility as adults. Nonetheless, he points out how focus on the perceived deficit within children can be a double-edged sword and therefore, presents alternative grounds for raising the ACR established in the principle of immunity from prosecution for children. Since, capacity in relation to the ACR has been evaluated in the section above, I chose to use Goldson's alternative grounds as a framework to engage critically and understand the other issues with the current law on criminal responsibility in England and Wales. The grounds for raising the ACR outlined in his article will be used as headings to structure this section. This includes, i) inter-jurisdictional consistency, ii) compliance with international human rights obligations, iii) intra-jurisdictional integrity and iv) social factors.¹⁷¹ In addition to summarising these arguments and critically reviewing them, I will also add

¹⁷⁰ Barry Goldson, "Unsafe, Unjust and Harmful to Wider Society': Grounds For Raising The Minimum Age Of Criminal Responsibility In England And Wales' (2013) 13 Youth Justice.

¹⁷¹ *ibid.* 'Social Factors' is a heading I used to combine Goldson's two grounds for raising the ACR – 'Criminalising Social Need' and 'Minimising Social Harm'.

to my own analysis and point out what I found to be missing from the grounds mentioned.

2.5.1 Inter-jurisdictional consistency

Each country sets its own ACR and this is often based on other arbitrary age limits within the legal system and their international obligations (e.g. CRC) in order to maintain a standard of protection for children in their jurisdiction. The ACR in England and Wales is the lowest in Europe.¹⁷² Hazel's research states that it is also considerably low compared to 86 countries worldwide.¹⁷³ The tables below outlines where England and Wales fall on a global scale and in Europe.

¹⁷² House of Lords House of Commons Joint Committee on Human Rights, *The UN Convention on the Rights of the Child (tenth report)* (London: HMSO, Session 2002–03).

¹⁷³ Neal Hazel, 'Cross-National Comparison of Youth Justice' (Youth Justice Board 2008)

Table 2.1. ACR in Different Countries

Age of Criminal Responsibility	Countries
7	Cyprus, India, Lichtenstein, Nigeria, Singapore, South Africa, Switzerland
8	Gibraltar, Kenya, Sri Lanka
10	England and Wales, Australia, Fiji, Malaysia, New Zealand
12	Scotland, Canada, Greece, Jamaica, Netherlands, Turkey, Belgium
14	Austria, China, Germany, Italy, Latvia, Lithuania, Romania, Vietnam, Bulgaria
15	Denmark Egypt, Estonia, Finland, Iceland, Norway, Sweden, Poland
16	Argentina, Portugal, Spain, Lithuania
18	Belgium, Brazil, Colombia, Luxembourg, Peru

The table above visually illustrates the considerable difference in ACR between England and Wales and other countries, with the average ACR in Europe being fourteen years old.¹⁷⁴ It is evident that the ACR being set at ten is “so out of line with prevailing practice in Europe”.¹⁷⁵ Additionally, it is also out of line within the United Kingdom (UK), as Scotland have raised their ACR to twelve in an attempt to fulfil international obligations.¹⁷⁶ It is “difficult to understand or defend” knowing that the youth justice system in other countries with higher ACRs manage to regulate their citizens without

¹⁷⁴ Neal Hazel, 'Cross-National Comparison of Youth Justice' (Youth Justice Board 2008); Howard League for Penal Reform, 'Punishing Children: A Survey Of Criminal Responsibility And Approaches Across Europe.' (The Howard League for Penal Reform 2008).

¹⁷⁵ House of Lords House of Commons Joint Committee on Human Rights, *The UN Convention on the Rights of the Child (tenth report)* (London: HMSO, Session 2002–03).

¹⁷⁶ The Age of Criminal Responsibility (Scotland) Act 2019; Age of Criminal Responsibility (Scotland) Bill 2018-19.

it having a negative impact on the crime rates.¹⁷⁷ Furthermore, in some jurisdictions worldwide there are distinctions made between relative and full criminal responsibility. In these countries, relative responsibility would mean that their responsibility is activated as per the ages outlined above however, children's cases are dealt with in special youth courts where educational disposals are prioritised over punitive measures. Here, full criminal responsibility does not come into action until a child reaches the eighteen, the age of majority.¹⁷⁸ Not only does England and Wales have one of the lowest ACRs in the world, but it also exposes children from the age of ten to the processes of the criminal justice system, thereby making it an obvious outlier in this context. The stark inter-jurisdictional inconsistency has been one of the key grounds of raising the ACR.

2.5.2 Compliance with international human rights obligations

The principal aim of the CRC is to promote the protection and welfare of children internationally. They are protected by fundamental human rights¹⁷⁹ and additional rights that are specifically for children.¹⁸⁰ These rights conferred to children must be distinguished from the rights that adults have as it takes into account their "special status" and "need for protection."¹⁸¹ This special status of children was first recognised and internationally agreed upon in the UN Declaration on the Rights of the Child in 1959, where a consensus was reached by the UN General Assembly on the fundamental principles of children's rights.¹⁸² The Declaration highlights that "the child, by reason of his physical and mental immaturity, needs special safeguards

¹⁷⁷ Frieder Dünkel, 'Current Directions In Criminal Policy', *Juvenile Delinquents and Young People in Danger in an Open Environment*. (Waterside Books 1996) as cited in Barry Goldson, 'Unsafe, Unjust and Harmful To Wider Society': Grounds For Raising The Minimum Age Of Criminal Responsibility In England And Wales' (2013) 13 Youth Justice.

¹⁷⁸ Scottish Law Commission, *Report on Age of Criminal Responsibility* (Scot Law Com No 185 Stationery Office 2002); Gerry Maher, 'Age and Criminal Responsibility' (2005) 2 Ohio State Journal of Criminal Law.

¹⁷⁹ Human Rights Act 1998

¹⁸⁰ Arabella Lang, 'UN Convention on the Rights of the Child: A brief guide' [2016] 7721 pg 3.

¹⁸¹ United Nations Declaration of the Rights of the Child (1959) as cited in Penelope Brown, 'Reviewing the age of criminal responsibility' (Criminal Law Review, 2018)

¹⁸² United Nations Declaration of the Rights of the Child (1959) United Nations General Assembly in Resolution 1386 (XIV)

and care, including appropriate legal protection”.¹⁸³ For example, arbitrary age limits are placed to protect children from the responsibility and consequences of certain actions like smoking, sex, marriage for example, by conferring rights upon them as they grow up. This recognises the fact that children develop into adults but until that point remain children. The criminal justice system, however, does not provide the full benefit of that to children in conflict with the law, as youth offenders go from being a “child” to a “non-child” because the threshold for being held criminally responsible is the same as it is for adults.¹⁸⁴ The current ACR with no presumption of *doli incapax* leaves children with no legal safeguards to protect them from entering into the criminal justice system¹⁸⁵, even though upon entry they are treated different to adults. This presents a strong ground for raising the ACR based on international human rights¹⁸⁶ obligations which will be the focus of this section.

The CRC was ratified by the UK in 1991, placing an obligation on the Government to act in line with the principles and standards it outlines.¹⁸⁷ Notably, the CRC has not been incorporated into English law, therefore, a lack of compliance cannot result in breach as it is not legally enforceable in domestic courts. This restricts its effect to persuasive input on decisions made.¹⁸⁸ The UK Government is obliged to report their progress in implementing the CRC and achieving its aims to the UN Committee on the Rights of the Child (referred to as UNCRC) every five years. This is followed up by a response from the Committee on the necessary improvements to

¹⁸³ United Nations Declaration of the Rights of the Child (1959) as cited in Penelope Brown, 'Reviewing the age of criminal responsibility' [2018] Criminal Law Review.

¹⁸⁴ Stephen Case and Tim Bateman, 'The Punitive Transition In Youth Justice: Reconstructing The Child As Offender' (2020) 34 Children & Society.

¹⁸⁵ Claire McDiarmid, 'After the Age of Criminal Responsibility: A Defence For Children Who Offend' (2016) 67 Northern Ireland Legal Quarterly.

¹⁸⁶ This includes broader rights that apply to children in the form of human rights.

¹⁸⁷ Raymond Arthur, *Young Offenders and the Law: How the Law Responds to Youth Offending* (1st Edn, Routledge, 2010) pg 34.

¹⁸⁸ *Ibid.*; also see the case of *R (on the application of SG and others) (previously JS and others) (Appellants) V Secretary of State for Work and Pensions (Respondent)* [2015] UKSC 16 in relation to a claim about the household benefit cap which demonstrates the difficulties of non-incorporation of the CRC into UK law.

better fulfil the CRC obligations.¹⁸⁹ The most recent UNCRC report on the UK law was in 2016 which repeated some of its criticisms regarding compliance with principles of the CRC.¹⁹⁰ Three main articles were mentioned in relation to this, namely, Article 3, 37, and 40(3) which will be discussed below.

Article 3 of the CRC states that “the best interests of the child shall be the paramount consideration in all actions concerning children”.¹⁹¹ In relation to the YJS, the general comments state that the child’s welfare should be the paramount consideration with rehabilitation and restorative justice coming before punishment.¹⁹² The 2016 UN Committee report noted that Article 3 was still not being reflected in all legislative and judicial decisions affecting children, especially within the YJS. This could be attributed to the history of the youth justice system which illustrates a shift away from the welfare approach to a more punitive one. Despite, the introduction of more diversionary measures in recent years,¹⁹³ the residual effects of the punitive approach still remain, especially with the ACR set at the young age of 10. This continues to focus on criminalising children in conflict with the law at the age of 10, rather than taking more rehabilitative measures against them. Raising the ACR would be a major step in the direction of ensuring the best interests of children are the foremost concern in the YJS, thus taking into account the guidance provided by the UNCRC.

The best interests of the child within the context of youth justice also relates to Article 37 of the CRC which states that “imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate

¹⁸⁹ Arabella Lang, ‘UN Convention on the Rights of the Child: A brief guide’ [2016] 7721 pg 9.

¹⁹⁰ United Nations Committee on the Rights of the Child, General Comment No.24: Children’s Rights in the Child Justice System. (United Nations, 2019), para.39.

¹⁹¹ The United Nations Convention on the Rights of the Child, Article 3

¹⁹² United Nations Committee on the Rights of the Child, *General Comment No. 10 Children’s rights in juvenile justice* (forty-fourth session, 2007) pg 5.

¹⁹³ Raymond Arthur, *Young Offenders and the Law: How the Law Responds to Youth Offending* (1st Edn, Routledge, 2010); Roger Smith, *Diversion in Youth Justice: What Can We Learn from Historical and Contemporary Practices?* (Routledge 2019).

time”.¹⁹⁴ Both Article 3 and 37 recommend rehabilitative measures, which comply with the best interests of the child and leaves imprisonment to be used as a last resort. Though both these CRC provisions make this point clear, the 2016 UNCRC Report still expressed concerns about the high number of children in custody.¹⁹⁵ In light of the this, the UNCRC recommends a review of all the orders introduced by the Crime and Disorder Act 1998 as these orders criminalise young people.¹⁹⁶ The same 1998 Act also abolished *doli incapax* leaving youth offenders from the age of ten with no defence or safety net.¹⁹⁷ Having such a low ACR widens the entrance into the YJS thereby exposing more children to it. Thus, having a low ACR is antithetical to promoting more rehabilitative measures and avoiding harsher measures like youth custody.

The CRC allows each of the State parties to decide their own ACR, taking further factors such as social considerations and cultural representation into account in line with this new construct of childhood.¹⁹⁸ Article 40(3) of the Convention addresses this by outlining that states “should establish a minimum age (ACR) at which children below shall be presumed not to have the capacity to infringe the law”.¹⁹⁹ Guidance from the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (the Beijing Rules) elaborates on this by recommending that “the ACR shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity”.²⁰⁰ Rule 17 specifically suggests considering whether a child “by virtue of his or her discernment and

¹⁹⁴ United Nations Convention on the Rights of the Child, Article 37(b)

¹⁹⁵ United Nations Committee on the Rights of the Child, *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* (Seventy-second session, 2016) Para 78 (d) pg 21.

¹⁹⁶ Raymond Arthur, ‘The Youth Justice in England and Wales: Complying with International Human Rights Law’ [2005] IFL pg 155-157.

¹⁹⁷ Sue Bandalli, ‘Abolition of the Presumption of Doli Incapax and the Criminalisation of Children’ [2008] Howard Journal of Criminal Justice Vol 37 Issue 2.

¹⁹⁸ Sarah H. Matthews, A Window on the ‘New’ Sociology of Childhood, *Sociology Compass* 1/1 (2007): 322-334 pg 325.

¹⁹⁹ United Nations Convention on the Rights of the Child, Article 40(3)

²⁰⁰ United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (the Beijing Rules) Rule 4.1

understanding can be held responsible for their behaviour”.²⁰¹ The commentary on the Beijing rules also elaborates on this idea by suggesting that the ACR should be closely related to the age at which young people obtain other social rights such as, the right to vote or marriage, to ensure consistency between criminal and civil law provisions.²⁰² Although, these rules are non-binding on domestic law, it indicates the “current international thinking on human rights for young people”²⁰³ which seems to be at odds with the thinking in England and Wales as made clear by the lack of change in the ACR. This is unlike other countries who have made attempts to rectify their ACR²⁰⁴ as per the UNCRC’s 2008 report.²⁰⁵

As a result, the UNCRC expressed its continued concerns about the current ACR in England and Wales in their report where they recommended that it be raised considerably in accordance with acceptable international standards.²⁰⁶ More specifically, General Comment No.24 urges the ACR to be raised to at least 14 years of age.²⁰⁷ The European Committee of Social Rights also declared it to be “manifestly too low” and stated that it was not conforming to Article 17 of the European Social Charter.²⁰⁸ Alvarez Gil-Robles (The Council of Europe’s Human Rights Commissioner in 2005) reported on his visit to the United Kingdom that although the European Convention of Human Rights (ECHR) does not set a specific age limit he suggested that it should be raised and brought in line with other European countries as he had “extreme difficulty in accepting that a child of 12 or 13

²⁰¹ United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (the Beijing Rules) Rule 17.

²⁰² Ibid.

²⁰³ John Gillen, ‘*The Age of Criminal Responsibility: The Frontier between Care and Justice* John Gillen’ (Vol 12, No 2, Routledge, 2006) pg 129-139.

²⁰⁴ Houses of Parliament Parliamentary Office of Science and Technology ‘Age of Criminal Responsibility’ (Post Note, Number 577, 2018)

²⁰⁵ Terry McGuinness ‘The age of criminal responsibility briefing paper’ (Number 7687, 2016)

²⁰⁶ United Nations Committee on the Rights of the Child, *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* (Seventy-second session, 2016) Para 79(a) pg 22.

²⁰⁷ UN Committee on the Rights of the Child, General Comment No. 24 (2019) on children’s rights in the child justice system.

²⁰⁸ European Committee of Social Rights, *Conclusions XVII-2 (United Kingdom) Articles 7,8,11,14,17 and 18 of the Charter* (Council of Europe, 2005), [105]. This Charter focuses on providing mothers and children a right to social and economic protection.

can be criminally culpable for his actions, in the same sense as an adult.”²⁰⁹ The same recommendation on the ACR has been repeatedly given to the UK government since the early 2000s. Scotland chose to act upon this recommendation with the introduction of the Age of Criminal Responsibility (Scotland) Bill in March 2018. This Bill went through 3 stages of readings and finally became the Age of Criminal Responsibility (Scotland) Act on 11th June 2019. Even then the Scottish Children’s Commissioner, Bruce Adamson, expressed that raising the age to twelve is not far enough.²¹⁰ This stands in stark contrast to the way the three ACR Bills proposed by Lord Dholakia have been received in England, as the government continued to maintain its position on leaving the ACR as it is. Unsurprisingly, the Bills have not gone beyond the second reading. In turn, the UK government has once again been reminded in the United Nations International Children’s Emergency Fund (UNICEF) UK’s 2020-21 Youth Justice Report that if it is serious about meeting the international children’s rights standards then “progressive reform of ACR in England is urgently required.”²¹¹

The children’s human rights obligations discussed above are indubitably at odds with the practice of “responsibilizing and adultifying” children from the age of ten, thereby providing a strong ground for raising the ACR.²¹² Doing this would recognise the evolving capacities of a children as part of their rights. As outlined by Cipriani:

“Children’s criminal responsibility is indeed an integral and necessary part of children’s rights – a logical extension of the concept of children’s evolving

²⁰⁹ Alvarez Gil-Robles, *Report on his visit to the United Kingdom 4th-12th November 2004 for the attention of the Committee of Ministers and the Parliamentary Assembly* (Council of Europe, 2005), [105].

²¹⁰ Bruce Adamson, 'Comment: Despite the Increase in Age Of Criminal Responsibility We Are Still Failing Our Children' (*Children in Scotland*, 2021) <<https://childreninscotland.org.uk/magazine-comment-despite-the-increase-in-age-of-criminal-responsibility-we-are-still-failing-our-children/>> accessed 8 March 2022.

²¹¹ UNICEF UK, 'A Rights-Based Analysis of Youth Justice in The United Kingdom' (UNICEF UK 2020) <https://www.unicef.org.uk/wp-content/uploads/2020/12/UnicefUK_YouthJusticeReport2020_screen.pdf> accessed 6 January 2021.

²¹² Barry Goldson, 'Unsafe, Unjust and Harmful to Wider Society': Grounds For Raising The Minimum Age Of Criminal Responsibility In England And Wales' (2013) 13 Youth Justice.

capacities insofar as it is an appropriate step in respecting children's progression from lesser to greater competence, which gradually prepares them for adult rights and responsibilities."²¹³

Having such a low ACR fails to recognise this and therefore, does not provide youth offenders the protection and assistance available to other children who have not committed a criminal offence. This disparity in the treatment of children calls for a higher ACR.

2.5.3 Intra-jurisdictional integrity

The law plays a major role in mediating "the transition from 'childhood' to 'adulthood' in criminal and civil statute whereby rights and responsibilities accumulate with age."²¹⁴ Consideration of both these types of statutes in England and Wales, reveals a dissonance in how the legal personality of a child is constructed. There is a huge inconsistency in the way social rights and responsibilities are assigned in comparison to the ACR. The table below illustrates the different ages at which children are assigned different rights and responsibilities.

²¹³ Don Cipriani, *Children's Rights and The Minimum Age Of Criminal Responsibility* (Routledge 2016) pg 34.

²¹⁴ Barry Goldson, "Unsafe, Unjust and Harmful to Wider Society': Grounds For Raising The Minimum Age Of Criminal Responsibility In England And Wales' (2013) 13 Youth Justice.

Table 2.2 Arbitrary Age Limits

Age	Age Limits for other Social Rights in England and Wales
10	The age of criminal responsibility in England, Wales and Northern Ireland is 10 years old.
13	To help protect younger children the law says anyone under the age of 13 can never legally give consent.
14	You can go into a bar and order soft drinks. Wearing a seatbelt is considered your own personal responsibility.
15	Working restrictions are the same as 14-year-olds, except you can work up to eight hours on a Saturday between 7.00am and 7.00pm (if you're 15 or over but under school-leaving age).
16	Age of marriage (with parental consent). Age of sexual consent. Leaving school. Living unsupported.
17	Right to become a blood donor. You can drive most types of vehicles (with a provisional driving licence and a 21+ adult in the passenger seat who is qualified to drive). If you pass your driving test, and you are properly insured, you can get behind the wheel and take to the road on your own.
18	Buying cigarettes. Jury service. Right to vote. Right to marriage without parental consent.

This table shows a three-year gap between the ACR and the next age limit at which a child is deemed sufficiently responsible and old enough to have a legal right. This raises the question of why would a young person lack the understanding to give sexual consent below the age of thirteen in the eyes

of the law, yet be able to take full responsibility for the consequences of their crime including engaging in sexual offending? This question can be posed in relation to the other rights outlined in Table 2.2. These questions can be related to capacity, however since this has been discussed previously, the focus here will be on highlighting the difference in the way children are treated when it comes to different rights and responsibilities. These intra-jurisdictional differences in age limits as shown above illustrate how the ACR “adultifies” children at the age of ten by exposing them to the rigours of the criminal justice system with no legal safeguard, unlike other social rights and responsibilities where a more cautious approach is taken with higher age limits. This illustrates how the ACR is an anomaly in comparison to other age limits, thus making it difficult to understand and justify why it is out of line with all other social rights.

These inconsistencies are not limited to the differences in civil and criminal statutes, but it also exists within the criminal law context. The difference arises based on the status of the child as either a witness or a defendant. Under the Youth Justice and Criminal Evidence Act 1999 children under the age of fourteen are not allowed to give sworn evidence. When this is compared to the ACR, the difference in the treatment of children within the justice system becomes apparent. For example, a child who is a defendant at the age of ten can be held criminally responsible, but the same child would not be able to give sworn evidence as a witness as they are below the minimum age limit. This links to how a child witness is deemed “vulnerable” and “deserving” of protection by the law, whereas a child defendant is treated “undeserving” of such consideration and is instead viewed as a “threat”.²¹⁵ Such differing perceptions of children and the way it affects how they are treated under criminal law is paradoxical, as the ACR remains inconsistent with other rights and responsibilities in more than one intra-jurisdictional context. This points to another reason why the current

²¹⁵ Barry Goldson, ‘Unsafe, Unjust and Harmful to Wider Society’: Grounds For Raising The Minimum Age Of Criminal Responsibility In England And Wales’ (2013) 13 Youth Justice.

ACR treats children unfairly without sufficient consideration of their evolving capacities.

Dixon and Nussbaum's capabilities approach²¹⁶ outlines how children arrive in this world with different forms of undeveloped capacities and as a result there is a need to protect them as these capacities develop.²¹⁷ The aim of this approach is to support children as their agency and practical reasoning skills grow with age.²¹⁸ During this process the state is urged to act dutifully by recognising the individual capacity of children to think and make informed decisions and support that process through ensuring that favourable conditions to realising these capabilities are provided.²¹⁹ Here, Dixon and Nussbaum's approach highlight the importance of a child's right to assistance and protection while their capabilities develop otherwise they can be "mutilated and deformed" by their experiences.²²⁰ This right to assistance is recognised in other areas of the law through the gradual conferral of rights such as the right to purchase alcohol, consent to sexual relations etc. These examples show how the law in most cases recognises that certain actions require the individual to attain a particular level of maturity and capacity before they can engage with it and so before they reach that point children are protected through the arbitrary age limits.

A similar approach is also taken within the family law context as seen in the case of *Mabon v Mabon*²²¹ where three young people aged thirteen, fifteen, and seventeen wanted to represent themselves. In this case, the court

²¹⁶ Rosalin Dixon and Martha Nussbaum, 'Children's Rights and a Capabilities Approach: The Question of Special Priority' (2012) 97 Cornell Law Review 549.

²¹⁷ Jean-Michel Bonvin and Daniel Stoeklin, 'Introduction' in Daniel Stoeklin and Jean-Michel Bonvin (eds), *Children's Rights and The Capability Approach: Challenges and Prospects* (Springer 2014) pg 10.

²¹⁸ Ibid.

²¹⁹ Zoë Clark and Holger Ziegler, 'The UN Children's Rights Convention and the Capabilities Approach: Family Duties and Children's Rights in Tension' in Daniel Stoeklin and Jean-Michel Bonvin (eds), *Children's Rights and The Capability Approach: Challenges and Prospects* (Springer 2014) pg 215.

²²⁰ Rosalin Dixon and Martha Nussbaum, 'Children's Rights and a Capabilities Approach: The Question of Special Priority' (2012) 97 Cornell Law Review 549; Raymond Arthur, Exploring childhood, criminal responsibility and the evolving capacities of the child: the age of criminal responsibility in England and Wales, *Northern Ireland Quarterly*, 67 (3) pg 274.

²²¹ [2005] EWCA Civ 634

found that there was a need to balance the child's right to participate in the decision-making processes that affect their family life and the "sufficiency of the child's understanding". Although, this case showed that a balance had to be struck between the right to participate and capacity, it can be questioned whether such a balance is attainable. Children within family law are often assumed to lack the capacity to articulate their thoughts and feelings and participate in a responsible manner to demonstrate to the courts that they have sufficient understanding.²²² Here, it can be argued that the current system tends to take an overly paternalistic approach where children's decisional freedom is concerned and may curtail their right to be heard in the process. Nonetheless, in this context the approach may be taken with the intention to protect children however, the same cannot be said about processes within the youth justice system especially since the presumption that a child was *doli incapax* was abolished.²²³ Evidently, when it comes to criminal responsibility little consideration is given to children's capacity, especially when compared to other social rights, responsibilities and legal processes where it is recognised that children may not perceive long-term consequences and its impact on their lives and the lives of others. Drawing young people into the criminal justice system at the age of ten does not adequately consider these factors. Therefore, put simply, the ACR introduces children into the criminal justice system at the age of ten, however, upon entering they lose their status as children as they move on from the status of a "child" to a "child offender" which puts them into a state of limbo between being a child and taking responsibility as an adult.

2.5.4 Social factors

There are many different factors that affect the lives of children and their overall development. So far, I have considered some neurological factors

²²² *Mabon v Mabon* [2005] EWCA Civ 634; *Re H* [1993] 1 FLR 440; *F (Mother) v F (Father)* [2013] EWHC 2683 (Fam); 112; Raymond Arthur, Exploring childhood, criminal responsibility and the evolving capacities of the child: the age of criminal responsibility in England and Wales, Northern Ireland Quarterly, 67 (3) pg 274.

²²³ Section 34 of the Crime and Disorder Act 1998

and referred to social factors that influence young people and our perception of them. These factors include the deprivation and disadvantage experienced by children however, it has been noted that this is not taken into account when attributing criminal responsibility. Failing to consider and prioritise this link allows for punishment to be brought upon young members of society, despite the plethora of research suggesting that children are less likely to offend if they are protected from abuse, deprivation and neglect and if their social, physical and mental needs are taken care of.²²⁴ Goldson outlines this point to be the basis of two grounds for raising the ACR namely, “decriminalising social need” and “minimising social harm” which will be considered below.²²⁵

i) Decriminalising Social Need

A prominent study from the 1990s discussing the influence of social factors on young offenders was the study conducted by Graham and Bowling where it was found that almost all young offenders have experienced some abuse, neglect, misfortune, and deprivation of some form.²²⁶ This link has been investigated further, by looking at risk factors known as Adverse Childhood Experiences (ACEs). Although the first documented study looking into ACEs focused on health-harming behaviours and poor health outcomes, it has also been used to explore the relationship between offending behaviour and exposure to ACEs. The experiences that form such adverse experiences are split into two categories namely: abuse which includes physical, emotional and sexual; and household dysfunction such as physical and emotional neglect, domestic violence, parental separation, family incarceration, mental illness, drug and alcohol abuse.²²⁷ A child’s relationship with their parents is especially crucial in the life of a

²²⁴ Barry Goldson, ‘Unsafe, Unjust and Harmful to Wider Society’: Grounds For Raising The Minimum Age Of Criminal Responsibility In England And Wales’ (2013) 13; Youth Justice; Home Office Research Study, ‘Young People And Crime’ (Home Office 1995).

²²⁵ Ibid.

²²⁶ Home Office Research Study, ‘Young People and Crime’ (Home Office 1995).

²²⁷ Vincent J. Felitti and others, ‘REPRINT OF: Relationship of Childhood Abuse and Household Dysfunction To Many Of The Leading Causes Of Death In Adults: The Adverse Childhood Experiences (ACE) Study’ (2019) 56 American Journal of Preventive Medicine.

young person and it has been shown that neglect, family conflict, poor domestic care and relationship have been shown to increase the risk of behavioural problems and offending among young people.²²⁸ General population studies, conducted in England and Wales, looking into these experiences and future violence found that participants who had experienced more ACEs were more likely to have committed a violent act than others who had no ACEs.²²⁹ Furthermore, another study conducted with a youth offender sample found that children who offend are more likely to have a higher rate of exposure to ACEs than the general population.²³⁰ Such traumatic experiences on children who are still in an impressionable phase in their life can have serious effects such as offending behaviour. To place criminal responsibility entirely on the individual with no consideration of their background where adversity may be prevalent would arguably be criminalising social need.

Another form of criminalising social need can be found in McAra and McVie's findings from The Edinburgh Study of Youth Transitions and Crime, where systemic links between poverty and violence were found.²³¹ The root cause of this is deprivation which limits the opportunities available to young people. This has been known to make them more vulnerable to crime. Before the pandemic began, there were 4.3 million children in the UK living in poverty in 2019/20. This is up 200,000 from the previous year and 500,000 over the last five years.²³² The Children's Society UK state that

²²⁸ Hirokazu Yoshikawa, 'Prevention as Cumulative Protection: Effects of Early Family Support and Education On Chronic Delinquency And Its Risks.' (1994) 115 *Psychological Bulletin*.

²²⁹ Mark A Bellis, Karen Hughes, Nicola Leckenby, Clare Perkins, and Helen Lowey, 'National Household Survey of Adverse Childhood Experiences And Their Relationship With Resilience To Health-Harming Behaviors In England' (2014) 12 *BMC Medicine*; Kathryn Ashton, Mark Bellis and Karen Hughes, 'Adverse Childhood Experiences And Their Association With Health-Harming Behaviours And Mental Wellbeing In The Welsh Adult Population: A National Cross-Sectional Survey' (2016) 388 *The Lancet*.

²³⁰ Michael T. Baglivio, Karen Hughes, Nicola Leckenby, Clare Perkins, Helen Lowey, 'The Relationship Between Adverse Childhood Experiences (ACE) And Juvenile Offending Trajectories in a Juvenile Offender Sample' (2015) 43 *Journal of Criminal Justice*.

²³¹ Lesley McAra and Susan McVie, 'Youth Crime and Justice: Key Messages from The Edinburgh Study Of Youth Transitions And Crime' (2010) 10 *Criminology & Criminal Justice*.

²³² Donald Hirsch and Juliet Stone, 'Local Indicators of Child Poverty After Housing Costs, 2019/20' (Loughborough University 2021) <<http://www.endchildpoverty.org.uk/wp->

three in ten children live in poverty with a 107% increase in children receiving emergency food in 2020.²³³ Recent reports have shown that with poverty levels continuing to increase in the UK and the detrimental effects of inflation affecting the whole population, child poverty is on the rise.²³⁴ Furthermore, child poverty has been found to be more prevalent in families with younger children, due to the effect that having a young child has on the parent(s) ability to work.²³⁵ This data shows that the basic needs of many children in the UK are not being met, leading to increased levels of deprivation experienced by many children. In such cases, children cannot be separated from their circumstances and based on the links made between deprivation and youth offending, these wider circumstances could increase their susceptibility to offending behaviour.

As a result, many children who enter the YJS are often noted to be in the greatest social need.²³⁶ Therefore, decriminalising social need as a ground for raising the ACR is based on the idea of giving youth the justice the system claims to provide by supporting those who are disadvantaged by socio-economic factors and ACEs, not criminalising them. This is not suggesting that only impoverished or children with ACEs offend, or that all poor children commit criminal offences, but emphasises the indubitable and inevitable link between such as adverse experiences and socio-economic disadvantage, and youth crime.²³⁷ With the current ACR, the factors which are closely linked to persistent and serious cases of youth crime are usually the “least amenable to intervention by agents of the youth justice system.”

content/uploads/2021/05/Local-child-poverty-indicators-report-MAY-2021_FINAL-1.pdf> accessed 16 January 2022.

²³³ 'Ending Child Poverty' (*The Children's Society*, 2022)

<[https://www.childrenssociety.org.uk/what-we-do/our-work/ending-child-poverty?gclid=Cj0KCQiAoY-](https://www.childrenssociety.org.uk/what-we-do/our-work/ending-child-poverty?gclid=Cj0KCQiAoY-PBhCNARIsABcz770AND9PMg3YLyAzrfXW4PVCiUF88hX94PiLMURwF0vIMc_wTZ9pTlMaArEtEALw_wcB)

PBhCNARIsABcz770AND9PMg3YLyAzrfXW4PVCiUF88hX94PiLMURwF0vIMc_wTZ9pTlMaArEtEALw_wcB> accessed 16 January 2022.

²³⁴ Joseph Rowntree Foundation, 'UK Poverty 2022: The Essential Guide to Understanding Poverty in The UK' (Joseph Rowntree Foundation 2022)

<<https://www.jrf.org.uk/report/uk-poverty-2022>> accessed 25 January 2022.

²³⁵ Ibid.

²³⁶ Andrew Becroft, 'How to Turn a Child Offender into An Adult Criminal – In 10 Easy Steps.', *Children and the Law International Conference* (2009).

²³⁷ Barry Goldson, 'Unsafe, Unjust and Harmful to Wider Society': Grounds for Raising the Minimum Age of Criminal Responsibility In England And Wales' (2013) 13 Youth Justice.

²³⁸ Here, a higher ACR to decriminalise social need could be classified as a diversionary strategy as children below the minimum age will be considered incapable of committing a crime, and therefore would not be drawn into the criminal justice system.²³⁹ It, therefore, pushes for an approach that would focus more on recognising children's needs and protecting them rather than holding them responsible for their inability to resist risk factors.

Over the years the YJS has gone through many changes, including more recent initiatives directed at reducing child arrests and reducing the number of FTE. The progress achieved has been acknowledged in both the UNICEF report called *A Rights-Based Analysis of Youth Justice in the United Kingdom*²⁴⁰ and the 2020 National Association for Youth Justice (NAJY) Report,²⁴¹ with a reduction in numbers for both these measures. Whilst this indicates the positive effects of diversion policies that have been put in place, there have been some concerns raised. It has been noted that children who come into the youth justice system are “disproportionately drawn from vulnerable working-class backgrounds, including children in care and children from BAME backgrounds.”²⁴² Since a lot of these children are most likely to be from deprived backgrounds with adverse life experiences, this further reinforces the obligation to decriminalise social need, so that these children are not swept into the youth justice system as a result of circumstances that affect and contribute to their choices.

ii) Minimising Social Harm

²³⁸ Adrian Bell, Mike Hodgson and Sandy Pragnell, 'Diverting Children and Young People from Crime and The Criminal Justice System', *Youth Justice: Contemporary Policy and Practice*. (Routledge 1999).

²³⁹ Ibid.

²⁴⁰ UNICEF UK, 'A Rights-Based Analysis of Youth Justice in The United Kingdom' (UNICEF UK 2020) <https://www.unicef.org.uk/wp-content/uploads/2020/12/UnicefUK_YouthJusticeReport2020_screen.pdf> accessed 6 January 2021.

²⁴¹ Tim Bateman, 'The State of Youth Justice 2020: An Overview of Trends and Developments' (National Association for Youth Justice 2020) <<https://thenayj.org.uk/cmsAdmin/uploads/state-of-youth-justice-2020-final-sep20.pdf>> accessed 17 June 2021.

²⁴² Ibid.

Zimring explains that most youth crime is “a by-product of adolescence” and therefore suggests that the cure for resolving youth crime is growing up.²⁴³ The former Chief Executive of the Howard League for Penal Reform, Frances Cook, further emphasises this point by stating that children who come in conflict with the law are often being challenging due to their age, and so the way in which they are dealt with can have an impact on the rest of their life.²⁴⁴ This idea that young people “grow out of crime” is a well-established fact,²⁴⁵ however, the premature interventionist approach to youth justice has been found to have counter-productive effects such as labelling, stigmatising, and generating negative social reactions.²⁴⁶ The consequences of these effects, in relation to children, is the reduced likelihood of them completing their education and obtaining qualifications that will therefore improve their employment prospects.²⁴⁷ Furthermore, the stigmatisation and labelling makes it harder to integrate into social institutions like the schools or the workplaces in the future.²⁴⁸ In addition, the criminal record that a child obtains remains with them throughout their adult life, thus impacting their future employment prospects.²⁴⁹

The ACR has remained the same over the years as the government has been reluctant to raise it, so as to avoid allowing children above the age of ten who commit crimes from slipping through the net of the justice system. However, this mentality to preventing crime is arguably problematic and does not consider the potential impact on the children who enter the YJS. Another longitudinal study conducted by McAra and McVie found that the

²⁴³ Franklin E Zimring, *American Juvenile Justice* (Oxford University Press 2005) pg 63.

²⁴⁴ Frances Cook, '2,000 Under-12s Arrested Last Year, Says Charity' (*Guardian*, 2012) <<https://www.theguardian.com/society/2012/dec/03/under-12s-arrested-children>> accessed 17 January 2022.

²⁴⁵ Andrew Rutherford, *Growing Out of Crime: The New Era* (Waterside Press 1992).

²⁴⁶ This is explained in John I. Kitsuse, 'Societal Reaction to Deviant Behavior: Problems of Theory and Method' (1962) 9 *Social Problems* 247-256.

²⁴⁷ Jon Gunnar Bernburg and Marvin D. Krohn, 'Labeling, Life Chances, and Adult Crime: The Direct and Indirect Effects of Official Intervention in Adolescence on Crime In Early Adulthood' (2003) 41 *Criminology*. 1287-1318.

²⁴⁸ *Ibid.*

²⁴⁹ Claire Sands, Jen Twite and Christopher Stacey, 'How Can England and Wales Achieve a Child-friendly Criminal Record Disclosure System?', *Child-friendly youth justice?* (NAYJ 2022) <<https://thenayj.org.uk/wp-content/uploads/2019/02/NAYJ-Child-friendly-youth-justice-May-18.pdf>> accessed 22 February 2022.

more young people were in contact with the youth justice system the more “damaged” they become. They found that the most effective way to prevent offending and reduce harm to children is to encourage “minimal intervention and maximum diversion.”²⁵⁰ Richards comments on another longitudinal study that was conducted in Montreal, Canada: “Even when the effect of other relevant variables had been controlled for...contact with the juvenile justice system increased the cohort’s odds of adult judicial intervention by a factor of seven.”²⁵¹ This concludes that although intervention at an early stage in a young person’s life could be intended to benefit and develop them into law-abiding citizens, this may be outweighed by the social harm it causes. Therefore, bringing children into the YJS at the age of ten impedes their development, due to harmful consequences such as labelling and negative social reaction, and takes away their opportunity to naturally “grow out of crime”. Raising the ACR would divert them from this system, in compliance with human rights obligations,²⁵² and avoid the social harm caused.

The recent trend suggests that although there are fewer FTE in the youth justice system with each passing year, children are now more likely to “skip” the caution stage and receive a conviction instead.²⁵³ In addition, evidence has shown that youth court orders have “increased in their intrusiveness and the principle of “minimum necessary intervention” is unfortunately not seen as a priority in the youth justice system.”²⁵⁴ This shows although diversion is emphasised, once children enter the system their treatment may still be harsh and punitive. Even though the numbers

²⁵⁰ Lesley McAra and Susan McVie, 'Youth Justice? The Impact of System Contact on Patterns Of Desistance From Offending.' (2007) 4 *European Journal of Criminology*, pg 315-345

²⁵¹ Kelly Richards, 'What Makes Juvenile Offenders Different from Adult Offenders?' [2011] *Australian Institute of Criminology*
<<https://www.aic.gov.au/publications/tandi/tandi409>> accessed 17 January 2022.

²⁵² Barry Goldson and John Muncie, 'Critical Anatomy: Towards A Principled Youth Justice', *Youth Crime and Justice: Critical Issues* (SAGE publications 2006) pg 223.

²⁵³ Tim Bateman, 'The State of Youth Justice 2020: An Overview of Trends and Developments' (National Association for Youth Justice 2020)
<<https://thenayj.org.uk/cmsAdmin/uploads/state-of-youth-justice-2020-final-sep20.pdf>> accessed 17 June 2021.

²⁵⁴ *ibid.*

suggest that there have been improvements in the YJS, the concerns raised in these reports showcases a continuing disregard for the welfare of children who come into contact with it.²⁵⁵ This contravenes international obligations, highlights the unfairness of the inter-jurisdictional and intra-jurisdictional difference in the treatment of a child offender, exacerbates social harm caused to children who come into the system and continues to criminalise social need. By extending the principle of immunity for children and increasing the ACR, young children can avoid the risks of coming into contact with the youth justice system and receive treatment more suitable for to their status as children.

2.6 Lack of Change in the ACR

Goldson concludes that the intellectual battle “has been won” however the lack of change in the ACR stems from “political imperative rather than criminological rationality”.²⁵⁶ The government’s response to arguments calling for a higher ACR have remained unchanged over the years. They continue to maintain that children are able to “differentiate bad behaviour from serious wrongdoing” and therefore are convinced, on that basis, that the ACR in England and Wales is appropriate. Unmoved by the overwhelming evidence and clear grounds for needing to raise the ACR, the government has rejected numerous calls to raise the ACR over the years as they believe it “appropriately and accurately reflects what is required of our justice system”.²⁵⁷ To further elaborate on this, the government state that it is “important to ensure that serious offences can, where appropriate, be prosecuted and the public protected”.²⁵⁸ Whilst it is valuable and necessary for the criminal justice system to prioritise

²⁵⁵ Despite the reduction in child arrests in 2019-20, the treatment of children in custody has been troubling due to excessive use of solitary confinement and violence against children using tasers and spit-hoods. See UNICEF UK, 'A Rights-Based Analysis of Youth Justice in The United Kingdom' (UNICEF UK 2020) <https://www.unicef.org.uk/wp-content/uploads/2020/12/UnicefUK_YouthJusticeReport2020_screen.pdf> accessed 6 January 2021.

²⁵⁶ Barry Goldson, "Unsafe, Unjust and Harmful to Wider Society': Grounds For Raising The Minimum Age of Criminal Responsibility In England And Wales' (2013) 13 Youth Justice.

²⁵⁷ Age of Criminal Responsibility HL Bill [2017] Vol 783

²⁵⁸ Age of Criminal Responsibility Bill HL [2016] Vol 768 Lord Faulks

protecting the public, criminalising children at a young age may not be the most appropriate way to do this as it takes away from the opportunity to protect children in need and minimise social harm .

Goldson provides numerous compelling grounds for raising the ACR, however he does not explore the reasoning that allows the government to maintain the status quo. From my review of articles in this area of research, the primary focus seems to be on the presenting and finding grounds to highlight the inappropriateness of the current ACR. It is due to these efforts that there is such a strong evidence base on the ACR in England and Wales. However, it has been noted that most of these articles only mention the reasoning provided by the government for the lack of change in this area, namely, children knowing the difference between right and wrong, but none have investigated it. The exceptions to this would be studies in the medical field that illustrate the children's brain development and its effects on impulsive and risky behaviour²⁵⁹, and the rare ones where children were asked about the ACR and their understanding of it.²⁶⁰ From these studies, one that stood out was an article by Watkins et al, that explores what and how children think about the ACR. This paper highlights that even when children were found to know about the ACR they often did not understand what it meant in the context of their lives or the lives of other children. The authors attributed this to a lack of education, however, did not explore this in much depth. From this, it can be argued that the government's claim that children know right from wrong is a "gross simplification" of the issue²⁶¹ as it seems that children may not understand criminal responsibility despite the provision of compulsory education. Therefore, I would argue that further

²⁵⁹ Enys Delmage, 'The Minimum Age of Criminal Responsibility: A Medico-Legal Perspective' (2013) 13 Youth Justice; Hannah Wishart, 'Young Minds, Old Legal Problems' (2018) 82 The Journal of Criminal Law; Claire Bryan-Hancock and Sharon Casey, 'Young People and The Justice System: Consideration of Maturity In Criminal Responsibility' (2011) 18 Psychiatry, Psychology and Law.

²⁶⁰ Dawn Watkins and others, 'If You Are 10, You Go to Prison': Children's Understanding of The Age of Criminal Responsibility' (2016) 67 Northern Ireland Legal Quarterly.

²⁶¹ Thomas Crofts, 'Catching Up with Europe: Taking The Age Of Criminal Responsibility Seriously In England' (2009) 17 European Journal of Crime, Criminal Law and Criminal Justice.

investigations need to be conducted into whether simply knowing right from wrong is adequate to hold children aged ten and above criminally responsible. Moreover, it is important to explore the relationship between compulsory education and children's understanding of right and wrong to examine the strength of the government's reasoning for the lack of change in this area.²⁶²

2.7 Gap in the Literature

Simplifying the issue to such an extent where there is a hard line (the ACR) which attributes responsibility to children, without any consideration of developmental factors²⁶³ (as the defence of *doli incapax* attempted to do) and justifying it with the excuse of "compulsory education" is deeply problematic. This is mainly because the same justification is not brought up in relation to other arbitrary age limits which are set at a much higher age, even though it is widely taught to children in schools. Relationship and Sex Education is one example of such a subject that is widely covered in primary and secondary schools, to provide children with knowledge on the legal responsibilities around relationships and sex and prepare them for it.²⁶⁴ As mentioned previously, in this regard an individual between the age of 10-17 is still treated as a child however, a child who offends will be seen as a fully "responsibilized and adultified agent".²⁶⁵ Furthermore, the provision of compulsory education is used to justify the current ACR in England and Wales, even though there are many countries around the world that provide compulsory education which have a higher ACR. Within the UK, Scotland

²⁶² Home Office, *No More Excuses – A New Approach to Tackling Youth Crime in England and Wales* (White Paper, Cm 3809, 1997).

²⁶³ Kate Fitz-Gibbon, 'Protections for Children Before The Law: An Empirical Analysis Of The Age Of Criminal Responsibility, The Abolition Of Doli Incapax And The Merits Of A Developmental Immaturity Defence In England And Wales' (2016) 16 *Criminology & Criminal Justice*.; Claire Bryan-Hancock and Sharon Casey, 'Young People and The Justice System: Consideration Of Maturity In Criminal Responsibility' (2011) 18 *Psychiatry, Psychology and Law*.

²⁶⁴ Department for Education, "Foreword by the Secretary of State" (*GOV.UK*, September 22, 2021) <<https://www.gov.uk/government/publications/relationships-education-relationships-and-sex-education-rse-and-health-education/foreword-by-the-secretary-of-state>> accessed October 20, 2021

²⁶⁵ Barry Goldson, "Unsafe, Unjust and Harmful To Wider Society': Grounds For Raising The Minimum Age Of Criminal Responsibility In England And Wales' (2013) 13 *Youth Justice*.

is an example of such a country. This begs the question of whether compulsory education in England and Wales adequately educates and prepares children to be held criminally responsible from the age of ten.

From my review of the literature, although compulsory education is widely cited as a reason for leaving the ACR as it is, there has been no investigation into what compulsory education teaches children about the ACR, as illustrated by my review of the literature. This highlights a gap in the current research on the ACR. Exploring the gap brings forth an opportunity to move away from merely presenting grounds for raising the ACR, and instead shifts the focus on how to protect children in England and Wales by providing an alternative to the normative ways of dealing with it. Hence, this thesis seeks to explore whether the current provision of compulsory education provides children between the age of 7-14 with adequate knowledge of the ACR and the extent to which it develops their understanding of it. This will help answer the question of whether compulsory education is a reasonable excuse to justify holding children criminally responsible at the age of ten. This will be explored in the next section will by investigating the compulsory education provided to children between the age of 10-14.

2.8 Compulsory Education: An Overview

Before the late 1800s there was no state system of education in England. Schools belonged to churches that ran them in line with the class structure prevalent at the time. As a result, between 1750-1860 there was a new focus within social movements to move towards state-provided, free, mass compulsory education. There were several reasons for this including, lower literacy rates in England in comparison to other countries in Europe, better education for the working class, stopping child labour and improving conditions of life for poorer children. Initial attempts to implement this change failed largely because of the prevalence of factories during the industrial revolution that relied on child labour. There was the scope of mass education to be properly considered only when restrictions were placed on employing children with the advent of provisions like the Factories Act 1833.²⁶⁶ Eventually, the Education Act 1880 established universal education in England for all children between the age of five and ten.²⁶⁷ The 1893 Act raised the age of compulsory school attendance to eleven and then 1899 Act increased it further to the age of twelve.²⁶⁸ In addition, a change in law in 1891 meant that fees were no longer required to be paid for schooling.²⁶⁹ As it currently stands, in England and Wales, it is compulsory for children to receive an education from the age of five until the age of sixteen.²⁷⁰ The current law is outlined in section 7 of the Education Act 1996 as shown below:

“The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable—

(a) to his age, ability and aptitude, and

²⁶⁶ Derek Gillard, *Education in England: A History* (2018) <<http://www.educationengland.org.uk/history>> accessed 5 February 2022.

²⁶⁷ Ibid.

²⁶⁸ The Education Act 1893; 'Key Dates' (*UK Parliament*, 2022) <<https://www.parliament.uk/about/living-heritage/transformingsociety/livinglearning/school/keydates/>> accessed 6 February 2022.

²⁶⁹ 'The 1870 Education Act' (*UK Parliament*, 2022) <<https://www.parliament.uk/about/living-heritage/transformingsociety/livinglearning/school/overview/1870educationact/>> accessed 18 January 2022.

²⁷⁰ 'School Leaving Age' (*GOV.UK*, 2022) <<https://www.gov.uk/know-when-you-can-leave-school>> accessed 17 January 2022.

(b) to any special educational needs (in the case of a child who is in the area of a local authority in England) or additional learning needs (in the case of a child who is in the area of a local authority in Wales)] he may have,
either by regular attendance at school or otherwise.”²⁷¹

This emphasises that every child of compulsory age must receive education however, this is not limited to learning in schools, as it also includes home schooling. Parents have the option to either pay for their child’s education by enrolling them into a Private or Independent school²⁷² or alternatively, State schools in England provide all children between the age of five and sixteen with a free place.²⁷³ Children are placed into State schools largely (but not solely) based on the catchment area which considers the proximity of the school to the houses of their students.²⁷⁴ State schools are funded by their local authority or directly by the government and take a few different forms. Some of the most common types of state schools are:

- community schools or local authority maintained also referred to as ‘maintained’) schools who follow the NC and are not influenced by business or religious groups;
- foundation schools and voluntary schools who are funded by the local authority but are given more freedom to do things in their own way and can be support by representatives from religious groups;
- academies and free schools are run by not-for-profit academy trusts, independent from the local authority and as a result, are given more freedom to run things as they choose and they are not limited by the NC;

²⁷¹ Section 7 Education Act 1996

²⁷² 'Types Of School' (GOV.UK, 2022) <<https://www.gov.uk/types-of-school/private-schools>> accessed 17 January 2022.

²⁷³ Ibid.

²⁷⁴ Department for Education, 'School Admissions Code' (Department for Education 2022) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1001050/School_admissions_code_2021.pdf> accessed 25 January 2022.

- grammar schools are selective as their students are chosen on the basis of their academic ability through a test and they can be run by either the local authority, a foundation body or an academy trust.²⁷⁵

In this thesis the focus will be on community/maintained schools, foundation schools and voluntary schools as these types of schools form the majority in England,²⁷⁶ and they are required to use the NC to inform their school curriculum.²⁷⁷ For the purposes of this investigation focusing on these schools makes it easier to examine the standard content taught to children between the age of 7-14 across England to find out how this informs them of the ACR. This age range was chosen because it covers the curriculum in the lead up to the ACR, starting from the age of seven and goes beyond it, until fourteen, to see what is taught in the years following it.

Section 78 of the 2002 Education Act states that a school curriculum must be balanced and broad by promoting “the spiritual, moral, cultural, mental and physical development of pupils at the school” and preparing them “for the opportunities, responsibilities and experiences of later life.”²⁷⁸ This underpins the curriculum taught to all children in school. Based on their age, these children are split between either primary (5-11year olds) and secondary (12-16 year olds) school or lower (ages 5-9), middle (ages 10-13) and upper school (ages 14-16).²⁷⁹ This varies from school to school. Within these levels of schooling children are divided based on their age into different year groups and a combination of these groups form Key Stages. A general overview of compulsory education in England and how it is

²⁷⁵ 'Types of School' (GOV.UK, 2022) <<https://www.gov.uk/types-of-school>> accessed 17 January 2022.

²⁷⁶ 'Schools, Pupils and Their Characteristics, Academic Year 2020/21' (GOV.UK, 2022) <<https://explore-education-statistics.service.gov.uk/find-statistics/school-pupils-and-their-characteristics>> accessed 18 January 2022.

²⁷⁷ 'Types Of School' (GOV.UK, 2022) <<https://www.gov.uk/types-of-school>> accessed 17 January 2022.

²⁷⁸ Education Act 2002.

This is the statute regulating state-funded schools.

Academies are also required to offer the same in accordance with Section 1 of the Academies Act 2010.

²⁷⁹ Early years education, which includes nursery and reception, have been excluded as it falls below the compulsory age.

structured based on age is represented in the table below. This will be helpful to understand the terminology used to refer to the difference stages of learning (Key Stages), the type of school (primary, secondary, middle) and any relevant assessments done during those years (SATs).

Table 2.3. Overview of the Schooling System

Age	Year	Key Stage	Exam	Level of School		
5 to 6	Year 1	KS1	Individual school end of year tests	Primary	Lower	
6 to 7	Year 2					
7 to 8	Year 3					
8 to 9	Year 4	KS2		SATs	Secondary	Middle
9 to 10	Year 5					
10 to 11	Year 6					
11 to 12	Year 7	KS3	Individual school end of year tests	Secondary	Upper	
12 to 13	Year 8					
13 to 14	Year 9					
14 to 15	Year 10	KS4	GCSE			
15 to 16	Year 11					

2.9 Children’s Right to Education

The provision of education for all children fulfils one of the most important aspects of the CRC – children’s right to education. Education is outlined as “a key social and cultural right and plays an important role in reducing poverty and child labour...[and] promotes democracy, peace, tolerance, development and economic growth.”²⁸⁰ The two main articles in the CRC that focus on the right to education are Article 28 and 29 with the former focusing on the provision of education and the latter outlining the content and quality of the education provided. Article 28 states that “State Parties recognise the right of children to education” and “should take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity.”²⁸¹ This focuses on children’s right to have access to education regardless of their race, gender and socio-economic background. In the UK, local authorities have a legal duty to ensure that education is provided to all children regardless of the child’s

²⁸⁰ ‘The Right to Education’ (UNICEF UK - Rights Respecting Schools Award, 2022) <<https://www.unicef.org.uk/rights-respecting-schools/the-rrsa/the-right-to-education/>> accessed 18 January 2022.

²⁸¹ Article 28 UN Convention on the Rights of the Child

immigration status or right of residence,²⁸² thereby confirming that the UK has taken steps to embed the right to education within their legal and policy framework as per Article 28.²⁸³ This is in line with General Comment 1 (2001) made by the UNCRC calling upon all states that have ratified the CRC to take steps towards formally incorporating the principles in the CRC into their education policies and legislation.²⁸⁴

Article 29 provides more detail on what education should aim to provide for children. This states that education should:

“support children’s development of mind, body and talents to their fullest potential, develop their respect for human rights and fundamental freedoms outlined in the Charter of the United Nations, respect for their parents, respect for the identity, values and languages of countries, and prepare them for a responsible life in a free society with tolerance for others and respect for the environment.”²⁸⁵

This article focuses on nurturing children through holistic, child-centred education that empowers children with knowledge of key subjects but also stresses the importance of developing their wider values and skills for life. This is confirmed by the General Comment on the aims of education made by the UNCRC in 2001 on Article 28 of the CRC where they emphasise that:

“education must include not only literacy and numeracy but also life skills such as the ability to make well-balanced decisions; to resolve conflicts in a non-violent manner; and to develop a healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents, and other

²⁸² Section 436A Education Act 1996

²⁸³ UNICEF UK, 'UNICEF UK Policy Position: Access to Education For Refugee Children' (UNICEF UK 2019) <<https://downloads.unicef.org.uk/wp-content/uploads/2018/09/UNICEF-UK-POLICY-POSITION-England-2.pdf>> accessed 8 December 2021.

²⁸⁴ UN Committee on the Rights of the Child, Twenty-sixth Session, 'General Comment no. 1 (2001) Article 29 (1): The Aims of Education' (17 April 2001) CRC/GC/2001/1.

²⁸⁵ Article 29 UN Convention on the Rights of the Child

abilities which give children the tools needed to pursue their options in life.”²⁸⁶

Such an education looks to strengthen a child’s capacity to experience the whole range of human rights and “to promote a culture which is infused by appropriate human rights values”²⁸⁷ by recognising the developmental needs of children, their evolving capacities and how it relates to their growth as valuable and responsible individuals of society.²⁸⁸

2.10 Rationale for Teaching the ACR

By using compulsory education as a justification for the current ACR,²⁸⁹ the government recognises the important role that education in school plays in the holistic growth and development of children. Education, as described in the General Comment by the UNCRC and in the CRC, recognises the importance of skills beyond literacy and numeracy that support the development of children’s capacities for their present and future life.²⁹⁰ This shows that schools are the primary provider for education to children and they play a crucial role in improving the “life chances” of children in general and also preventing offending.²⁹¹ Their role in relation to offending behaviour is evident from the well-established relationship between a child’s engagement and achievement in education and their involvement in offending behaviour.²⁹² The general trend found has been that the more estranged children are from education through measures such as

²⁸⁶ UN Committee on the Rights of the Child, ‘General Comment no. 1 (2001) Article 29 (1): The Aims of Education’ Twenty-sixth Session, (17 April 2001) CRC/GC/2001/1.

²⁸⁷ Ibid.

²⁸⁸ Ibid.

²⁸⁹ *C (A Minor) v DPP* [1994] 3 All ER 190; Home Office, *No More Excuses – A New Approach to Tackling Youth Crime in England and Wales* (White Paper, Cm 3809, 1997).

²⁹⁰ UN Committee on the Rights of the Child, Twenty-sixth Session, ‘General Comment no. 1 (2001) Article 29 (1): The Aims of Education’ (17 April 2001) CRC/GC/2001/1,

²⁹¹ Catherine Elliott, ‘Criminal responsibility and children: a new defence required to acknowledge the absence of capacity and choice.’ (2003) 75 *The Journal of Criminal Law*, pg. 289- 308; Home Office Development and Practice Report, ‘The Role of Education In Enhancing Life Chances And Preventing Offending’ (Digital Education Resource Archive (DERA) 2004) <<https://dera.ioe.ac.uk/8465/1/dpr19.pdf>> accessed 11 February 2022.

²⁹² Youth Justice Board, ‘Keeping Children in Care Out Of Trouble: An Independent Review Chaired By Lord Laming’ (Youth Justice Board 2015) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/543582/YJB_response_Laming_Review_keeping_children_in_care_out_of_custody.pdf> accessed 17 January 2022.

permanent exclusion, the more they are vulnerable to criminal activity.²⁹³ As a result, the YJB have encouraged better support in schools to prevent absence and exclusions from school.²⁹⁴ Studies by McAra and McVie highlight the importance of education in a child's development and the need for "curricular transformation" to help reduce truancy. They explain this as "transformations in the curriculum to make its precepts and ambitions more attuned to the goals of young people who are not academic high achievers".²⁹⁵ This suggestion highlights that there may be aspects of the curriculum that are not suited to the needs of children at different levels of capabilities and hence, brings to question what is taught in the school curriculum.

This question plays a crucial role specifically in relation to the ACR, as there has been very little in the literature explaining how the education system prepares children for the ACR. Instead, it is assumed that compulsory education does enough to inform their knowledge and develop their understanding of criminal responsibility. Here, the general focus is on school attendance and their experience in education to reduce risk of offending. Cavadino points out that when looking at the link between truancy and offending it is found that many children have "failed to benefit from universal compulsory education" and therefore, children need to attend school to understand the "nature of criminal conduct".²⁹⁶ Yet, when compulsory education is mentioned in relation to *doli incapax*, it is used to support a specific claim namely, that children aged ten know right from

²⁹³ Home Office Development and Practice Report, 'The Role of Education In Enhancing Life Chances And Preventing Offending' (Digital Education Resource Archive (DERA) 2004) <<https://dera.ioe.ac.uk/8465/1/dpr19.pdf>> accessed 11 February 2022.

²⁹⁴ Youth Justice Board, 'Keeping Children In Care Out Of Trouble: An Independent Review Chaired By Lord Laming' (Youth Justice Board 2015) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/543582/YJB_response_Laming_Review_keeping_children_in_care_out_of_custody.pdf> accessed 17 January 2022.

²⁹⁵ Lesley McAra and Susan McVie, 'Understanding Youth Violence: The Mediating Effects Of Gender, Poverty And Vulnerability' (2016) 45 *Journal of Criminal Justice*.; Lesley McAra and Susan McVie, 'Youth Crime And Justice: Key Messages From The Edinburgh Study Of Youth Transitions And Crime' (2010) 10 *Criminology & Criminal Justice*.

²⁹⁶ Paul Cavadino, 'Goodbye Doli - Must We Leave You?' [1997] *Child & Family Law Quarterly*.

wrong. This argument fails to explain how this translates to knowledge and awareness capable of holding them criminally responsible.

Using education as a means to prepare children for certain rights or responsibilities is not uncommon. In recent years, a huge emphasis has been placed on incorporating relationship, sex and health education into the school curriculum, starting with the Children and Social Work Act 2017 requiring all primary and secondary schools to teach relationship education and sex education from secondary school.²⁹⁷ This eventually culminated in the publication of statutory guidance for all schools to use to inform their teaching in September 2021.²⁹⁸ The Secretary of State explains the rationale for teaching children about the sex, relationship and sex education is to provide children with information they need to know about how to be safe and healthy in a “complex world and living their lives seamlessly on and offline.”²⁹⁹ Similarly, UNESCO also explains that children receive “confusing and conflicting information about relationships and sex” during their adolescence which is why children need comprehensive sex education.³⁰⁰ Using a similar line of reasoning, the ACR in England and Wales being ten can be also be viewed as a complex area that children may know little about unless they are taught about it in schools. Therefore, following the lead from sex education, teaching children about the ACR as part of the curriculum, could ensure that they are better supported in their understanding of the law on criminal responsibility and its implications, regardless of what age it is set at. I would argue that it teaches them content that children need to know, as it is a legal responsibility that is applicable to them from the age of ten, and since this is considerably low in comparison to other arbitrary age limits it strengthens this case further. Moreover, if children are taught about sex, alcohol and drugs within the school

²⁹⁷ Children and Social Work Act 2017

²⁹⁸ 'Relationships And Sex Education (RSE) And Health Education' (GOV.UK, 2019) <<https://www.gov.uk/government/publications/relationships-education-relationships-and-sex-education-rse-and-health-education>> accessed 20 October 2021.

²⁹⁹ Ibid.

³⁰⁰ 'Why Comprehensive Sexuality Education Is Important' (UNESCO, 2018) <<https://en.unesco.org/news/why-comprehensive-sexuality-education-important>> accessed 12 January 2022.

curriculum to protect them from its effects then a similar argument can be made for the ACR.

2.11 The National Curriculum

All schools have their own school curriculum which is made up of all the learning each school intends for its students in the form of knowledge and other experiences. In both primary and secondary local authority maintained schools, the NC is used as the foundational content for certain key subjects. The Department for Education (DfE) outlines that the NC is an “outline of core knowledge” that teachers can use to plan and create their lessons on core knowledge that children need to be “educated citizens”.³⁰¹ This fits within the wider context of the school curriculum to encourage the development of students’ knowledge, understanding and skills.³⁰² For each Key Stage, schools must incorporate the mandatory elements of the NC into their school curriculum along with a non-statutory programme of RE.³⁰³

Within the mandatory elements of the NC there are three core subjects that are obligatory for all students between the age of 5-16 and these are English, Mathematics and Science. In addition to this there are foundation subjects that are compulsory at different Key Stages. In Key Stage 1 and Key Stage 2, which is taught in primary school, these subjects are: Art and Design, Computing, Design and Technology, Geography, Music and Physical Education. Students are also required to learn a foreign language at Key Stage 2. Key Stages 3 and 4 are taught in secondary school. For the purposes of this study, the content taught to children from the age of seven to fourteen will be explored and therefore, the focus will be on the Key Stage 2 and 3 curricula with references made to Key Stages 1 and 4 for context.

³⁰¹ Department for Education, 'The National Curriculum in England: Framework Document' (Department for Education 2014).

³⁰² Ibid.

³⁰³ The term “basic curriculum” is used in this thesis to refer to the national curriculum and the “other” subjects that are required to be taught outside it such as RE, PSHE, RSHE and British Values. This is different to the “school curriculum” as schools use the basic curriculum to determine their own curriculum (what they choose to include and exclude) based on their students, school vision and ethos.

In addition to the core subjects, Key Stage 3 has the following foundation subjects: History, Geography, Modern foreign languages, Technology, Art and Design, Music, Physical Education, Citizenship, and Computing. In addition to these core and foundation subjects, primary and secondary schools are also encouraged to include appropriate topics on personal, social, and health, economic education (PSHE), however, this is not a statutory requirement. Within this context, Relationship and Health education became a statutory requirement of the NC making it mandatory for primary school students in 2020. In Key Stage 3 this develops to also include sex education.

The core subjects seem to naturally contribute mainly to the mental development of the child with the foundation subjects broadening this to include cultural and physical development with subjects like PE, history, geography and foreign language. On the other hand, the subjects that are non-statutory or merely “encouraged” in primary school such as RE, PSHE, and Citizenship seem to take a broader approach addressing most, if not all aspects of spiritual, moral, cultural, mental and physical development of children with at least one of its topics. The most appropriate placement for the ACR as a topic would be under/with these non-mandatory subjects, such as RE and PSHE, which are categorised and known as “other” subjects by the DfE.³⁰⁴ The table below lists the subjects described as “core” subjects, “foundation” subjects and “other” curriculum subjects. It illustrates the point at which each of these subjects are taught to children between Key Stage 1-4. This puts into perspective when each subject becomes relevant especially, in terms of age and what subjects are taught alongside it, thus providing further context to what a child learns as a whole.

³⁰⁴ 'National Curriculum' (GOV.UK, 2013)
<<https://www.gov.uk/government/collections/national-curriculum>> accessed 5 July 2021.

Table 2.4. National Curriculum & Other Subjects

	Key Stage 1	Key Stage 2	Key Stage 3	Key Stage 4
Age	5-7	7-11	11-14	14-16
Year groups	1-2	3-6	7-9	10-11
Core Subjects				
English	✓	✓	✓	✓
Mathematics	✓	✓	✓	✓
Science	✓	✓	✓	✓
Foundation Subjects				
Art and Design	✓	✓	✓	
Citizenship			✓	✓
Computing	✓	✓	✓	✓
Design and Technology	✓	✓	✓	
Languages		✓	✓	
Geography	✓	✓	✓	
History	✓	✓	✓	
Music	✓	✓	✓	
Physical Education	✓	✓	✓	✓
Other Subjects				
Religious Education	✓	✓	✓	✓
Relationship and Health Education	✓	✓		
Sex and Relationship Education			✓	✓

2.12 Overview of Subjects

This section will examine the “other” subjects and additional subjects that relate to a child’s overall development as an evolving member of English society. This will include PSHE, Relationship, Sex and Health Education (RSHE), RE, Citizenship, British Values (BV), and Children’s rights/Human Rights Education (HRE). An overall background to each of these subjects will be provided to understand the type of content covered in each subject, and how it fits into the wider school and NC. Furthermore, this review of these subjects sets the context for the document analysis findings in Chapter Four.

2.12.1 Personal Social Health Education

This subject is known by many different names such as “Personal and Social Development”, “Life skills”, and “Personal, Economic, Social and Health” education. For the purposes of this thesis it will be known as PSHE education (known commonly as PSHE). The PSHE Association³⁰⁵ describes PSHE as a subject that looks to “develop the knowledge, skills and attributes they need to keep themselves healthy, safe and prepared for life and work.”³⁰⁶ As the name and definition suggest, it is a subject that covers many different areas of study, making its contents quite broad in nature.³⁰⁷ PSHE is a non-statutory subject, meaning that teachers are allowed to teach this subject based on the needs of their students as the DfE think they “do not need additional central prescription.”³⁰⁸ Therefore, the delivery of the topics within PSHE vary based the students that attend the school, the school’s vision and the wider community around the school (within the catchment area). Although this is the case, major elements of

³⁰⁵ The PSHE Association were provided with grant funding by the Department for Education to focus on helping schools develop their own PSHE curriculums and improve the teaching quality through the advice they provide to schools. Hence, they are considered an authority on teaching this subject.

³⁰⁶ PSHE Association, “Curriculum Guidance & FAQs” (*Curriculum*) <<https://pshe-association.org.uk/curriculum>> accessed October 20, 2021

³⁰⁷ Department for Education, “Personal, Social, Health and Economic (PSHE) Education” (*GOV.UK*, September 13, 2021) <<https://www.gov.uk/government/publications/personal-social-health-and-economic-education-pshe>> accessed October 20, 2021

³⁰⁸ Ibid.

this subject are now compulsory as per the Sex and Relationships Education statutory guidance, which came into force in September 2020.³⁰⁹ This makes Relationships Education in Key Stages 1 and 2 and Relationships and Sex Education in Key Stages 3 and 4 compulsory for all schools providing primary education including all-through and middle schools.³¹⁰ They are also required to teach HE from Key Stage 1 to 4.³¹¹ The statutory guidance includes PSHE within its remit, as many schools choose to teach Relationship and Sex Education within the wider context of PSHE, however the subject itself remains non-statutory.³¹² Schools do not have to teach these topics under PSHE however, the DfE note that many schools choose to do so.³¹³

The expectation is for schools to build their PSHE education based on what is outlined in the statutory content of the NC, their school curriculum and the statutory guidance on drug education, financial education, sex and relationship education (SRE) and the importance of physical activity and diet for a healthy lifestyle.³¹⁴ Consequently, they are given the freedom to develop their own PSHE programmes based on what their students need. However, the DfE does expect the programme to “equip pupils with a sound understanding of risk and with the knowledge and skills necessary to make safe and informed decisions.” It deems PSHE to be an “important and

³⁰⁹ Department for Education, “Personal, Social, Health and Economic (PSHE) Education” (GOV.UK, September 13, 2021) <<https://www.gov.uk/government/publications/personal-social-health-and-economic-education-pshe>> accessed October 20, 2021

³¹⁰ Note: PSHE education was already a requirement in independent schools.

³¹¹ PSHE Association, “Curriculum Guidance & FAQs” (*Curriculum*) <<https://pshe-association.org.uk/curriculum>> accessed October 20, 2021.

³¹² “Introduction to Requirements” (GOV.UK, September 13, 2021) <<https://www.gov.uk/government/publications/relationships-education-relationships-and-sex-education-rse-and-health-education/introduction-to-requirements>> accessed October 20, 2021.

³¹³ ‘Relationships And Sex Education (RSE) And Health Education’ (GOV.UK, 2019) <<https://www.gov.uk/government/publications/relationships-education-relationships-and-sex-education-rse-and-health-education>> accessed 20 October 2021.

³¹⁴ Department for Education, “Personal, Social, Health and Economic (PSHE) Education” (GOV.UK, September 13, 2021) <<https://www.gov.uk/government/publications/personal-social-health-and-economic-education-pshe>> accessed October 20, 2021.

necessary” part of a student’s education³¹⁵, because it has an effect on both their academic and non-academic outcomes, especially those who are the vulnerable and disadvantaged ones.³¹⁶ This expectation of teaching children to understand risk and make informed decisions makes it a possible subject within which the ACR can be taught. Hence, these are important elements that inculcate knowledge of responsibility, By extension, these could be broadened to contribute to children’s understanding of criminal responsibility.

PSHE covers a wide body of knowledge, skills and competencies and as a result, it can also relate to other subjects in the curriculum where topics overlap, like for example, HE can be related to aspects of biology taught in a science class. It is set apart from other school subjects as it primarily deals with real-life issues that could affect the child, their families, or their community. This personal element of the subject encourages students to draw on their own knowledge and understanding of issues and link it to their own experiences, feelings and values. As Boddington et al highlight it can “provide an opportunity for pupils to reflect on issues which do not arise as part of the formal curriculum”,³¹⁷ therefore making it a good place in the curriculum to include information about legal responsibilities like the ACR, as seen with the inclusion of sex education and the age of consent.

Although the PSHE Association provides a programme of study to support curriculum building in schools, the elements that are non-statutory remain optional and thus, may not be taught by all schools. This flexibility allows for the subject to be more focused on the children’s needs however, also raises some concerns about the consistency of standards and time dedicated to the subject. The PSHE education Strategic Partners Group

³¹⁵ Department for Education, “Personal, Social, Health and Economic (PSHE) Education” (GOV.UK, September 10, 2021) <<https://www.gov.uk/government/publications/personal-social-health-and-economic-education-pshe/personal-social-health-and-economic-pshe-education>> accessed October 20, 2021

³¹⁶ PSHE Association, “Curriculum Guidance & FAQs” (*Curriculum*) <<https://pshe-association.org.uk/curriculum>> accessed October 20, 2021.

³¹⁷ Nick Boddington, Adrian King and Jenny McWhirter, *Understanding Personal, Social, Health and Economic Education In Primary Schools* (SAGE Publications, Ltd 2014).

notes that although many schools teach the subject successfully, it is not prioritised due to its non-statutory status and only the statutory aspects are focused on in schools.³¹⁸ This is reflected in Ofsted reports where they estimate that up to 40% of schools teach PSHE to a standard that is “not yet good enough”, with the March 2018 Teacher Voice Omnibus survey statistics suggesting that 6% of schools do not teach any PSHE or RSHE.³¹⁹ In addition, the DfE figures have indicated a reduction in curriculum time for the subject since 2011.³²⁰ The PSHE education Strategic Partners Group are advocating for PSHE to become an entirely statutory subject in order ensure that students benefit from all the content covered in PSHE education rather than just limiting it to RSHE.³²¹ This would send out a clear message on the expectation of high-quality PSHE with clear national guidelines and support in the form of training and resources for teachers.³²² Such calls for improvement suggest that although PSHE education has a role to play in the school curriculum, it is not given as much importance and support as perhaps other subjects within the NC.

2.12.2 Relationship Education, Relationships and Sex Education and Health Education

As mentioned in the previous section on PSHE, Relationship Education (RLE), Relationships and Sex Education (RSE) and Health Education (HE)

³¹⁸ It is worth noting that majority of the PSHE curriculum has now become statutory with the implementation of the Relationship Education, Relationships and Sex Education (RSE) and Health Education as mentioned in:

'The Long Road to Statutory PSHE Education (Almost!)' (*Pshe-association.org.uk*) <<https://pshe-association.org.uk/long-road-statutory-pshe-education-almost>> accessed 27 December 2021.

³¹⁹ 'PSHE Education Supports Academic Success, Says Major Evidence Review' (*Pshe-association.org.uk*) <<https://pshe-association.org.uk/news/pshe-education-supports-academic-success-says>> accessed 28 December 2021.

It is important to note that since the Omnibus survey was conducted, there is now a statutory requirement to teach RSHE however, PSHE still remains a non-statutory subject. Therefore, the problem highlighted in the survey results still continues to be an issue.

³²⁰ PSHE education Strategic Partners Group, 'Statutory PSHE Education: Meaningful Change Supported by Busy Teachers & School Leaders' (PSHE Association 2018) <<https://pshe-association.org.uk/system/files/PSHE%20workload%20report%20FINAL%20version%204%206%202018.pdf>> accessed 28 December 2021.

³²¹ Ibid.

³²² Ibid.

are all subjects that are often covered by schools under the umbrella of PSHE. The main difference is that as per the Relationships Education, Relationships and Sex Education and Health Education (England) Regulations 2019 (RSHE), made under sections 34 and 35 of the Children and Social Work Act 2017, all primary schools are required to teach RLE and all secondary schools have to teach RSE, unlike other subjects/topics that fall within the remit of PSHE.³²³ In addition, HE is compulsory to teach in both types of schools except independent schools, where PSHE is compulsory to teach and HE is included within that.³²⁴ The combination of all these subjects will be referred to as relationship, sex and health education (RSHE) for the rest of this thesis which will include the subject material taught from Key Stage 1-4.³²⁵

The Secretary of State in the Foreword of the statutory guidance outlines how there is an increase in life off and online for children these days, especially as they grow older, thus increasing the complexities of navigating through it. Hence, making these subjects compulsory is part of an effort to inform children “how to be safe and healthy, and how to manage their academic, personal and social lives in a positive way” and it is about giving children the “knowledge and attributes gained will support their own, and others’, wellbeing and attainment and help young people to become successful and happy adults who make a meaningful contribution to society.”³²⁶ These subjects look to form “key building blocks of healthy, respectful relationships, focusing on family and friendships, in all contexts, including online” and alongside this it looks to develop an understanding of

³²³ “Introduction to Requirements” (GOV.UK, September 13, 2021) <<https://www.gov.uk/government/publications/relationships-education-relationships-and-sex-education-rse-and-health-education/introduction-to-requirements>> accessed October 20, 2021.

³²⁴ ‘Relationships And Sex Education (RSE) And Health Education’ (GOV.UK, 2019) <<https://www.gov.uk/government/publications/relationships-education-relationships-and-sex-education-rse-and-health-education>> accessed 20 October 2021

³²⁵ When the term ‘RSHE’ is used for key stage 1 and 2 this will exclude sex education however, in relation to key stage 3 and 4 it will include all aspects of this subject including sex education.

³²⁶ Department for Education, “Foreword by the Secretary of State” (GOV.UK, September 22, 2021) <<https://www.gov.uk/government/publications/relationships-education-relationships-and-sex-education-rse-and-health-education/foreword-by-the-secretary-of-state>> accessed October 20, 2021

how to be healthy.³²⁷ This is the main focus of RSHE in primary schools. In secondary schools, RSHE will build on the knowledge students have acquired in their primary education, and further develop their understanding of health with more focus on areas such as drugs and alcohol, to address these risk areas, whilst also introducing knowledge of intimate relationships and sex.³²⁸

The implementation of these subjects as a statutory requirement has made a large portion of the PSHE curriculum mandatory in schools, therefore, emphasising it as important knowledge that children need to learn about in primary and secondary school.³²⁹ This represents a move towards prioritising subjects outside the mandatory subjects in the NC, unlike the downward trends noted with the non-statutory subjects like RE and other aspects of PSHE that are not included in RLE and RSE. This is a huge development however, there are some concerns raised by the PSHE Association in relation to RSHE. For example, topics such as Female Genital Mutilation (FGM) and menstruation are not taught to children in primary school despite children experiencing menstruation as young as eight, leaving them unprepared for something that can be “confusing or even alarming for girls if they are not prepared”.³³⁰ Such content needs to be taught in an age-sensitive manner in order for the knowledge to help children navigate through their different circumstances. Although RSHE and the ACR are not similar content-wise, a comparison can be drawn between the two in this critique. In both contexts, compulsory education can play an important role in teaching children about such topics in a timely manner, to increase their awareness and consequently their capacity as rational agents. Such knowledge empowers young people by giving them

³²⁷ Department for Education, 'Relationships Education, Relationships and Sex Education (RSE) And Health Education' (Relationships Education, Relationships and Sex Education (RSE) and Health Education 2019).

³²⁸ Ibid.

³²⁹ 'Health Education and RSE Guidance' (*Pshe-association.org.uk*, 2018) <<https://pshe-association.org.uk/news-and-blog/blog-entry/health-education-and-rse-guidance-%E2%80%94-outstanding>> accessed 29 December 2021.

³³⁰ Department for Education, 'Relationships Education, Relationships and Sex Education (RSE) And Health Education' (Relationships Education, Relationships and Sex Education (RSE) and Health Education 2019).

an opportunity to make a choice and act from a place of awareness rather than only finding out about it after something has happened. For example, without knowledge of the ACR, children may only find out about it and its implications once they find themselves in conflict with the law, hence leaving children unprepared. Therefore, the ACR could arguably classify as knowledge that children need to be taught as it is applicable to them from a young age.

2.12.3 Religious Education

RE seeks to educate young people about religious beliefs in local, national and global contexts by asking children to think about the bigger questions in life. The National Association of Teachers of Religious Education (NATRE) outlines that the main purpose of the RE is to contribute “dynamically to children and young people’s education in schools by provoking challenging questions about meaning and purpose in life, beliefs about God, ultimate reality, issues of right and wrong and what it means to be human.”³³¹ It focuses on developing children’s “ideas, values and identity” through the discussion of religious knowledge and thought-provoking questions about how these beliefs can inform values and the behaviour and actions of individuals.³³² RE is not included in the NC and remains on the outside as an “other” subject giving it a unique position in the school curriculum. This position places RE as a compulsory part of the basic curriculum because all maintained schools are required to teach a “broad and balanced curriculum” as per the requirements of the NC.³³³ Unlike the other subjects, the RE curriculum is determined by the local Standing Advisory Council on Religious Education (SACRE), established by each Local Authority. Maintained schools that are either of a religious

³³¹ 'About RE - All You Need to Know Teaching RE' (*Natre.org.uk*)

<<https://www.natre.org.uk/about-re/about-re/>> accessed 19 December 2021.

³³² Ibid.; Department for children, school and families, 'Religious Education In English Schools: Non-Statutory Guidance 2010' (Department for Education 2022)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/190260/DCSF-00114-2010.pdf> accessed 19 November 2021.

³³³ 'Legal Requirements' (*Natre.org.uk*, 2021) <<https://www.natre.org.uk/about-re/legal-requirements/>> accessed 10 August 2021.

character or not are both required to teach RE in accordance with the local agreed syllabus, and as per section 375 (3) of the Education Act 1996 and paragraph (5) of Schedule 19 to the School Standards and Framework Act 1998, academies and free schools must also teach within the requirements of the locally agreed syllabus.³³⁴ As a result, RE is compulsory for all students in local authority maintained schools from the age of 5-18 unless they are withdrawn from it either by their parents or themselves (only from the age of 18).³³⁵ The purpose of RE aligns with this requirement of promoting “the spiritual, moral, cultural, mental and physical development of pupils”, contributing to community cohesion and supporting their personal development and well-being.³³⁶

While RE is not considered a “core” or “foundational” subject, it is recognised to be an integral part of a child’s education which encourages and guides their development through their years of schooling.³³⁷ Despite such claims, there have been concerns about the quality of RE teaching

³³⁴ Ibid.

³³⁵ Department for Education, 'The National Curriculum in England: Framework Document' (Department for Education 2014) pg 4.

The legal requirement outlining this in the National Curriculum states that:

'Every state-funded school must offer a curriculum which is balanced and broadly based, and which:

- promotes the spiritual, moral, cultural, mental and physical development of pupils;
- and
- prepares pupils at the school for the opportunities, responsibilities and experiences of later life.

All state schools ... must teach religious education ... All schools must publish their curriculum by subject and academic year online'.

³³⁶ Department for children, school and families, 'Religious Education in English Schools: Non-Statutory Guidance 2010' (Department for Education 2022)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/190260/DCSF-00114-2010.pdf> accessed 19 November 2021.

³³⁷ The Religious Education Council of England and Wales, 'A Curriculum Framework for Religious Education In England' (The Religious Education Council of England and Wales 2022) <https://www.religiouseducationcouncil.org.uk/wp-content/uploads/2017/09/RE_Review_Summary.pdf> accessed 19 November 2021.

Michael Gove, former Secretary of State for Education, confirmed this in the following quote:

“All children need to acquire core knowledge and understanding of the beliefs and practices of the religions and worldviews which not only shape their history and culture, but which guide their own development. The modern world needs young people who are sufficiently confident in their own beliefs and values that they can respect the religious and cultural differences of others and contribute to a cohesive and compassionate society.”

raised in a number of reports.³³⁸ Successive Ofsted reports highlighted that the quality of teaching and learning RE was variable and generally it was found to be lower than subjects like History and Geography at both primary and secondary level.³³⁹ In addition, changes to the systems of accountability has cultivated an environment in schools where the incentives to teach RE are reducing, especially as Ofsted are not inspecting individual subjects anymore.³⁴⁰ This has also resulted in schools not offering RE, and therefore not complying with the legal requirement outlined above, especially in Key Stage 4.³⁴¹ From these reports, it becomes evident that RE teaching is not given the attention and support it needs for it to be effectively delivered in schools. Even though there are legal requirements in place for teaching RE to all students, the lack of compliance with teaching it, low incentives to teach and the lack of a standard quality of teaching alludes to a deeper, more fundamental issue within the curriculum. RE as a subject does not seem to be receiving the attention and support it needs for these concerns to be addressed, despite being a core element of the basic curriculum for all maintained schools. Here, the key difference is the status and level of priority given to RE as a subject within the wider context of the school and NC.

There have been recommendations for an agreed national syllabus for RE, determined by a national body similar to the SACRE, which should be given a similar legal status to the requirements of other subjects in the NC.³⁴²

³³⁸ Charles Clarke and Linda Woodhead Woodhead, 'A New Settlement Revised: Religion and Belief In Schools' (2018) <<https://researchbriefings.files.parliament.uk/documents/CBP-7167/CBP-7167.pdf>> accessed 22 December 2021.

For example, the Clarke and Woodhead report argues that 'the best developments in the way religion is handled in schools were being inhibited, and the worst were going unchecked.'

³³⁹ Commission on Religious Education, 'Religion and World Views: The Way Forward. A National Plan For RE' (2018) <<https://www.commissiononre.org.uk/wp-content/uploads/2018/09/Final-Report-of-the-Commission-on-RE.pdf>> accessed 22 December 2021 pg 4.

³⁴⁰ Ibid. pg 22.

³⁴¹ Ibid. pg 45.

³⁴² Charles Clarke and Linda Woodhead Woodhead, 'A New Settlement Revised: Religion and Belief in Schools' (2018) <<https://researchbriefings.files.parliament.uk/documents/CBP-7167/CBP-7167.pdf>> accessed 22 December 2021.

Alternatively, the Commission on Religion and Belief in British Public Life proposed making the non-statutory guidance statutory as part of the NC.³⁴³ Both these suggestions call for a stronger enforcement of RE teaching within the curriculum as the current provisions have proven to be weak enough for it to be easily neglected. In light of this, NATRE suggested that data on RE provision be routinely published by the DfE.³⁴⁴ Reporting such data publicly will improve accountability which, in turn could positively impact the levels of compliance with RE teaching in schools and increase incentives to teach it. Moreover, it has also been suggested that investment needs to be made to provide teachers with opportunities for qualification, education and development within the subject area.³⁴⁵ This includes RE receiving a similar level of attention to other core subjects like English and Maths in teacher education.³⁴⁶ All of these recommendations point to a discrepancy in the way that an “other” subject like RE is treated in comparison to the core subjects, despite claims that the NC must promote the overall development of pupils and prepare them for the opportunities, responsibilities and experiences in life.³⁴⁷

³⁴³ Report of the Commission on Public Life and Belief, 'Living with Difference: Community, Diversity and The Common Good' (The Woolf Institute 2015) <<https://corablivingwithdifference.files.wordpress.com/2015/12/living-with-difference-community-diversity-and-the-common-good.pdf>> accessed 22 December 2021.

³⁴⁴ NATRE, 'The State of The Nation: A Report on Religious Education Provision Within Secondary Schools in England' (NATRE 2017) <<https://www.natre.org.uk/uploads/Free%20Resources/SOTN%202017%20Report%20web%20version%20FINAL.pdf>> accessed 22 December 2021.

³⁴⁵ Commission on Religious Education, 'Religion and World Views: The Way Forward. A National Plan For RE' (2018) <<https://www.commissiononre.org.uk/wp-content/uploads/2018/09/Final-Report-of-the-Commission-on-RE.pdf>> accessed 22 December 2021. Foreword.; NATRE, 'The State of The Nation: A Report on Religious Education Provision Within Secondary Schools in England' (NATRE 2017) <<https://www.natre.org.uk/uploads/Free%20Resources/SOTN%202017%20Report%20web%20version%20FINAL.pdf>> accessed 22 December 2021.

³⁴⁶ Report of the Commission on Public Life and Belief, 'Living with Difference: Community, Diversity and The Common Good' (The Woolf Institute 2015)

³⁴⁷ Department for Education, 'The National Curriculum in England: Framework Document' (Department for Education 2014) pg 4.

2.12.4 Citizenship

The Association for Citizenship Teaching (ACT) defines citizenship education as a subject which “develops knowledge, skills and understanding that pupils need to play a full part in society as active and responsible citizens.”³⁴⁸ In primary schools citizenship is a non-statutory subject unlike in secondary schools where it is a statutory NC foundation subject.³⁴⁹ Citizenship becomes a mandatory subject in Key Stage 3 and 4 however, prior to the 2014 reforms the NC suggested the inclusion of citizenship topics in the school curriculum, but schools were not specifically directed to include it as a subject. The non-statutory guidance prior to the NC in 2014 has been retained even though the latest NC document for primary schools (Key Stage 1 and 2) does not encourage citizenship education at all.³⁵⁰ The fact that it is not mentioned indicates that citizenship education is not prioritised within the NC for children in Key Stage 1 and 2. Nonetheless, schools are still given the autonomy to decide how to provide citizenship education to their students and hence, some primary schools may choose to teach it as an individual subject or as a part of a joint programme with PSHE or having elements of citizenship education weaved into other subjects.³⁵¹ Although, teaching citizenship with other subjects is beneficial, a Select Committee Report on Citizenship education notes that this can make the distinction between the subjects indiscernible to children and as a result, they question its effectiveness in developing active citizens as the subject requires.³⁵²

³⁴⁸ 'About Citizenship' (*Teachingcitizenship.org.uk*) <<https://www.teachingcitizenship.org.uk/about-citizenship>> accessed 29 December 2021.

³⁴⁹ Department for Education, 'Citizenship Programmes of Study for Key Stages 1 And 2' (Department for Education 2015).

³⁵⁰ Department for Education, 'The National Curriculum in England Key Stages 1 And 2 Framework Document' (Department for Education 2013).

³⁵¹ 'About Citizenship' (*Teachingcitizenship.org.uk*) <<https://www.teachingcitizenship.org.uk/about-citizenship>> accessed 29 December 2021.

³⁵² Select Committee on Citizenship and Civic Engagement, *The Ties that Bind: Citizenship and Civic Engagement in the 21st Century*, Report of Session 2017-19, HL 118, para. 103-108.

This alludes to the Select Committee's concerns with the quality of citizenship education and the general decline of the subject. The report attributes this to an increased focus on character education and promoting volunteering, rather than emphasising the role of individuals in the community through discussion of the political elements of what being a citizen entails.³⁵³ The ACT corroborates this view by explicating how helpful it is to teach children to understand the relationship between citizenship and other subjects, like PSHE, so that they can "make connections between the personal and public aspects of learning".³⁵⁴ Despite these concerns about citizenship education, it still remains a subject that could be an avenue for teaching the ACR due to the nature of the content covered. For example, character education could support the development of children into moral and rational agents through acts like volunteering, which can be useful for inculcating a sense of individual responsibility for the collective good. As such, the ACR could be included in such a context.

Notably, there has been a pivot towards teaching BV, thereby resulting in the marginalisation of citizenship.³⁵⁵ This has resulted in more resources and incentives given to BV than citizenship, even though there is value in them being considered together. The value attributed to these subjects together is generally due to the relatedness of the subject material. However, within the context of my research it is also because it provides more scope for the ACR to be included within the school curriculum.³⁵⁶ Moreover, as a stand-alone subject citizenship is often neglected, even in secondary schools where it is sometimes forgotten to be a compulsory part

³⁵³ Select Committee on Citizenship and Civic Engagement, *The Ties that Bind: Citizenship and Civic Engagement in the 21st Century*, Report of Session 2017-19, HL 118.

³⁵⁴ 'About Citizenship' (*Teachingcitizenship.org.uk*) <<https://www.teachingcitizenship.org.uk/about-citizenship>> accessed 29 December 2021.

³⁵⁵ Select Committee on Citizenship and Civic Engagement, *The Ties that Bind: Citizenship and Civic Engagement in the 21st Century*, Report of Session 2017-19, HL 118, para. 150-153.

³⁵⁶ *Ibid.*

of the NC, thus illustrating an overall decline of the subject.³⁵⁷ With the limited guidance provided for teaching citizenship at Key Stage 1 and 2 and no explicit instruction to teach the subject, it is clear that the government does not consider citizenship education to be as important as other foundational subjects. Therefore, this leaves little hope for a topic like the ACR, despite its relevance, to be prioritised within the parameters of this subject or within the school curriculum.

2.12.5 British Values

Prior to the guidance published by the DfE on the 27th November 2014, schools were required to “respect” BV. However, since then, on promoting BV in schools was published on this date by the DfE, there has been a shift in the approach taken.³⁵⁸ For academies and independent schools this is outlined in part 2 of The Education (Independent School Standards) Regulations 2014. Schools now have “a duty to ‘actively promote’ the fundamental BV of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs.”³⁵⁹ These are the four fundamental BV that were first outlined in the Prevent strategy in 2011 which was a part of the government’s counter-terrorism strategy, CONTEST, and integration strategy.³⁶⁰ This initiative was a response taken by Michael Gove, the secretary of state at the time, following the “Trojan Horse Affair”, where it was alleged that Islamists were attempting to take over state schools in Birmingham.³⁶¹ The wider political context at the time

³⁵⁷ Select Committee on Citizenship and Civic Engagement, *The Ties that Bind: Citizenship and Civic Engagement in the 21st Century*, Report of Session 2017-19, HL 118, para. 103-108

³⁵⁸ 'Guidance On Promoting British Values in Schools Published' (GOV.UK, 2022) <<https://www.gov.uk/government/news/guidance-on-promoting-british-values-in-schools-published>> accessed 11 November 2021.

³⁵⁹ Ibid.

³⁶⁰ Home Office, 'Prevent Strategy 2011' (GOV. UK 2011).

³⁶¹ Carol Vincent and Myriam Hunter-Henin, 'The Problem with Teaching 'British Values' In School' (*The Conversation*, 2018) <<https://theconversation.com/the-problem-with-teaching-british-values-in-school-83688>> accessed 6 January 2022.

is also significant as there was a strong “British” agenda being pushed with the UK Referendum to vote on Brexit and calls for a British Bill of Rights.³⁶²

Lord Nash, the Parliamentary Under Secretary of State for Schools under the 2010 to 2015 Conservative and Liberal Democrat Coalition Government, elaborated on the rationale behind these changes by explaining that they were designed to “tighten up the standards on pupil welfare to improve safeguarding, and the standards on spiritual, moral, social and cultural development of pupils to strengthen the barriers to extremism”.³⁶³ Hence, the main objective behind promoting BV in schools was to prevent people from being drawn into terrorism through extremism (defined as the opposite of fundamental BV)³⁶⁴ at a young age. Lord Nash further explains that BV in the wider context of education, can help ensure that children become “valuable and fully rounded members of society who treat others with respect and tolerance, regardless of background” and thus leave school “fully prepared for life in modern Britain.”³⁶⁵ The way schools can do this, as per the DfE’s guidance, is by having a strategy for embedding these values into their school processes and demonstrating how effective they have been in doing so. Ofsted and independent inspectorates review this during their inspections using their own inspection framework which was previously revised in 2014, concurrent to the promotion of BV in schools.³⁶⁶ With both coming into play at the same time, it further enforced the promotion of BV as schools wanted to obtain positive result from their Ofsted inspection.³⁶⁷ The latest Ofsted guidance from 2021

³⁶² Carol Vincent and Myriam Hunter-Henin, 'The Problem with Teaching 'British Values' In School' (*The Conversation*, 2018) <<https://theconversation.com/the-problem-with-teaching-british-values-in-school-83688>> accessed 6 January 2022.

³⁶³ Department for Education and Lord Nash, 'Guidance on Promoting British Values In Schools Published' (2014) <<https://www.gov.uk/government/news/guidance-on-promoting-british-values-in-schools-published>> accessed 16 November 2021.

³⁶⁴ Home Office, 'Prevent Strategy 2011' (GOV. UK 2011).

³⁶⁵ 'Press Release: Guidance on Promoting British Values In Schools Published' (GOV.UK, 2014) <<https://www.gov.uk/government/news/guidance-on-promoting-british-values-in-schools-published>> accessed 26 October 2021.

³⁶⁶ Bill Bolloten and Robin Richardson, 'The Great British Values Disaster – Education, Security And Vitriolic Hate - Institute Of Race Relations' (*Institute of Race Relations*, 2015) <<https://irr.org.uk/article/the-great-british-values-disaster-education-security-and-vitriolic-hate/>> accessed 28 December 2021.

³⁶⁷ Ibid.

continues to mention BV and looks to evaluate its promotion during school inspections.³⁶⁸

The guidance notes that through ensuring pupils' spiritual, moral, cultural, mental and physical development (SMSC development), which is a broader part of the curriculum, schools can also show that they are "actively promoting" BV.³⁶⁹ In addition to the four values outlined above, the instructions provided to schools on their provision of SMSC highlight the values of respect, participation, liberty, tolerance, and non-discrimination.³⁷⁰ As Struthers describes, these values are "ostensibly unobjectionable" and these could even be recognised as human rights values, though the guidance itself does not identify it as such.³⁷¹ However, the promotion of these values has been met with criticism from the media, academics and the education sector due to its questionable undertones.³⁷² The problem lies in the fact that BV were introduced as a response to counter-terrorism and extremism, thus leaving potential discriminatory undertones in its delivery in schools.

This is exacerbated by limited guidance and training provided on this subject, thus leaving an unreasonable expectation on schools to figure out what they need to do for the effective promotion of BV during Ofsted inspections.³⁷³ A critique of Ofsted's approach suggests that:

³⁶⁸ 'School Inspection Handbook' (GOV.UK, 2022)

<<https://www.gov.uk/government/publications/school-inspection-handbook-eif/school-inspection-handbook#contents>> accessed 22 March 2022.

³⁶⁹ Department for Education, 'Promoting Fundamental British Values Through SMSC' (Department for Education 2014).

³⁷⁰ Ibid.

³⁷¹ Alison E. C Struthers, *Teaching Human Rights In Primary Schools* (Routledge 2021) pg 60-61.

³⁷² Carol Vincent and Myriam Hunter-Henin, 'The Problem with Teaching 'British Values' In School' (*The Conversation*, 2018) <<https://theconversation.com/the-problem-with-teaching-british-values-in-school-83688>> accessed 6 January 2022.

³⁷³ The Ofsted Inspection Handbook states 'school may be judged inadequate if 'there are serious weaknesses in the overall promotion of pupils' spiritual, moral, social and cultural development or their physical well-being, so that pupils are intolerant of others and/or reject any of the core values fundamental to life in modern Britain' as cited in: Bill Bolloten and Robin Richardson, 'The Great British Values Disaster – Education, Security And Vitriolic Hate - Institute Of Race Relations' (*Institute of Race Relations*, 2015) <<https://irr.org.uk/article/the-great-british-values-disaster-education-security-and-vitriolic-hate/>> accessed 28 December 2021.

“Whilst Ofsted works out how it measures ‘British Values’ and schools wonder how they might be downgraded for failing to promote them, asking Ofsted to become the schoolroom security service is a step too far.”³⁷⁴

Thus, the push for teaching children these values within largely political context (including concurrent issues like Brexit) with minimal educational framework makes the provision superficial in its attempts to inculcate deeper, universal values in their students. By moving attention away from encouraging children’s “independent and critical thinking, and that challenges prejudice, discrimination and bullying related to race, religion and culture” this could potentially threaten community cohesion and mutual trust between schools and stigmatised groups, such as the Muslim community.³⁷⁵ The flexibility around the meaning of BV does provide context for a discourse on rights and responsibilities, however, without explicit guidance linking it to the broader human rights framework, the majority of teachers are unlikely to take such an approach. In spite of BV having a notable place within the curriculum, the problems with its context and interpretation diminish its ability to teach children values that empower them with knowledge of their rights and responsibilities. Nonetheless, from a general understanding of the content BV covers, specifically in relation to teaching children the values underpinning the legal system of this country, and their responsibilities as citizens, it seems like it could offer an opportunity to discuss criminal responsibility. Even though there is no ‘British’ ACR as the law in question only applies to England and Wales, the values it attempts to teach can be useful to facilitate children’s understanding of this legal responsibility and their role in English society.

³⁷⁴ Bill Bolloten and Robin Richardson, 'The Great British Values Disaster – Education, Security And Vitriolic Hate - Institute Of Race Relations' (*Institute of Race Relations*, 2015) <<https://irr.org.uk/article/the-great-british-values-disaster-education-security-and-vitriolic-hate/>> accessed 28 December 2021.

³⁷⁵ Ibid.

2.12.6 Children's Rights and Human Rights Education

In England, ratification of the CRC recognises the interests of a child, yet it does not necessarily confer rights upon them because children's rights have not been incorporated into domestic law. However, the promotion children's interests are limited by the largely absent children's rights or human rights provisions in the NC. The main subjects where rights are discussed, albeit not explicitly in relation to the CRC, are RSHE and Citizenship education. In primary school rights education involves students learning to identify their feelings and recognise if relationships make them feel unsafe, unhappy or uncomfortable so that they can also learn to report abuse or such concerns.³⁷⁶ In secondary school, this knowledge is taken further by teaching students about what constitutes sexual harassment and violence and explaining how such behaviours are unacceptable.³⁷⁷ They are also taught about legal rights and responsibilities in terms of equality and online rights and how to report and get help in such circumstances.³⁷⁸

In these subjects, children are taught about some of their rights however, it is limited in its coverage as there is a greater focus on knowledge that will keep children safe rather than that which will empower them. Here, it seems like the curriculum material places children in a more passive role rather than empowering them with fuller knowledge of their rights. A similar trend can be noted with the ACR and the justice system, as it is deemed sufficient for children to know right from wrong and based on this, they are assumed to understand the responsibility they have in criminal law. Providing children with very limited knowledge on a subject (e.g. children's rights or the ACR), may make them aware of the law, but this does not help them realise the effects of the law on their life. A more holistic approach is necessary. However, such an approach is not possible in the absence of a clear

³⁷⁶ Department for Education, 'Relationships Education, Relationships and Sex Education (RSE) And Health Education' (Relationships Education, Relationships and Sex Education (RSE) and Health Education 2019) pg 21-29.

³⁷⁷ Ibid. pg 27-29.

³⁷⁸ Ibid. pg 21-29.

curriculum.³⁷⁹ As this is not provided either by the DfE or by educational professionals, there has been a turn towards human rights experts namely, NGOs to help with this cause.³⁸⁰ They have developed educational material and programs to support schools in delivering HRE to children through the Rights Respecting Schools Award (RRSA) and Amnesty International's Human Rights Friendly Schools.³⁸¹

A prominent approach in the UK has been the RRSA developed by UNICEF. This is not a part of the national curriculum, therefore schools choose to register for this award themselves. It helps them use the CRC as a values framework to become a rights-respecting school³⁸² which involves teaching children about their rights and how they apply them to their own lives. Unlike the provisions of rights education in the national curriculum, the RRSA offers a holistic programme with training, lesson plans, guidance and an assessment by one of their children's rights professionals, to ensure that Children's Rights Education (CRE) is not treated as an add-on but rather is integrated as part of the school. This goes beyond just teaching children about their rights but also informing the adults within the school community about children's rights.³⁸³ The feedback from schools after taking part in this award has been overwhelmingly positive with reports of "a significant and positive influence on the school ethos, relationships, inclusivity, understanding of the wider world and the well-being of the school community, according to the adults and young people in the evaluation schools."³⁸⁴ Although, there are currently around 5000 schools in the UK

³⁷⁹ Walter C. Parker, 'Human Rights Education's Curriculum Problem' (2018) 1 Human Rights Education Review.

³⁸⁰ Sam Mejias and Hugh Starkey, 'Critical Citizens or Neoliberal Consumers? Utopian Visions and Pragmatic Uses of Human Rights Education In A Secondary School In England', *Politics, Participation and Power Relations: transdisciplinary approaches to critical citizenship in the classroom and community* (Sense 2012) pg 119-136.

³⁸¹ Ally Dunhill, 'The Language of The Human Rights Of Children: A Critical Discourse Analysis' (PhD Thesis, University of Hull 2019).

³⁸² 'What is a Rights Respecting School? - UNICEF UK' (*Rights Respecting Schools Award*) <<https://www.unicef.org.uk/rights-respecting-schools/the-rrsa/what-is-a-rights-respecting-school/>> accessed 11 November 2021.

³⁸³ Ibid.

³⁸⁴ Judy Sebba and Carol Robinson, 'Evaluation of UNICEF UK'S Rights Respecting Schools Award' (UNICEF 2010) <https://www.unicef.org.uk/rights-respecting-schools/wp-content/uploads/sites/4/2014/12/RRSA_Evaluation_Report.pdf> accessed 11 November 2021.

working towards this award,³⁸⁵ this is far from the majority. To put this into perspective, there are a total of 32,163 schools in the UK with 24,413 just in England.³⁸⁶ These numbers indicate that most children in compulsory education in England will only be provided with minimal Human Rights Education (HRE), as outlined above, unless attempts are made to make the provision of children's HRE less "fragmented, incomplete and inconsistent."³⁸⁷ A children's rights education framework like RRSA has been considered in this study to gain an understanding of what a holistic approach to educating children about the law would resemble. This subject provides a promising avenue to teach children about the ACR in terms of subject content, due to the relationship between rights and responsibilities, and the depth of the educational framework. Nonetheless, it is important to note that there is currently no curriculum provided for HRE and therefore, it is scarcely taught in schools.

2.13 Hierarchy of subjects

Education literature has discussed curriculum hierarchy to be the assumption that some subjects are more important than others based on the nature and value of different types of knowledge.³⁸⁸ Bleazby refers to one form of this as "traditional curriculum hierarchy" which deems abstract subjects, such as Mathematics, as more valuable than subjects which are based on "experience, practicality and the body" like Physical Education (PE) and vocational subjects.³⁸⁹ This increasingly marginalises non-abstract subjects through educational processes such as categorising and labelling certain subjects as "compulsory" and "core" as opposed to "other"

³⁸⁵ 'Accredited Rights Respecting Schools in The UK -' (*Unicef.org.uk*) <<https://www.unicef.org.uk/rights-respecting-schools/the-rrsa/awarded-schools/>> accessed 11 November 2021.

³⁸⁶ 'Key UK Education Statistics - BESA' (*BESA*, 2022) <<https://www.besa.org.uk/key-uk-education-statistics/>> accessed 20 January 2022.

³⁸⁷ Alison E. C Struthers, *Teaching Human Rights in Primary Schools* (Routledge 2021) pg 64-65.

³⁸⁸ Jennifer Bleazby, 'Why Some School Subjects Have a Higher Status Than Others: The Epistemology of The Traditional Curriculum Hierarchy' (2015) 41 *Oxford Review of Education*.; Michael Young and Johan Muller, 'On The Powers Of Powerful Knowledge' (2013) 1 *Review of Education*.

³⁸⁹ Jennifer Bleazby, 'Why Some School Subjects Have a Higher Status Than Others: The Epistemology of The Traditional Curriculum Hierarchy' (2015) 41 *Oxford Review of Education*

and providing differing amounts of teaching time based on these labels.³⁹⁰ Certain subjects having compulsory status and getting more time allocated for teaching puts some curricular areas forward as more important which subsequently trickles down on children's perceptions towards subjects within the school curriculum.³⁹¹

The curriculum hierarchy in England is made evident from the NC document, where the number of pages dedicated to the core subjects such as Mathematics, English and Science exceeds the number of pages outlining the programmes of study for all the foundation subjects combined, which consists of between 6-8 subjects depending on the Key Stage level.³⁹² This follows the traditional curriculum hierarchy which is "embedded in an epistemological framework that equates knowledge with certainty".³⁹³ Certainty is considered favourable in terms of curricula as it breaks up content "into discrete, neatly defined parcels of "indubitable" facts, so as to be efficiently transmitted to students through precisely sequenced lessons."³⁹⁴ This epistemology can be traced all the way back to Plato who argued that the most important subject knowledge was based on abstract reasoning and discovering universal truths, thus forming the basis of Mathematics having its firm position at the top of the hierarchy.³⁹⁵ Bleazby states that subjects are likely to possess certainty in its subject matter by having a more of the following characteristics: 1) strong disciplinary boundaries and internal cohesiveness; 2) more established subject matter; 3) a higher degree of abstractness; 4) an emphasis on cognition over practical activities; 5) an emphasis on written text and literacy.³⁹⁶ Each of these characteristics will be explored in relation to the

³⁹⁰ Filio Constantinou, 'Strong and Weak 'Brands' in The School Curriculum: Towards A Framework for Levelling the Curriculum Hierarchy' (2018) 34 *Research Papers in Education*.

³⁹¹ *Ibid.*

³⁹² Department for Education, 'The National Curriculum in England: Framework Document' (Department for Education 2014).

³⁹³ Jennifer Bleazby, 'Why Some School Subjects Have a Higher Status Than Others: The Epistemology of The Traditional Curriculum Hierarchy' (2015) 41 *Oxford Review of Education*

³⁹⁴ *Ibid.*

³⁹⁵ *Ibid.*

³⁹⁶ *Ibid.*

other subjects (RE, PSHE, RSHE, Citizenship, BV and Children's HRE) with comparisons made to NC subjects in order to find out whether the ACR, if taught within these subjects, will be prioritised as important knowledge for children between the age of 7-14 within the basic school curriculum. An understanding of the curriculum hierarchy can inform my analysis in later chapters of the data collected on whether children aged 7-14 are taught the ACR in school.

2.13.1 Strong disciplinary boundaries and internal cohesiveness

This characteristic suggests that subjects that are more distinct in nature with less interdisciplinarity have stronger boundaries and more cohesiveness.³⁹⁷ Based on this it is easy to see how a subject like mathematics remains a top priority in the curriculum, as the content is less likely to overlap with "other" subjects. Although, there are elements of science that uses mathematics, this is clearly understood to be an application of mathematics in science, further solidifying its importance as a subject, even possibly in comparison to science, another core subject. When looking at the other subjects such as RE, PSHE and RSHE, they are all said to contribute and further the provision of SMSC development of pupils at the school.³⁹⁸ With a similar aim, these subjects often have topics that may overlap or where links could be made, thus weakening the disciplinary boundaries. It is worth noting, however, that the interdisciplinary nature of these subjects is characteristic of them, due to the contributions they make to a child's holistic education by dealing with aspects that are outside the normative standards of knowledge in schools. Hence, the imposition of strong boundaries in these subjects would be counter-intuitive. The certainty that this characteristic provides endorses "the systematic acquisition of established knowledge through uncritical reading, listening and reciting" found in the curriculum subjects as opposed to

³⁹⁷ Basil Bernstein, 'On the Classification Of Educational Knowledge', *Knowledge and control: New directions for the sociology of education* (Collier Macmillan 1971).

³⁹⁸ Department for Education, 'The National Curriculum in England: Framework Document' (Department for Education 2014) pg 4.

marginalising the “other” subjects which require students to reflect, make connections and delve into issues in society.³⁹⁹

2.13.2 Established subject matter

The subjects considered more established are often within the NC. This is usually because the content that has been used has a long history in education and therefore, it is seen to be less contentious. As a result, such subjects are considered to be “prestigious and rigorous” as found in Constantinou’s study on “Strong and Weak Brands” in education.⁴⁰⁰ The overview of the “other” subjects revealed that most of these subjects have been developed and emphasised in recent years. Citizenship and BV were only included in schools properly from 2014, with citizenship education becoming a foundation subject in Key Stage 3 and 4 only at that time, after previously having its topics optional for schools to include in their curriculum.⁴⁰¹ Subjects like RE and PSHE seem to be evolving based on the progress made in society. For example, the recent statutory regulation to include RSHE into the school curriculum has made that part of the PSHE curriculum mandatory illustrating how adaptable the subject can be to meet the needs of the students, unlike core subjects which remain factual and more stagnant in comparison. Legal provisions are always subject to change and therefore its provisions within the curriculum are likely to be placed in less established subjects, such as PSHE and citizenship. This already places knowledge of legal provisions, such as the ACR and CRC, at a lower status in the curriculum hierarchy, leaving little hope for it to be prioritised unless it is made compulsory.

³⁹⁹ Jennifer Bleazby, 'Why Some School Subjects Have a Higher Status Than Others: The Epistemology of The Traditional Curriculum Hierarchy' (2015) 41 *Oxford Review of Education*.

⁴⁰⁰ Filio Constantinou, 'Strong and Weak 'Brands' In The School Curriculum: Towards A Framework For Levelling The Curriculum Hierarchy' (2018) 34 *Research Papers in Education*.

⁴⁰¹ Department for Education, 'The National Curriculum in England: Framework Document' (Department for Education 2014); Department for Education and Lord Nash, 'Guidance On Promoting British Values In Schools Published' (2014) <<https://www.gov.uk/government/news/guidance-on-promoting-british-values-in-schools-published>> accessed 16 November 2021.

Furthermore, for educational content to be included in the curriculum there is a “struggle between the proponents of various perspectives, negotiated by policymakers, subject experts, and the profession”.⁴⁰² As a result, it is harder for less-established content with varying perceptions to be included within the national curricula.⁴⁰³

2.13.3 Abstractness

This characteristic refers to how linked the subject is to experience. Subjects that are considered more abstract usually contain content that is less subjective and is linked to theory which provides a level of certainty to the knowledge being taught. As a result, the traditional curriculum hierarchy deems these subjects to have a higher status. This is because a more abstract subject has a greater sense of certainty, as seen in Mathematics and Science education for younger children.⁴⁰⁴ In these subjects there are clear boundaries of what is “right” and “wrong” knowledge which can be attributed to its abstractness from emotions, experiences and society in general. This contrasts subjects like RE and PSHE that focus on subjectiveness of children’s thought. In between these two extremes there are also subjects like History where in some cases value judgements need to be made, placing it above “other” subjects in status but below subjects like mathematics. Notably, the more abstract a subject is, the more it is “comparatively stable and predictable” as the knowledge in these subjects often has a greater sense of certainty, with absolute, right answers to questions as seen in Mathematics and Science.⁴⁰⁵ Interestingly, subjects like RE, PSHE, and Citizenship deal with teaching right and wrong however, the discussions on right and wrong are very different to core subjects. This is mainly because they deal with right or wrong from a moral perspective in

⁴⁰² Ann Quennerstedt, 'Children's and Young People's Human Rights Education in School: Cardinal Complications And A Middle Ground' [2022] *Journal of Human Rights*.

⁴⁰³ *Ibid.*

⁴⁰⁴ Richard Teese and John Polesel, *Undemocratic Schooling* (Melbourne University Press 2003) as cited in Jennifer Bleazby, 'Why Some School Subjects Have a Higher Status Than Others: The Epistemology of The Traditional Curriculum Hierarchy' (2015) 41 *Oxford Review of Education* citing pg 20-21.

⁴⁰⁵ *Ibid.*

relation to rules, beliefs, values and behaviour. This cannot be perceived as absolute as is the idea of “right” and “wrong” in core subjects, because even if there is a right answer often different perspectives are considered in this context. In light of these points, the ACR could be considered more of a “certain” topic within a more discursive and subjective array of subjects, as it has an absolute sense of right and wrong. This is because the law on the ACR states that anyone under the age of ten who commits a crime is deemed incapable of criminal responsibility, whereas anyone above it will be held responsible. Although, there is a moral element to it, the cognitive threshold for criminal responsibility is knowledge of right from wrong and therefore it can be quite clear-cut.

2.13.4 Cognition over practical activities

This characteristic is another indicator of certainty, a measure that organises subjects within the traditional curriculum hierarchy, in this the prioritisation of cognition over practical activities. These activities involve experiences in the physical world, a place that is constantly changing, therefore the closer a subject is to such experiences the harder it becomes to control and predict.⁴⁰⁶ Within the traditional curriculum hierarchy increased subjectivity based on culture-specific knowledge in a subject lowers its status in comparison to other more objective ones where reliable predictions can be made promoting “universal knowledge”.⁴⁰⁷ Cognition and practicality are not truly at opposing ends within subjects, as even abstract subjects like Mathematics or Science include knowledge of a practical nature, however, the curriculum focus remains thereby keeping these subjects remote from the world, keeping it further from refutation.⁴⁰⁸ Although, subjects such as PSHE, RE and HRE cultivate the development

⁴⁰⁶ Jennifer Bleazby, 'Why Some School Subjects have a Higher Status than Others: The Epistemology of the Traditional Curriculum Hierarchy' (2015) 41 Oxford Review of Education.

⁴⁰⁷ Filio Constantinou, 'Strong and Weak 'Brands' in The School Curriculum: Towards a Framework for Levelling the Curriculum Hierarchy' (2018) 34 Research Papers in Education.

⁴⁰⁸ Jennifer Bleazby, 'Why Some School Subjects have a Higher Status than Others: The Epistemology of The Traditional Curriculum Hierarchy' (2015) 41 Oxford Review of Education.

of reasoning through cognition, they place greater emphasis on how that affects the experiences of students in their own lives. This is much harder to quantify and measure, especially through assessment, therefore, the traditional curriculum hierarchy continues to place less value on subjects of a practical nature that children can apply in their daily lives.

This has been known to perpetuate social inequality, as higher status subjects are more “aligned with middle-class culture, university and lucrative professions.”⁴⁰⁹ The economic and cultural capital that a student possesses can play a major role in their ability to access higher status subjects and succeed in them. This is more likely to put students from higher socio-economic backgrounds (most likely in private schools) in a more advantageous position because they can draw from cultural resources that many students may not have access to. In turn, this allows the privileged to dominate “high-status” or “prestigious” aspects of the curriculum.⁴¹⁰ As a result, students from lower socio-economic or working class backgrounds are more represented in “low status” or vocational parts of the curriculum. This type of segregation within education forms the basis of social segregation in society. A noteworthy example of this is seen in the socio-economic make-up of the ruling Conservative party elected in 2019, where it was found that 41% of Conservative MPs attended fee-paying schools whilst only 7% of the general population do, therefore putting politicians that come from privilege in a position to determine education policy.⁴¹¹ This illustrates how segregation is perpetuated by reaffirming the place of “middle class” curriculum content whilst leaving the “working class” curriculum at the bottom of the hierarchy.⁴¹² Although, it is considered to be

⁴⁰⁹ Jennifer Bleazby, 'Why Some School Subjects have a Higher Status than Others: The Epistemology of The Traditional Curriculum Hierarchy' (2015) 41 Oxford Review of Education.

⁴¹⁰ John Polesel, 'Democratising the Curriculum or Training the Children of The Poor: School-Based Vocational Training In Australia' (2008) 23 Journal of Education Policy.

⁴¹¹ Richard Cracknell and Richard Tunnicliffe, 'Social Background of MPs 1979- 2019' (House of Commons Library 2022).

⁴¹² Richard Teese and John Polesel, *Undemocratic Schooling* (Melbourne University Press 2003) as cited in Jennifer Bleazby, 'Why Some School Subjects Have a Higher Status Than Others: The Epistemology Of The Traditional Curriculum Hierarchy' (2015) 41 Oxford Review of Education citing pg 20-21.

at the bottom of the hierarchy, knowledge of the “other” subjects in the school curriculum can support and make a contribution to the overall development and empowerment of all children regardless of their background, by giving them the tools and high-order thinking skills to question the status quo. Suppressing the value of this knowledge by marginalising it in the curriculum, not only preserves the hierarchy in the curriculum but within English society at large.

A distinction must be made here between England and the devolved nations of the UK. In Scotland, Wales and Northern Ireland there has been a greater emphasis on children’s rights into all parts of society including schools. HRE acts as a way to implement children’s rights into schools by empowering children by not only encouraging cognition but equally prioritising their actions by teaching them what they are entitled to, thus shifting away from the traditional curriculum hierarchy. In Wales, for example The Curriculum and Assessment (Wales) Act 2021 outlines that knowledge and understanding of the Human Rights Act 1998 and the CRC must be promoted among those who provide learning and teaching in schools and the development of the curriculum.⁴¹³ This can then lead to better support for children to know about their rights and respect those of others through HRE thus enabling the fulfilment of the 4 purposes in the Welsh Curriculum.⁴¹⁴ Scotland is currently trying to incorporate the CRC

⁴¹³ The Curriculum and Assessment (Wales) Act 2021; 'Cross-Cutting Themes For Designing Your Curriculum - Hwb' (*Hwb.gov.wales*, 2022) <<https://hwb.gov.wales/curriculum-for-wales/designing-your-curriculum/cross-cutting-themes-for-designing-your-curriculum/#human-rights>> accessed 22 January 2022. See also, Rhian Croke, Helen Dale, Arwyn Roberts, Ally Dunhill, Malvika Unnithan and Jane Williams, 'Integrating Sustainable Development and Children’s Rights: A Case Study on Wales' (2021) 10 Social Sciences.

⁴¹⁴ Section 2 of the The Curriculum and Assessment (Wales) Act 2021 states:

The four purposes of a curriculum are—

- To enable pupils and children to develop as ambitious, capable learners, ready to learn throughout their lives;
- To enable pupils and children to develop as enterprising, creative contributors, ready to play a full part in life and work;
- To enable pupils and children to develop as ethical, informed citizens of Wales and the world;
- To enable pupils and children to develop as healthy, confident individuals, ready to live fulfilling lives as valued members of society.

into domestic law, hence allowing children to enforce their rights in court.⁴¹⁵ The Scottish Parliament seeks to use this Bill to embed children's rights into all aspects of society and empower children to claim their rights. This is in line with the four capacities of the Scottish NC, known as Curriculum for Excellence, which seeks to nurture: 1) successful learners; 2) confident individuals; 3) responsible citizens; and 4) effective contributors.⁴¹⁶ Northern Ireland has also seen developments in education policy and legislation with a children's rights focus, particularly through "the publication of the Children and Young People's strategy, the establishment of an expert panel to examine education inequalities and disadvantage, ongoing improvements to SEN provision including the advancement of the SEN Framework, and the development of an emotional health and well-being in education framework."⁴¹⁷ The implementation of HRE remains a work in progress in each of these nations but meaningful steps have been taken. In comparison the progress made in the England has been "conspicuous largely by its absence".⁴¹⁸ Moreover, no legislative efforts have been made to promote CRE for the holistic development of children. Instead, the focus in England remains heavily on teaching "British" Values. Although, the term "British" also includes Scottish and Welsh values, it does not make explicit reference made to children's human rights as seen in some of the provisions implemented in the devolved nations. The lack of a move towards HRE suggests that the educational framework represented by the NC continues to place greater emphasis on cognition over practical activities. Therefore, this limits the rights and responsibilities-based initiatives taken up by schools in England which can be crucial to

⁴¹⁵ The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill

⁴¹⁶ 'Schools: School Curriculum and Qualifications' (*Gov.scot*)

<<https://www.gov.scot/policies/schools/school-curriculum/>> accessed 22 January 2022.

⁴¹⁷ Sinéad McMurray, *Research and Information Service Briefing Paper: Children's Rights and Educational Policy in Northern Ireland: Implementation of The UNCRC* (Northern Ireland Assembly 2021) accessed from

<<http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2017-2022/2021/education/1121.pdf>>

⁴¹⁸ Alison E. C Struthers, *Teaching Human Rights in Primary Schools* (Routledge 2021) pg 64.

empowering children with knowledge of the laws that protect and apply to them.

2.13.5 Emphasis on written text and literacy

This characteristic of certainty places emphasis on written text and literacy over other forms of demonstrating knowledge. Literacy is at the core of all subjects taught in schools as it is the ability to read, write, speak and listen.⁴¹⁹ A child's ability to communicate and demonstrate knowledge through literacy plays a major role in how teachers determine the progress and level of attainment of their students in most subjects. This is usually measured by carrying out formative assessments, through their teaching practice, or summative assessments, or upon the completion of a topic or a period of time. This forms an essential part of the education system.⁴²⁰ The way in which these assessments take place varies based on schools and their teachers, however between Key Stage 1 to 3 there are statutory assessments that take place as a compulsory element of the curriculum in England. These involve NC assessments (also known as the SATs) on 3 core academic subjects, namely English, Mathematics and Science, which take place at the end of Key Stage 1 and 2. In Key Stage 3 students work towards their GCSEs or English Baccalaureate, with both qualifications requiring examinations in the same three core subjects along with optional subjects from other subject areas.⁴²¹

In an inquiry conducted into primary assessment, it was found that there is a strong link between statutory assessment and school accountability. This is because student performance in Key Stage 2 national assessments are

⁴¹⁹ 'What Is Literacy?' (*National Literacy Trust*)

<<https://literacytrust.org.uk/information/what-is-literacy/>> accessed 22 January 2022.

⁴²⁰ 'An Introduction to Formative and Summative Assessment' (*NFER*)

<<https://www.nfer.ac.uk/for-schools/free-resources-advice/assessment-hub/introduction-to-assessment/an-introduction-to-formative-and-summative-assessment/>> accessed 22 January 2022.

⁴²¹ Nerys Roberts, *Assessment and Testing in Primary Education (England)* (2020), Briefing Paper.

reported to the DfE and this data is published.⁴²² Teachers and schools are generally held to account for the percentage of students reaching the expected standard of progress in English and Maths. This data affects school league tables as Ofsted's evaluation of a school and teachers' pay is based on performance. Such high stakes placed on NC assessments, invariably leads to the narrowing of the curriculum, where all subjects apart from English, Mathematics and Science, receive less curriculum time in comparison due to a prevalent "teaching to test" approach.⁴²³ This further solidifies their position at the top of the curriculum hierarchy. Not only is there a more focus on these three subjects, within the assessment process, greater emphasis is placed on written text and literacy skills rather than the thinking and creativity around the content expressed by the student. For example, writing assessments identify two major flaws: one being a separation between "the composition of writing from the transcription elements of grammar" and the second, "an undue emphasis on decontextualised grammatical knowledge."⁴²⁴ It is clear from this that there is greater value attributed to the certainty and concreteness around assessing and measuring such skills over less quantifiable elements like a student's ability to construct new ideas or problem-solve, within the context of standardised national assessments. This line of thought can be found in the wider curriculum context, which continues to maintain the higher status of core subjects in compulsory education. Hence, the high stakes involved in NC assessments shifts the focus of education from students' progress and level of understanding to include the assessment of teachers and the schools they teach in. This results in more prominent efforts towards good performance data, which implicitly assumes that better assessments results provides children with the essential knowledge they need.

Although the NC states that it looks to provide a "broad and balanced" curriculum, the DfE believe English, Mathematics and Science to be at the

⁴²² House of Commons Education Committee, *Primary assessment* (eleventh report) (2016-17, HC682).

⁴²³ *Ibid.*

⁴²⁴ *Ibid.*

core of children's education.⁴²⁵ This has been previously reported to reflect in Ofsted evaluations of schools, where there was found to be a greater focus on English and Mathematics, thus affecting the way schools approach their teaching in order to receive a better inspection report. Ofsted's Education Inspection Framework (EIF) in 2019 acknowledged this by stating that although performance data will continue to contribute to inspections, it would have a lesser role to play in comparison to the substance of education. They clarify this as follows: "inspectors will focus on what is taught and how and will draw the outcomes that learners achieve into that education-focused, rather than data-focused, conversation."⁴²⁶ Ofsted now conduct deep dives into various subjects to gather evidence on the education provided in schools. Even in this context, inspectors are always required to conduct a deep dive in reading and mathematics.⁴²⁷ Despite their shift away from performance data for the purposes of accountability, the focus still largely remains on written text and literacy by considering core subjects like English, Mathematics, and Science to be at the centre of a child's education. This suggests that compulsory education in Key Stage 2 and 3 is predominantly focused on literacy and numeracy with less emphasis on other aspects of the curriculum. Considering these curriculum factors in relation to the ACR, the extent to which children are taught about right and wrong and the level of emphasis placed on such a concept is questionable.

⁴²⁵ Department for Education, 'Primary Assessment and Accountability Under the New National Curriculum' (Department for Education 2013)
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/298568/Primary_assessment_and_accountability_under_the_new_curriculum_consultation_document.pdf> accessed 8 January 2022.

⁴²⁶ Ofsted, 'Education Inspection Framework 2019: A Report on The Responses to the Consultation' (Department for Education 2019)
<<https://www.gov.uk/government/consultations/education-inspection-framework-2019-inspecting-the-substance-of-education/outcome/education-inspection-framework-2019-a-report-on-the-responses-to-the-consultation>> accessed 17 December 2021.

⁴²⁷ Ibid.

2.14 Curriculum hierarchy and Hierarchy of Needs

Applying the aforementioned understanding of curriculum hierarchy to the NC, it can be seen that there is more emphasis guidance, content and resources provided to subjects with more “certainty” and “abstractness” therefore putting them at the forefront of children’s education in English schools. Whilst the other subjects which are less absolute and objective in nature, with its knowledge embedded in the physical and social world, remain side-lined. From the overview of these “other” subjects such as RE, PSHE, RSHE, Citizenship, BV and children’s HRE, the lack of attention given to these subjects in comparison to what is provided for the core subjects clearly indicates where the government and the DfE believe children’s educational needs lie. My exploration of the literature on the current NC proposes the figure on the right (shown below) as the DfE’s hierarchy of children’s educational needs.

Figure 2.1 – Model of the DfE’s Hierarchy of Children’s cognitive needs.⁴²⁸

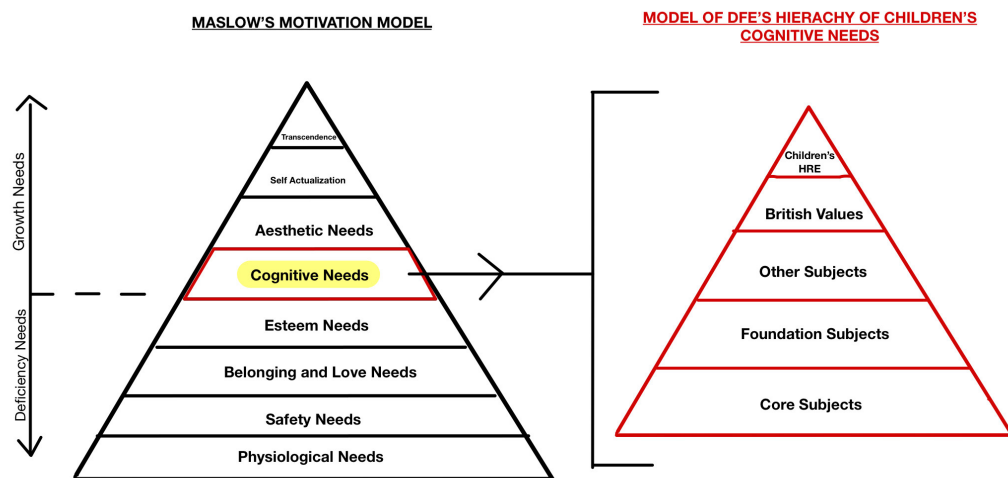


Figure 2.1 is adapted from Maslow’s hierarchy of needs theory as shown by the illustration on the left. This is a prominent motivational theory in psychology represented as a model of human needs that has made a huge contribution to teaching and classroom management within schools with its

⁴²⁸ The figure is derived from Maslow’s Motivational Model Abraham H Maslow and Robert Frager, *Motivation and Personality* (Pearson Education 1987).

holistic approach to education.⁴²⁹ Maslow suggests that for a child's cognitive needs to be met, their physiological needs to be addressed first. This is why the pyramid starts at the bottom with physiological needs, followed by other deficiency needs, which are understood to be needs that come from deprivation of basic human needs which "are said to motivate people when they are unmet."⁴³⁰ He argues that deprivation needs need to be addressed (not necessarily in full) before individuals feel motivated enough to satisfy their growth needs that are more cognitive in nature.⁴³¹ Figure 2.1 shows, the top half of the pyramid starts with these cognitive needs that students need to know and understand.

I created the diagram on the right to expand on the "cognitive needs" level of Maslow's pyramid through my interpretation of how the DfE prioritises children's educational needs. This is based on my review of the NC, the teaching of "other" subjects and the traditional curriculum hierarchy. The shape of the diagram is represented as a pyramid with the most essential needs at the bottom and the least essential at the top. Therefore, the core, compulsory subjects form the foundation of children's educational needs followed by other categories of knowledge. As per Maslow's model, the shift from one level to the next, takes place once the needs of that level have been addressed to some degree. A similar progression is seen in my model, where the level of importance given to the different categories of cognitive needs moves from one level to the next, once the needs at the level below have been addressed. It must be noted that there is a level of fluidity that exists between levels however, the linear progression presented describes the general trend.

Another aspect of the model is the placement of subject categories, one on top of the other. This is to visually represent the ability of the knowledge

⁴²⁹ Saul McLeod, 'Maslow's Hierarchy of Needs' <<https://www.simplypsychology.org/maslow.html>> accessed 9 January 2022.

⁴³⁰ Ibid.

⁴³¹ Abraham H Maslow and Robert Frager, *Motivation and Personality* (3rd edn, Pearson Education 1987) pg 69.

within that subject to trickle down the categories of subjects below. For example, promoting BV in schools will have an effect on children's thoughts, values and behaviour, which in turn will affect the way in which they approach the subjects that are found in the categories below it, like RE in the level below or citizenship in the level below that. The knowledge gained from the categories of subjects on top, by nature, has more of an effect on the general personhood of the child. This has the ability to translate into their everyday interaction with the subjects on lower levels of the pyramid model which are considered more abstract in nature. Children's HRE is placed on the topmost level, even though the DfE make very little reference to it in their curriculum guidance because it has the greatest ability to empower and instil values that trickle down into how children approach the subject categories on all levels.⁴³²

Based on this, the model I created can also be super-imposed on top of Maslow's hierarchy as the subjects at the top of my pyramid could be argued to align with some aspects of the self-actualisation process of personal growth and fulfilment, from the level of "other" subjects and above. This mainly because the knowledge gained in those subjects is focused on children's personal development through education. Furthermore, the move from purely cognitive needs to self-actualisation on Maslow's model can only take place when the aesthetic needs of students are supported in a conducive learning environment, therefore making this level in between a crucial part of the process.

On a more practical level, in my figure, the area represented by each level of the pyramid also represents the amount of teaching time and resources given to each subject category within the NC. The DfE's emphasis on building an education based on this representation of children's cognitive needs, involves the investment of more time and resources on the bottom

⁴³² It is important to note that there may be varying amounts of emphasis placed on different subjects within each level of the pyramid, like for example, some foundational subjects may be considered more valuable than others, however this model was created to capture the overall trend and such details were outside the scope of this literature review.

levels of the pyramid, leaving little left for the top. Therefore, in each year of schooling, the core subjects remain at the foundation of children's educational needs as per the DfE. This represents the reality of "other" subjects, BV and HRE in comparison to the core and foundation subjects, where those at the top of the pyramid are often "added on" to the school curriculum with the remaining time and resources available after teaching the compulsory NC subjects. Drawing on a construction analogy, the using up of resources for the bottom levels will see a strong educational foundation based on cognitive needs however, the quality of the building is likely to decrease when the amount of time and resources spent is reduced as the levels go up, eventually leaving parts at the top of the pyramid weaker and possibly unfinished. As mentioned previously, this seems to be the trend for most schools in England at Key Stage 1-3, with non-statutory subjects being given less attention, resources and time within the school curriculum, especially in comparison to compulsory subjects.

2.15 Conclusion

The ACR in England and Wales is ten and is applicable to all children who come into conflict with the law from this age onward. There have been numerous arguments calling for an increase in the ACR over the years however, it has remained the same for almost 60 years. One of the main reasons given by government for the lack of change is that children can distinguish "right from wrong" and as a result can be held responsible for their actions. This was widely discussed in the case of *C v DPP*⁴³³ and in the *No more excuses* report⁴³⁴ when the presumption of *doli incapax* was brought into question. In this context, the provision of compulsory education was one of the main reasons provided to explain why children understand this distinction. This has been widely cited two decades ago, yet there has been no research evaluating the validity of this reasoning. In order to explore this gap and understand how compulsory education prepares

⁴³³ *C (A Minor) v DPP* [1994] 3 All ER 190

⁴³⁴ Home Office, *No More Excuses – A New Approach to Tackling Youth Crime in England and Wales* (White Paper, Cm 3809, 1997).

children for this legal responsibility, the above review of the literature was conducted. Here, the details of what compulsory education covers within the curriculum and how it prioritises this content was demonstrated. Although, there was no explicit mention of the ACR within the curriculum review, the content covered in RE, PSHE, Citizenship and BV, all briefly mentioned teaching children about “right and wrong”. Within this topic, there is scope for teaching children about the ACR to ensure they know how the idea of “right and wrong” works specifically in a legal context. However, it is unclear from the overview of these subjects whether this connection is made by teachers, as there is no mention of it in the curriculum. This needs to be explored further in order to effectively evaluate whether compulsory education is an adequate justification for the current ACR.

Based on the nature of these subjects, it is evident that there is scope for including the ACR as a topic in RE, PSHE, Citizenship and BV, however efficacy of doing this questionable. This is mainly because, within the basic school curriculum, the aforementioned subjects are often marginalised and treated as having a lower status to the core NC subjects. This was exemplified in figure 2.1 where I illustrated my interpretation of the DfE’s curriculum priorities for children based on their cognitive needs. Therefore, if included, the ACR being one topic amongst many within these “other” subjects, means it is likely to receive very little attention in schools and will not be taught uniformly and consistently across England in an age-sensitive manner, despite its relevance to all children before and after the age of ten. To examine and find out whether the ACR is taught to children as part of the compulsory education they receive, further information needs to be obtained about the teaching that goes on in schools alongside the NC, especially in the “other” subjects. My study conducts an exploratory study into this gap.

Chapter Three: Methodology

3.1. Introduction

The current ACR in England and Wales has been a contentious issue for many years. With it being set at the age of ten,⁴³⁵ children are exposed to the rigours of the criminal justice system at a very young age. A widely cited reason for justifying this low age at which young people can be held criminally responsible has been the government's view that children know right from wrong.⁴³⁶ They attributed children being able to understand the difference between actions that are seriously wrong and those that are naughty or mischievous,⁴³⁷ to the provision of compulsory education.⁴³⁸ Despite the prominence of this reasoning, there has been no evidence to indicate how compulsory education prepares children for this legal responsibility. As a result, my study will explore this by carrying out an exploratory investigation into the role of school education in informing children about the ACR. In this chapter, I will be outlining the research processes and the methods employed to conduct this study.

This chapter begins by introducing myself as the researcher in order to explain the context around the study and to explain the narrative tone used throughout. Having established this, the reader is given some insight into the developing stages of the study undertaken in this thesis and the rationale for doing an exploratory study is explained. The main aims of this research, the research questions guiding the study and an overview of the methods used are then outlined. Following this, key details in the research process such as the research setting, sample group, sampling strategy used, and the methods used to collect the primary data will be discussed. To explain this further, the methods employed in this study, namely semi-structured interviews and document analysis, will be discussed in detail with

⁴³⁵ Section 16 Children and Young Persons Act 1963

⁴³⁶ Home Office, *No More Excuses – A New Approach to Tackling Youth Crime in England and Wales* (White Paper, Cm 3809, 1997).

⁴³⁷ Raymond Arthur, *The Moral Foundations of the Youth Justice System, Understanding the Principles of the Youth Justice System* (1st edn, Routledge, 2017) p. 24

⁴³⁸ Home Office, *No More Excuses – A New Approach to Tackling Youth Crime in England and Wales* (White Paper, Cm 3809, 1997). See also, *C (A Minor) v DPP* [1994] 3 All ER 190.

an overview of all the steps taken in the data collection process. Furthermore, the processes employed for analysing the data gathered will also be discussed in this chapter.

3.2 Researcher's Background

Before looking further into the research methods and processes of data analysis, I would like to provide more context to the “I” or the person behind the use of first person in this study. So far, this term has been used in a few instances however, in this chapter it is important to get to know the person behind the “I” as the methodological decisions made during this study were often shaped by my background, prior knowledge and research experience.

Before starting my PhD journey, I completed my Undergraduate and Masters Law degrees from Durham University. As a result, much of the research work I had done prior to my doctoral study was doctrinal in nature. Both my Undergraduate and Masters' dissertations dealt with black-letter law and it was conducted with the mindset of formulating my arguments based on theory and supporting and opposing arguments. Coming from such a background, I naturally started my research process by taking a doctrinal approach to the literature on the ACR and the youth justice system, using which I identified, analysed and synthesised the contents of the law.⁴³⁹ The research design I used here was problem-based doctrinal research where I focused on the legal sources and linked any new information to the body of law on ACR. This bears similarities to literature reviews conducted in social science studies; however, the main difference is the source of primary research. In doctrinal studies, primary research consists of sources of the law, whereas in studies where a literature review is conducted primary sources would consist of data collected from research subjects or experiments.⁴⁴⁰

⁴³⁹ Dawn Watkins and Mandy Burton, *Research Methods in Law* (Routledge 2013).

⁴⁴⁰ *Ibid.*

Once I started researching the ACR and the issues around it, I found that doctrinal research would not be sufficient as the youth justice system does not exist in a vacuum where only the law and legal system exists. In fact, there are many factors that affect one another in that sphere,⁴⁴¹ making it hard to focus on just the legal aspect. Moreover, there has already been a lot of research critiquing the ACR using legal arguments⁴⁴² hence, I realised that had to look outside the legal sphere to be able to examine the law from an original and novel perspective. Prominent modern scholars such as Cotterrell would argue that true legal scholarship would require this, thus advocating a shift from purely doctrinal research to socio-legal research.⁴⁴³ Therefore, to obtain a more holistic and practical understanding, I decided to broaden my approach to consider non-legal issues affecting the virtue of the law on ACR.

Looking into the role of education and how it impacts children's understanding of the ACR required a closer, real-world exploration of what schools teach them on this topic. This involved moving away from solely using legal sources of information. Due to my legal background and unfamiliarity with empirical research, I had to start learning more about empirical research and how to conduct a study on the ACR from an educational perspective. Burton recognises that learning as you conduct research is common amongst socio-legal doctoral students. As a result, I took on the role of a learner throughout the research process because my identity as a socio-legal researcher developed as I progressed with my study, with me learning "on the job".⁴⁴⁴

⁴⁴¹ There are many familial, societal, political and economic factors that affect children, crime and the youth justice system as a whole. See the literature review in Chapter Two for details.

⁴⁴² Raymond Arthur, 'Rethinking the Criminal Responsibility of Young People In England And Wales' (2012) 20 *European Journal of Crime, Criminal Law and Criminal Justice*; Claire McDiarmid, 'An Age of Complexity: Children and Criminal Responsibility In Law' (2013) 13 *Youth Justice*; Thomas Crofts, 'Catching Up With Europe: Taking The Age Of Criminal Responsibility Seriously In England' (2009) 17 *European Journal of Crime, Criminal Law and Criminal Justice*; Kathryn Hollingsworth, 'Theorising Children's Rights In Youth Justice: The Significance Of Autonomy And Foundational Rights' (2013) 76 *The Modern Law Review*.

⁴⁴³ Roger Cotterrell, 'Why Must Legal Ideas Be Interpreted Sociologically?' (1998) 25 *Journal of Law and Society*.

⁴⁴⁴ Dawn Watkins and Mandy Burton, *Research Methods in Law* (Routledge 2013).

Despite, my strong interest in this area, being a novice researcher felt like a barrier to carrying out this research. The feeling of being an outsider to my research interest was perpetuated on so many levels. Firstly, I was outside my expertise as a lawyer carrying out empirical research on the education system. Secondly, being an Indian woman who grew up in Malaysia and studied in an international school, I did not know much about school education in England. Thirdly, due to the exploratory nature of my study my research did not fit any specific research paradigm. These barriers to my research and my position as a researcher were reconciled and eventually broken with the identification and acceptance of myself as someone wishing to explore territories unknown to me. This is why I felt that an exploratory study worked on many levels.

3.3. Developing stages of the study

When I first started my research into the ACR, I wanted to speak to children and find out what they know about the ACR. In light of Article 12 of the CRC, I felt it was important to hear from children about what they know and are taught about it.⁴⁴⁵ However, since there have already been some studies conducted in this area,⁴⁴⁶ I thought my original contribution would be to develop a suitable method of research or toolkit that children would find engaging and that would encourage them to share their thoughts on the ACR. Although this was an interesting challenge, I was conscious of the fact that empirical research was quite new to me and so I continued reading to find another way to explore whether children understand the ACR. As mentioned in the previous chapter, an article by Watkins et al., in which

⁴⁴⁵ Article 12 UN Convention on the Rights of the Child

⁴⁴⁶ Dawn Watkins and others, 'If You Are 10, You Go to Prison': Children's Understanding of The Age of Criminal Responsibility' (2016) 67 Northern Ireland Legal Quarterly; Beth-Anne Logan, 'Age of Criminal Responsibility: Children and Young People's Views' (Children and Young People's Centre for Justice 2021)

<<http://www.cycj.org.uk/wp-content/uploads/2021/03/ACR-final-survey-report.pdf>>

accessed 8 May 2021; Siobhan McAlister and others, 'Raise the Age? Children's Attitudes Towards the Minimum Age of Criminal Responsibility'

<<http://www.ark.ac.uk/publications/updates/update113.pdf>> accessed 11 August 2021;

children were asked about their understanding of the ACR, found that children were not adequately taught about this. This sparked my interest and inspired me to explore and examine the role of school education in supporting children's knowledge and understanding of the ACR.

During the planning stages of my study, I decided to speak informally to friends and acquaintances about my area of research in order to find out what people know about the ACR. So, whenever I was asked about work, I used the opportunity to talk about the topic of my thesis and I would mention the ACR being ten In England and Wales. The most common response was that of shock. Many of them had not realised that the ACR was so low, and it elicited an even stronger reaction from those with children around the age of ten. This made me think that if some adults are not aware of the ACR being ten, then what do children know? And if parents are not informing their children about it, then do they learn about it in schools? These conversations and questions also played a crucial role in determining the focus of my study.

3.4. Exploratory Study

The ACR is a hugely controversial area with many clearly defined issues, however, the role of compulsory education in children's understanding of their role as rational, legal agents as required by this law is not well-defined. My research aims to examine the basic curriculum and what is being taught around criminal responsibility to children between the age of 7-14 in primary and middle schools. This was intended to find out what is being imparted to children in schools about the ACR, in order to understand the extent to which school education supports their ability to be held responsible if they come into conflict with the law.

In my literature review, it was found that this is a largely unexplored area and therefore, I did not aim to find conclusive answers but instead I intended to peel through the layers of what compulsory education currently achieves in informing children about the ACR. I wanted to find out about how children can be better protected from the negative effects of the current ACR, not

just in terms of raising it, but also by highlighting the need for an education system that supports children affected by this law. Hence, the lack of a pre-determined hypothesis allowed me to cast a wide net and be guided by the data I collected. As a result, I chose to conduct exploratory research. This is defined as a methodological approach “that seeks to create hypotheses rather than test them.”⁴⁴⁷ It is known to help formulate and clarify the problem allowing for the formation of hypotheses after the research has been carried out.⁴⁴⁸

An exploratory study like mine is often conducted “when fields or issues are rather new and unfamiliar, researchers first have to understand them in a rather open way.”⁴⁴⁹ I was unfamiliar with what is taught in schools in general, however, approaching this investigation into how schools inform children about the ACR from this position allowed me to go into the research process without any preconceived notions, ideas or theories. Initially, I perceived my unfamiliarity as a disadvantage, but as I proceeded to pursue this research, I realised that was not the case, because the aim of my study was to gain familiarity with this unexplored perspective on the ACR. All methodological decisions, thereafter, were made with this aim in mind and for the process of learning more about the relationship between the education system and the ACR. According to Stebbins, a well-renowned exploratory researcher, an open mind and flexibility is a necessity for exploration.⁴⁵⁰ In fact, Stebbins does not exclude novice researchers like myself from using an exploratory approach but rather encourages us, by asking researchers to follow their curiosities and put themselves in a position to make discoveries.⁴⁵¹ Therefore, by exploring this poorly defined area, any data I gather on this topic would be useful and it could raise an interest for further research into this area.

⁴⁴⁷ Valerie M Sue and Lois A Ritter, *Conducting Online Surveys* (SAGE Publications 2015) pg 1-13.

⁴⁴⁸ *Ibid.*

⁴⁴⁹ Uwe Flick, *An Introduction to Qualitative Research* (SAGE 2018) pg 600.

⁴⁵⁰ Robert A Stebbins, *Exploratory Research in The Social Sciences* (SAGE 2001) pg 10.

⁴⁵¹ *Ibid.* pg 3-12.

I decided that the best place to start my exploration into this area would be by speaking to teachers who work with children between the age of seven and fourteen in order to explore the general practices carried out in schools to inform children of the ACR. With most children spending much of their time in school, teachers hold an influential position in young people's lives, thus making them uniquely placed. As a result, I chose to rely on teachers' experiences and their understanding of the curriculum in order to examine how compulsory education develops children's understanding of right and wrong, especially in a legal context. I later decided that I would also conduct a document analysis of key curriculum documents to better understand the context of teachers' experiences and to examine the contents of the curriculum in order to obtain a fuller picture of the teaching that goes on in schools.

It has been found that when investigating a fairly niche area or topic with the intention of ascertaining key issues, qualitative research methods are most suited to studies gathering such data.⁴⁵² With my topic being an unexplored area of research, I chose to use qualitative research methods in my exploratory approach to inductively find out more about the ACR from an educational perspective by uncovering new ideas, theories and generalisations. Stebbins emphasises the importance of original ideas that are brought to light using this approach and states how this should not be minimised due to too much focus on "matters of (research) design."⁴⁵³ He goes on to explain that the priority in exploration is on obtaining data to produce hypotheses or tentative generalisations about the situation in question, thereby laying theoretical foundations for further research in this area.⁴⁵⁴ I intended for my doctoral research study to elucidate any discrepancies between the government's justification for the ACR, that children know right from wrong due to the provision of compulsory education, and what they are truly taught in schools to prepare them to be

⁴⁵² John W Creswell, *Qualitative Inquiry and Research Design (International Student Edition)* (Sage Publications 2007).

⁴⁵³ Robert A Stebbins, *Exploratory Research in The Social Sciences* (SAGE 2001) pg 4.

⁴⁵⁴ Barney G Glaser and Anselm L Strauss, *Discovery of Grounded Theory* (Sage 1967).

held criminally responsible. Identifying and exploring this gap will allow me to find out what children learn about the ACR in compulsory education, and this will help provide another critique of the ACR in England and Wales. More studies on this topic can then produce further generalisations which can later be woven together into a grounded theory explaining this topic area.⁴⁵⁵

3.5. Overview of Research Aims, Questions and Methods

To address the gap that I chose to investigate through my exploratory study, I defined the aims of my research to guide me. The two main aims of my research were to:

- a) Investigate what compulsory education teaches children about the ACR.
- b) Evaluate the extent to which it prepares them for being held criminally responsible at the age of ten.

These aims were broken down into the following research questions were used to guide the choices I made throughout this study:

- RQ1: Does the current provision of compulsory education inform children aged seven to fourteen about the ACR?
- RQ2: To what extent do other topics within the basic curriculum contribute to children's understanding of criminal responsibility?
- RQ3: Having examined the extent to which schools educate young people about their potential for criminal responsibility, is it still valid to argue that the age of ten is rational by virtue of compulsory education?

With these research questions as the anchor of this exploration, I set off trying to understand more about what children are taught about the ACR in compulsory education. All the methodological decisions were guided by the aforementioned aims and research questions, in order to learn more about this research area by using an appropriate research design that would ensure the validity and reliability of my study. Although, the research design

⁴⁵⁵ Barney G Glaser and Anselm L Strauss, *Discovery of Grounded Theory* (Sage 1967).

in exploratory studies is not considered as rigorous as conclusive studies, making conscious methodological choices even when dealing with a small sample, sets up well for future studies in this area.⁴⁵⁶ This was an important aspect of my research as I carried out my research with the awareness that it will only shed light on a small part of the phenomena in this area, yet I wanted to make sure that it started the work into examining what children are taught about the ACR so that a more holistic and child-centric approach can be taken to the ACR.

Consequently, I started by looking into what methods would be best suited to my research questions. With my preliminary understanding of the difference between qualitative and quantitative research, I was inclined to use qualitative research methods, defined by Flick as “research interested in analyzing the subjective meaning or the social production of issues, events or practices by collecting non-standardized data...”⁴⁵⁷ As research into the education through empirical research was new to me on both levels, I chose not to start with a hypothesis. Instead, with a blank slate, I wanted to construct a picture of what is taught to children aged 7-14 on the ACR using sensitizing concepts for exploring and understanding this area.

To find out what is relevant to this picture I directed myself towards consulting participants with knowledge in this area (teachers) placing me, as the researcher, in a position to learn from their expertise and experience. Relating my study to Flick’s definition of qualitative research, the data collected from teachers would be presenting their perception of the interaction between the DfE, schools, teachers and the students producing subjective, non-standardised data. To do this I chose to conduct interviews to gather information from teachers as this is one of the most common methods used in qualitative research.⁴⁵⁸ Oakley explains that qualitative interviews are a type of framework that accounts for practices and

⁴⁵⁶ Rajendra Nargundkar, *Marketing Research* (3rd edn, Tata McGraw-Hill 2008) pg 38.

⁴⁵⁷ Uwe Flick, *An Introduction to Qualitative Research* (SAGE 2018) pg 604

⁴⁵⁸ Shazia Jamshed, 'Qualitative Research Method-Interviewing And Observation' (2014) 5 *Journal of Basic and Clinical Pharmacy*.

standards but also challenges and reinforces them.⁴⁵⁹ This type of qualitative data would be descriptive and since there is not much information on the interaction between the ACR and the education system, nonetheless the issue in question can be examined not only from its central subject but also from some of its marginal expressions.⁴⁶⁰

The marginal expressions in my research were topics related to the ACR that could contribute to children's understanding of criminal responsibility and how it affects them. Information about these topics would be gathered from the interview data and also a second source of data, namely, curriculum documents. This was used to provide a fuller and wider picture of what is taught in schools in relation to the ACR. It would provide further detail that teachers may not go into about the standardized teaching content which is taught as part of compulsory education. This type of flexibility in the research design is easily accommodated by qualitative research methods allowing me to take an open approach to uncovering relevant information about this area of study. These research methods and processes will be outlined in more detail in later sections of this chapter designated to interviews and document analysis.

3.6 Researching in Schools

When considering the extent to which compulsory education plays a role in children's understanding of criminal responsibility, it was imperative to speak to members of society who are involved in the process of educating children – teachers. With children spending a lot of their time in school, the school environment and the teachers themselves become a strong influence in their lives. Institutional rules and social interactions in schools are often internalised by students. McLeod and Yates use Bourdieu's concept of Habitus to explain how the social context and discourse in schools, embodied by the values of the school, play a key role in the formation of children's identities and it integrates into their attitude and

⁴⁵⁹ Ann Oakley, 'Gender, Methodology and People's Ways Of Knowing: Some Problems With Feminism And The Paradigm Debate In Social Science' (1998) 32 *Sociology*.

⁴⁶⁰ Robert A Stebbins, *Exploratory Research in The Social Sciences* (SAGE 2001) pg 19.

“ways of being”.⁴⁶¹ Their studies show that school values are internalised by students, highlighting the level of influence schools have on children. Notably, the habitus of the school goes beyond the school gates as it is a microcosm in a larger social context.⁴⁶² Therefore, the influence of family, peers and other social interactions also plays a role in the values and identity developed by a child. Nonetheless, within the context of my study, the focus will remain on what children learn from schools on the ACR, making schools the setting for my research.

3.7 Case Study in North-East England

As a researcher based in the North-East of England, conducting a study in this region was my first consideration for practical reasons such as accessibility. However, after looking further into key data from the region that is relevant to my research, it proved to be an appropriate and interesting case for the product and process of my inquiry.⁴⁶³ Here, the product refers to what my study aims to find out namely, the role of school education in educating children about the ACR, and the process refers to the exploratory approach I took to collect my data. A case study has been defined as the “choice of what is to be studied”.⁴⁶⁴ On this basis, I used three main factors to identify North-East England as my case study of choice. These were the crime levels, rate of school exclusions and economic inequality levels. Each of these will be discussed in turn.

There has been a general downward trend in the level of youth crime in England and Wales with reductions in the number of FTEs, youth cautions, sentencing occasions, number of children in custody and knife and

⁴⁶¹ Julie McLeod and Lyn Yates, *Making Modern Lives: Subjectivity, Schooling, And Social Change* (State University of New York Press 2006) pg 90.

⁴⁶² Ibid. Chapter 6 & 7.

⁴⁶³ Robert E. Stake, 'Qualitative Case Studies', *The SAGE Handbook of Qualitative Research* (3rd edn, SAGE 2022). See also Charles C Ragin and Howard S Becker, *What is a Case?: Exploring The Foundations Of Social Inquiry* (Cambridge University Press 1992).

⁴⁶⁴ Adrijana Biba Starman, 'The Case Study as A Type of Qualitative Research' (2013) 1 *Journal of Contemporary Educational Studies*.

offensive weapon offences.⁴⁶⁵ This has been seen in the North-East of England as well with the number of children in custody being the lowest England and Wales.⁴⁶⁶ Despite the low number of children in custody, it has the highest rates of children cautioned and sentenced per 1000 children by region.⁴⁶⁷ This combined with having one of the highest police recorded adult crimes in England and Wales, makes this a region of particular interest in relation to criminal responsibility.⁴⁶⁸ In addition to these statistics, there has been a general rise in crime in the North-East of England. Recognising this, Northumbria Violence Reduction Unit, Police & Crime Commissioner, Kim McGuinness, has taken on initiatives to divert young people from crime through courses provided in collaboration with schools and community police officers.⁴⁶⁹ With rising crime rates and the implementation of such educative initiatives in the region, the North-East of England was well-suited to the aims of my study.

There has been a strong correlation established between increased crime rates and levels of inequality.⁴⁷⁰ As Kim McGuinness outlines, “Violent crime is a symptom of inequality, and like a contagious disease it spreads if we don’t treat it.”⁴⁷¹ Inequality can take many forms however, in this instance

⁴⁶⁵ Youth Justice Board/Ministry of Justice, 'Youth Justice Statistics 2019/20 England And Wales' (National Statistics 2021) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/956621/youth-justice-statistics-2019-2020.pdf> accessed 5 February 2021.

⁴⁶⁶ Youth Justice Board, 'Children Cautioned or Sentenced Data, Geographical Tool' (Ministry of Justice Press Office 2021) <<https://www.gov.uk/government/statistics/youth-justice-statistics-2019-to-2020>> accessed 4 August 2021.

⁴⁶⁷ Youth Justice Board/Ministry of Justice, 'Youth Justice Statistics: 2019 To 2020 Infographics' <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/956043/youth-justice-statistics-2019-20-infographic.pdf> accessed 4 February 2021.

⁴⁶⁸ Office for National Statistics, 'Crime in England and Wales, Year Ending March 2021 - PFA Tables' (Office for National Statistics 2021) <<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/police-forceareadatatables>> accessed 4 July 2021.

⁴⁶⁹ 'New Programme to Divert Young People In North-East England From Crime. - The Wise Group' (*The Wise Group*, 2021) <<https://www.thewisegroup.co.uk/justice/new-programmes-to-divert-young-people-in-north-east-england-from-crime/>> accessed 14 July 2021.

⁴⁷⁰ Chris Grover, *Crime and Inequality* (Routledge 2012).

⁴⁷¹ 'New Programme to Divert Young People In North-East England From Crime. - The Wise Group' (*The Wise Group*, 2021) <<https://www.thewisegroup.co.uk/justice/new-programmes-to-divert-young-people-in-north-east-england-from-crime/>> accessed 14 July 2021.

socio-economic inequality is relevant. In a regional analysis done on economic well-being, it was found that the North-East had the second-highest Gini coefficient (a statistical measure of inequality)⁴⁷² in comparison to other regions in England and Wales, indicating greater inequality, whilst also being one of the lowest income areas in the country.⁴⁷³ The impact of ten years of austerity in the form of funding cuts to youth services and other public services, has contributed to an increase in crime.⁴⁷⁴ The North-East being a region where crime is evidently a rising concern makes it well-suited case study location for my research on the extent to which compulsory education teaches children about criminal responsibility.

In the context of schools, the North-East of England has the highest level of student suspension and permanent exclusions in the country.⁴⁷⁵ Although, these rates have reduced in the last year it is still double the national average.⁴⁷⁶ In addition, there is a higher rate of suspension and permanent exclusion amongst students who are eligible for FSM, showing the effects of numerous life challenges such as low income on the behaviour of young people.⁴⁷⁷ Although, it cannot be said that school exclusion causes crime it has been a marker, amongst others, of increased exposure to criminal activity and it can put them more at risk of being either a victim or perpetrator of crime.⁴⁷⁸ Another noticeable trend is that these

⁴⁷² John Black, Nigar Hashimzade and Gareth Myles, *A Dictionary of Economics* (Oxford University Press 2009).

⁴⁷³ 'Analysing Regional Economic and Well-Being Trends - Office for National Statistics' (*Ons.gov.uk*, 2021) <<https://www.ons.gov.uk/economy/nationalaccounts/uksectoraccounts/compendium/economicreview/february2020/analysingregionaleconomicandwellbeingtrends>> accessed 27 July 2021.

⁴⁷⁴ 'New Programme to Divert Young People In North-East England From Crime. - The Wise Group' (*The Wise Group*, 2021) <<https://www.thewisegroup.co.uk/justice/new-programmes-to-divert-young-people-in-north-east-england-from-crime/>> accessed 14 July 2021.

⁴⁷⁵ 'Permanent Exclusions and Suspensions in England, Academic Year 2019/20' (*Explore-education-statistics.service.gov.uk*, 2021) <<https://explore-education-statistics.service.gov.uk/find-statistics/permanent-and-fixed-period-exclusions-in-england/2019-20>> accessed 12 July 2021.

⁴⁷⁶ *Ibid.*

⁴⁷⁷ *Ibid.*

⁴⁷⁸ Edward Timpson, 'Timpson Review of School Exclusion' (Department for Education 2019) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807862/Timpson_review.pdf> accessed 8 July 2021.

rates peak at the age of fourteen.⁴⁷⁹ Taking into account the points mentioned above, the North-East of England was the most appropriate region to conduct this case study as it is a part of the country where children are more vulnerable due to income inequality, higher rates of school exclusions and increasing exposure to crime.

3.8. Study Sample

3.8.1 The Sample Group

From a children's rights perspective, research involving an issue pertaining to children is often best if it is conducted with them or by them.⁴⁸⁰ This allows for children's voices to be heard in a conversation mostly led by adults and keeps the discussion child-centric. I wanted to keep my research focused on children and taking a right-respecting approach, so initially I did consider speaking to children about what they know and understand about the ACR. This has been done before in other studies,⁴⁸¹ however, as my research aim was to investigate what educational tools are provided to children to make them aware of their criminal responsibility at the age of ten, I needed to look at what schools share with them about it. Hence, based on the aims of my study, I found that speaking to teachers was more appropriate than consulting children within the scope of my research.

During their time in education, children interact primarily with teachers, therefore they embody the values of the school and impart them to their students. This puts them in a unique position of influence with regard to

⁴⁷⁹ 'Permanent Exclusions and Suspensions in England, Academic Year 2019/20' (*Explore-education-statistics.service.gov.uk*, 2021) <<https://explore-education-statistics.service.gov.uk/find-statistics/permanent-and-fixed-period-exclusions-in-england/2019-20>> accessed 12 July 2021.

⁴⁸⁰ Nigel Patrick Thomas, 'Child-Led Research, Children's Rights and Childhood Studies: A Defence' (2021) 28 *Childhood*; Chae-Young Kim, 'Why Research 'By' Children? Rethinking The Assumptions Underlying the Facilitation of Children as Researchers' (2016) 30 *Children & Society*.

⁴⁸¹ Dawn Watkins and others, 'If You Are 10, You Go to Prison': Children's Understanding of The Age of Criminal Responsibility' (2016) 67 *Northern Ireland Legal Quarterly*; Beth-Anne Logan, 'Age of Criminal Responsibility: Children And Young People's Views' (Children and Young People's Centre for Justice 2021) <<http://www.cycj.org.uk/wp-content/uploads/2021/03/ACR-final-survey-report.pdf>> accessed 8 May 2021.

children. In my research study, learning about what teachers share with their students on the ACR helped me examine the extent to which children are educated on this legal responsibility. Moreover, teachers would also be able to inform me of their experience of teaching such concepts and how they perceive children to understand it.

I chose to speak to teachers who taught children aged 7-14 which meant my sample was made up of teachers who taught Key Stage 2 and 3 in primary, middle and the lower years of secondary school. I was interested in teachers who work with this particular age group for a few reasons. Firstly, the average ACR in Europe, as mentioned previously, is fourteen therefore, I treated fourteen as a potential ACR that England and Wales could work towards implementing, in line with the CRC recommendations.⁴⁸² In addition, the general trend shows that school exclusions peak at the age of fourteen,⁴⁸³ which is another reason why exploring what is taught to children before that age would be inciteful. Similarly, I also wanted to know what children before the age of ten are taught in preparation for being held criminally responsible at that age (if they come in conflict with the law). This narrowed down the types of teachers I approached in this study to those who are teaching or have taught children between 7-14 years of age in the last few years.

3.8.2 Sampling Strategy and the Recruitment Process

In the beginning, the sampling strategy I chose to use was purposive sampling because I wanted the participants within the group to meet a specific criterion so that comparisons within the sample could be made.⁴⁸⁴

⁴⁸² United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (the Beijing Rules) Rule 4.1 and 17; United Nations Committee on the Rights of the Child, *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* (Seventy-second session, 2016) Para 79(a) pg 22.

⁴⁸³ 'Permanent Exclusions and Suspensions In England, Academic Year 2019/20' (*Explore-education-statistics.service.gov.uk*, 2021) <<https://explore-education-statistics.service.gov.uk/find-statistics/permanent-and-fixed-period-exclusions-in-england/2019-20>> accessed 12 July 2021.

⁴⁸⁴ Louis Cohen, Lawrence Manion and Keith Morrison, *Research Methods In Education* (8th edn, Routledge 2018) pg 218.

In August 2019, I found a list of schools on the Newcastle City Council website and DfE website which I planned to narrow down based on the number of students receiving FSM. Categorising the schools in the Newcastle-Upon-Tyne and Gateshead area into 4 quartiles based on the economic background of the students, would allow me to choose schools from each quartile. Using this sampling strategy, I thought I would investigate how the economic background of the student majority affects the approach taken to educating children on the ACR. In early November 2019, I started contacting all the schools on my list by sending them an email introducing myself, my study and establishing a request to connect on the topic of what their school teaches about the ACR. From the 75 emails I sent, only three replied and all the responses were negative. Two weeks after that I followed-up with a phone call, hoping to establish contact with the head teacher of each of the schools contacted. This proved to be challenging as I was unable to speak to anyone beyond the school reception for the most part. As Flick describes, I was trying to enter into a system and my research seemed like a disruptive factor that the school reacted to in a defensive manner.⁴⁸⁵ My research proved to be an interference they did not want or need and there was nothing functional to them that I could offer in return. Despite receiving negative responses for one to two months using this sampling strategy, eventually, two headteachers connected with me on the phone. In the majority of other cases, I was unable to get beyond the first hurdle of school reception.

Consequently, I decided to change my sampling strategy from purposive to snowball sampling. The change in sampling strategy was to facilitate better access to participants. Using snowball sampling, I was able to speak to personal or social contacts to identify individuals who fit the characteristics of the sample group described above. This strategy is known to be useful in research where access to participants is difficult due to its sensitive nature, where participants are suspicious of researchers or where contact

⁴⁸⁵ Uwe Flick, *An Introduction to Qualitative Research* (SAGE 2018) pg 164.

is difficult.⁴⁸⁶ As a researcher with a legal background conducting a study in a school setting, I had no established contact with any schools, making me an outsider. This made gaining access to schools challenging as they were unwilling to give their time to do research with someone were not acquainted with. Moreover, a recent *Teaching and Learning International Survey* indicated that primary school teachers worked an average of 48.3 hours per week which is the second-highest workload of the fifteen countries that took part in the survey.⁴⁸⁷ With teachers having limited time and my lack of contacts within schools, I had to take a more social approach.⁴⁸⁸

Starting from early December 2019, I made initial contact with friends, colleagues and acquaintances who became key insiders in my research. This meant they would get in touch with me when they knew someone who fit the characteristics of the sample group I was looking for, or if they knew someone else who would know of someone with such contacts. Following this chain of referrals, I was able to finally make contact with teachers who taught children between the age of 7-14. The initial contact was usually through the means recommended by the key insider who connected me to them, which was either via email, phone call or text. I did not know any of the participants I ended up connecting with, so I usually introduced myself, mentioned the key insider who gave me their contact, outlined my research and requested their participation in my research. If they were interested in finding out more, I would either arrange for an informal conversation on the phone after which I would send over an information sheet and consent form with further details of the study (purpose, procedure, risks and benefits, maintenance of confidentiality), ethical approval and all my contact information or if they preferred I would directly send it to them directly.⁴⁸⁹

⁴⁸⁶ Louis Cohen, Lawrence Manion and Keith Morrison, *Research Methods in Education* (8th edn, Routledge 2018) pg 220.

⁴⁸⁷ Helen Ward, 'Teachers in England Work Longest Hours In Europe' (*TES*, 2019) <<https://www.tes.com/news/teachers-england-work-longest-hours-europe>> accessed 15 April 2021.

⁴⁸⁸ Chaim Noy, 'Sampling Knowledge: The Hermeneutics of Snowball Sampling In Qualitative Research' (2008) 11 *International Journal of Social Research Methodology*.

⁴⁸⁹ Please see appendices for documents submitted to the Ethics Committee at Northumbria University.

Upon reviewing the information presented to them, they had the opportunity to respond to the request. Of the contacts I made using this sampling strategy, all of them responded positively and only one interview did not take place. The change in sampling strategy proved useful and increased the response rate significantly.

3.8.3 Sample Size

Sample sizes vary based on a variety of factors, prominently, the type of study conducted based on its research objectives and the nature of the sample.⁴⁹⁰ In my research the sample size was appraised continuously, first, in the planning stages, then during the research process and finally when I had to determine whether enough data was obtained for adequate analysis.⁴⁹¹ There are some guidelines provided for actual sample sizes which I used as a rough guideline in the initial stages and during my sample appraisal. For example, Morse recommends at least 6 participants,⁴⁹² whereas Creswell recommends between 5-25 interviews for phenomenological studies.⁴⁹³ Alternatively, Kuzel gives his recommendations based on sample heterogeneity and research objectives, suggesting 6-8 interviews for a homogenous sample and 12-20 “when looking for disconfirming evidence or trying to achieve maximum variation.”⁴⁹⁴ Notably, as Guest et al. highlight there is no evidence presented for these recommendations⁴⁹⁵ hence, I decided to use the information power model outlined by Malterud et al. which looks to shift attention from the number of the sample to the contribution of new

⁴⁹⁰ Greg Guest, Arwen Bunce and Laura Johnson, 'How Many Interviews Are Enough?' (2006) 18 *Field Methods*.

⁴⁹¹ *Ibid.*

⁴⁹² Janice M. Morse, 'Designing Funded Qualitative Research', *Handbook for qualitative research* (Sage 1994).

⁴⁹³ John W Creswell, *Qualitative Inquiry and Research Design* (Sage 1998).

⁴⁹⁴ Anton J Kuzel, 'Sampling in Qualitative Inquiry', *Doing Qualitative Research* (Sage 1992).

⁴⁹⁵ Greg Guest, Arwen Bunce and Laura Johnson, 'How Many Interviews Are Enough?' (2006) 18 *Field Methods*.

knowledge.⁴⁹⁶ Based on this measure, the more information the sample holds, the less participants required for the study.⁴⁹⁷

I reviewed the sample size continuously during the research process and eventually evaluated whether the final sample size was adequate based on Malterud et al.'s information power model which considers the "study aim, sample specificity, theoretical background, quality of dialogue, and strategy for analysis" to determine whether the number of participants provides sufficient information power.⁴⁹⁸ Although, the concept of saturation was also taken into account during the evaluation of my sample size it was not used as the applicability of it within qualitative approaches outside grounded theory is not specified clearly, especially in terms of how it is achieved.⁴⁹⁹ Furthermore, an exploratory study like mine with social constructivist roots can only shed light on a partial knowledge therefore, the idea of having a "total" amount of information as saturation suggests did not suit my research.⁵⁰⁰

Based on the numerical sample size recommendations mentioned above, I started with the aim of conducting 10-20 interviews for my exploratory study with some phenomenological aspects, as I was looking for maximum variation within a fairly homogenous sample of teachers in the North-East of England who teach 7-14 year old children. In addition, applying the information power model, my specific sample, narrow research aim to find out about what teachers' impart to children about and related to the ACR, and theoretical foundations to the phenomena being investigated, suggested that twelve interviews would provide adequate information for my exploratory study.⁵⁰¹ Stebbins states that the exploration ends when no more new ideas come from further open-ended investigation and "pressing

⁴⁹⁶ Kirsti Malterud, Volkert Dirk Siersma and Ann Dorrit Guassora, 'Sample Size in Qualitative Interview Studies' (2016) 26 *Qualitative Health Research*.

⁴⁹⁷ *Ibid.*

⁴⁹⁸ *Ibid.*

⁴⁹⁹ Janice M. Morse, "Data Were Saturated. " (2015) 25 *Qualitative Health Research*.

⁵⁰⁰ Kirsti Malterud, Volkert Dirk Siersma and Ann Dorrit Guassora, 'Sample Size in Qualitative Interview Studies' (2016) 26 *Qualitative Health Research*.

⁵⁰¹ Whilst the sample size proved to be adequate, it was reduced by time constraints as a result of the Covid-19 pandemic.

confirmatory issues dominate.”⁵⁰² After the 12th interview there were more confirmatory issues than new ideas and hence, I stopped conducting further interviews. Moreover, the strength of the information provided could be attributed to the participants not just describing what is taught in relation to the ACR at their current school, but they were also encouraged to reflect and share what they have taught previously at other schools in their experience as a teacher. Therefore, despite the small sample size, the depth of teaching experience that each participant could share provided more holistic and meaningful responses. Moreover, a document analysis of key curriculum documents relevant to the ACR was conducted to further substantiate the experiences shared by the participants.

3.9 Interviews

As a novice researcher, gathering data from teachers on their experience of teaching children about the ACR or topics that can help them understand this legal responsibility, the most natural method of data collection was to speak to them directly. Therefore, conducting interviews felt like the best way to get straight to the crux of the question under investigation. Interviews have been commonly used in anthropology and sociology since the beginning of the nineteenth century as a qualitative methodology and continues to be a popular research method.⁵⁰³ It is defined by Kvale, as an “inter-view”,⁵⁰⁴ where views are inter-changed between two or more people on a topic of interest to the participants involved.⁵⁰⁵ Kvale further describes two approaches to interviews – one of the “miner” who looks to extract information from the participant and the other of the “traveller” who is interested in travelling with participant to an unknown place.⁵⁰⁶ My epistemological position as a researcher wishing to explore and learn puts this study in line with the latter approach outlined by Kvale. Exploratory

⁵⁰² Robert A Stebbins, *Exploratory Research in The Social Sciences* (SAGE 2001) pg 10.

⁵⁰³ Max Travers, 'New Methods, Old Problems: A Sceptical View of Innovation in Qualitative Research' (2009) 9 *Qualitative Research*.

⁵⁰⁴ Steinar Kvale, *Interviews* (Sage Publications 1996) pg 14.

⁵⁰⁵ Louis Cohen, Lawrence Manion and Keith Morrison, *Research Methods in Education* (8th edn, Routledge 2018).

⁵⁰⁶ Steinar Kvale, *Interviews* (Sage Publications 1996) pg 14.

interviews accommodate this heuristic nature by looking to develop hypotheses rather than generating facts or numbers. This requires the interviewer to be skilful and facilitate deep and authentic sharing on the part of the interviewee.⁵⁰⁷

With the use of structured, unstructured, or semi-structured interviews, a researcher can explore new details or perspectives on a topic by employing their desired degree of flexibility, as required by the study. I chose to use semi-structured interviews for my research. This complemented the explorational flow of my study through the use of a guided, conversational approach to obtain and construct knowledge using multi-sensory channels. Despite the fact that exploration through interviews is more focused than other methods such as observation, it allowed for better navigation around this unfamiliar subject area without being as focused and specific as questionnaires, where the depth of the responses are lost.⁵⁰⁸ Furthermore, interviews were found to be an effective research method to employ in my study in order to make sure that my research questions were addressed as it provided me with the opportunity to follow-up with any questions or clarifications.

The use of guiding questions in my semi-structured interviews helped steer the conversation to address key points relevant to the aims of the research, whilst also leaving the question open-ended enough to leave room for the “experience and knowledge of each interviewee.”⁵⁰⁹ Their responses would shed light on these key points allowing for the participants and myself, as the researcher, to work together to uncover what is taught in relation to the ACR as it is not a part of the NC. This involved a back and forth involving the participant sharing their response, and with me then going back to clarify what they said and then asking a further question or probing. It also

⁵⁰⁷ Abraham Naftali Oppenheim, *Questionnaire Design, Interviewing and Attitude Measurement* (Pinter Publishers Ltd 1992).

⁵⁰⁸ Louis Cohen, Lawrence Manion and Keith Morrison, *Research Methods in Education* (8th edn, Routledge 2018).

⁵⁰⁹ Herbert J Rubin and Irene Rubin, *Qualitative Interviewing* (3rd edn, Sage 2012) pg 37.

gave the participants time to reflect on what they just said and building on the previous point. Here, a social constructivist approach was taken where knowledge on the teaching of ACR in schools and how this informs children, starts to paint a picture of the realities of the situation. Through the use of ethnographic and phenomenological techniques in the interviews carried out, the hypotheses developed from the knowledge and experiences of the teachers form a starting point to emerging theories.

3.9.1 Mode of interview

Interviews gather data through the direct interaction between the researcher and participant. The mode in which the interaction takes place can vary. They are commonly conducted face-to-face as it enables data to be collected through multi-sensory channels in the form of speech, hearing, visual and non-visual elements,⁵¹⁰ however, other modes such as telephone, online and written interviews also exist. When I started planning my methodology, face-to-face interviews seemed like the obvious choice as it is commonly used and seen as the 'gold standard' mode of interviews in qualitative research.⁵¹¹ When I began my recruitment process the lack of positive responses to my interview requests (partly due to the sampling strategy implemented) made me feel like I had to be more open to accommodating the requirements of the teachers. With statistics showing that teachers in England and Wales work some of the longest hours,⁵¹² I decided to include telephone as a mode of interview. Giving participants the option to choose a mode of interview, that suited their personal circumstances, allowed the interviewees to feel supported in the research process. This also allowed for flexibility in my methodology, which proved useful when Covid-19 social distancing measures came into place during my study.

⁵¹⁰ Louis Cohen, Lawrence Manion and Keith Morrison, *Research Methods in Education* (8th edn, Routledge 2018).

⁵¹¹ Judith L. M. McCoyd and Toba Schwaber Kerson, 'Conducting Intensive Interviews Using Email' (2006) 5 *Qualitative Social Work*.

⁵¹² Helen Ward, 'Teachers in England Work Longest Hours in Europe' (*TES*, 2019) <<https://www.tes.com/news/teachers-england-work-longest-hours-europe>> accessed 15 April 2021.

Rubin and Rubin state that: “through qualitative interviews you can understand experiences and reconstruct events in which you did not participate.”⁵¹³ To do this and understand how the interviewee feels, proximity to them is helpful; it allows interviewers to pick up on visual cues such as facial expressions, the feeling in the room when information is shared, and to accurately pick up on the meaning behind their words.⁵¹⁴ Face-to-face interviews allow researchers to access this information with ease, hence demonstrating why they are heavily favoured in qualitative research.⁵¹⁵ They are also well-known for yielding in-depth data on various topics.⁵¹⁶ In contrast, a number of concerns have been raised amongst qualitative researchers on the comparability of telephone interviews with face-to-face ones.⁵¹⁷ It is contended that the difficulty in building rapport without being physically present with the interviewee, effects of the interview mode on interview length, and the absence of visual data, has a negative impact on the quality of data generated in telephone interviews. Hence, telephone interviews are usually considered as a viable option where face-to-face interviews are not possible and due to convenience factors.⁵¹⁸ As a result, I carried out research specifically into whether the telephone interviews can be used as a primary mode alongside face-to-face interviews in my study.⁵¹⁹

From my research it was found that face-to-face interviews had advantageous features such as, visual cues, a more direct ability to build rapport with the participants, and the ability to elicit long and rich responses

⁵¹³ Herbert J Rubin and Irene S Rubin, *Qualitative Interviewing* (Sage 1995) 1.

⁵¹⁴ Ibid.

⁵¹⁵ Gina Novick, 'Is There a Bias Against Telephone Interviews in Qualitative Research?' (2008) 31 *Research in Nursing & Health*.

⁵¹⁶ Nicole Cook, 'It's Good to Talk: Performing and Recording The Telephone Interview' (2009) 41 *Area*.

⁵¹⁷ Vicente M. Lechuga, 'Exploring Culture from A Distance: The Utility of Telephone Interviews in Qualitative Research' (2012) 25 *International Journal of Qualitative Studies in Education*.

⁵¹⁸ Roger W. Shuy, 'In-Person Versus Telephone Interviewing', *Inside Interviewing* (Sage 2003).

⁵¹⁹ Malvika Unnithan, 'Dialling In: Reflections on Telephone Interviews in Light of The Covid-19 Pandemic' (2021) 1 *Journal of Legal Research Methodology*.

due to “contextual naturalness”,⁵²⁰ which arguably, telephone interviews did not share. This, however, did not make telephone interviews a more disadvantageous mode of interview to use. Instead, it was found that telephone interviews had some advantageous features of its own: it is flexible, safer, cost-effective, facilitates higher participation rates without diminishing the quality of data generated.⁵²¹ Furthermore, it reduces the imbalance in power relations that may be experienced between the interviewer and the interviewee, and provides an anonymity that could facilitate the sharing of sensitive data, without concerns of ‘surveillance.’⁵²² Notably, the benefits of using interviews as a research method are commonly associated with the advantageous features of face-to-face interviews, thus contributing to the scepticism amongst qualitative researchers regarding the use of telephone interviews as a primary mode of data collection. Hence, the importance placed on visual data and physical proximity may not be necessary in all studies as I found with my research.

The combination of both telephone and face-to-face interviews gave me access to the benefits of both and also contributed to a significant increase in positive responses to my interview requests. Overall, using interviews as my method to gather knowledge produced some meaningful and thought-provoking ideas which were explored further through document analysis.

3.9.2 Interview Process

Following on from the recruitment process and describing the methods used in my study, details of the interview process will be discussed here. Although, I started contacting more than 70 schools in early November 2019, I only managed to get one positive response by mid-December 2019, so I chose to change my strategy to snowball sampling hoping to increase the response rate. From the beginning of January 2020, I received more

⁵²⁰ Roger W. Shuy, 'In-Person Versus Telephone Interviewing', *Inside Interviewing* (Sage 2003) pg 179.

⁵²¹ Malvika Unnithan, 'Dialling In: Reflections on Telephone Interviews in Light of The Covid-19 Pandemic' (2021) 1 *Journal of Legal Research Methodology*.

⁵²² Amanda Holt, 'Using the Telephone for Narrative Interviewing: A Research Note' (2010) 10 *Qualitative Research*.

interest in my research. As part of my research, I was able to conduct semi-structured interviews with twelve teachers. Six face-to-face interviews and six telephone interviews were conducted; this was wholly dependent on the option chosen by the teachers. As mentioned earlier, I contacted the recommended participant through the contact details they chose to share with our mutual contact. Once they had expressed their consent to participate in an interview with me, I followed-up to organise the date, time and mode of interview based on their convenience. I did not know any of the participants personally, apart from a few general details, so this was the starting point of our interaction.

Being a researcher intending to learn from teachers' insights into what children know about the ACR between the age of 7-14 and find out about what schools do to inform children of the ACR, an over-arching philosophy I chose to incorporate in my interview style was appreciative inquiry. This theory suggests moving away from focusing on the problems within a particular context and instead, asking what is going on within the system to make it work.⁵²³ This shift away from focusing on the negative and using the positive to discover new ideas and generate theory,⁵²⁴ aligned with my epistemological position. The debate on the ACR is an ongoing one that tends to focus on the problem and negative effects on children who come into conflict with the law. On reflection, it was the rigorous and harmful effects that the ACR has on young children that inspired me to carry out my doctoral research in this area. Although the negative aspects of the situation played an important role in starting my research journey, with so much of the research in this area focusing on attributing blame and solving the problem, I wanted to use a different lens to investigate this issue. For this reason, I approached teachers to ask them about their practices and experiences related to teaching the ACR with children, rather than

⁵²³ Maha Shuayb, Caroline Sharp, Michelle Judkins, and Monica Hetherington, 'Using Appreciative Inquiry in Educational Research: Possibilities and Limitations' (National Foundation for Educational Research 2009)
<<https://www.nfer.ac.uk/publications/aen01/aen01.pdf>> accessed 6 August 2019.

⁵²⁴ Lynn Clouder and Virginia King, 'What Works? A Critique of Appreciative Inquiry as A Research Method/Ology' [2015] *Theory and Method in Higher Education Research*.

questioning their practices. This established an inquisitive tone from my end as an interviewer looking to gather knowledge from teachers, thereby setting up for active participation and collaboration between myself and the participant.

3.9.3 The Interview Guide

As briefly mentioned earlier in this chapter, I conducted semi-structured interviews in my study. This was to make sure that information shared during the interviews was relevant to the study and addressed the main research aims, whilst leaving enough room for the participants to share information that they felt was relevant to this issue. To ensure that this was achieved an interview guide was created with some key questions to ask the participants. Initially, I made a list of main topics I want to cover in each interview from my theoretical understanding of the literature on the ACR and some preliminary reading on the education system in England. I had not conducted the document analysis at this point as I wanted to understand what is taught in schools about the ACR from the teachers themselves, without specific, preconceived notions affecting my process of enquiry. This was because the interview questions, with its foundations in appreciative enquiry, were designed for me to learn more about teacher's experiences and perspectives on teaching the ACR and topics related to it, in order to inform my understanding of what is going on in that social context and how they respond to it.

The interaction during the interview was conducted with the hope that it would get both myself and the participant to think more closely about what children are taught about the ACR and to think about what more can be done to make them understand this legal responsibility better. This required the questions to be specific in terms of its content but phrased open-endedly so that the participants could respond with detail, drawing on their experiences. During the brainstorming process, I came up with three main themes for my interview guide – the teacher's background, their general experience of teaching children, and ACR related topics in schools. When

choosing the types of questions suited to each theme, I referred to Patton's six types of qualitative interview questions, using four of them, namely, background questions, opinion/values questions, and knowledge questions.⁵²⁵ Being new to empirical research, I followed the recommendation that interview questions be written out in full to ensure accurate phrasing during interviews.⁵²⁶ This proved to be particularly useful in the first few interviews I conducted however, with time the questions came more naturally to me. Below is an example of the initial draft of the interview guide.

⁵²⁵ Michael Quinn Patton, *Qualitative Research & Evaluation Methods* (4th edn, Sage 2015).

⁵²⁶ Nigel King, Christine Horrocks and Joanna M Brooks, *Interviews in Qualitative Research* (2nd edn, Sage 2019) pg 68.

Image 3.1 Initial Interview Guide⁵²⁷

Interview questions (semi-structured)

About the teacher and their experience of teaching

- 1) How long have you been a primary school teacher?
- 2) What age groups have you taught? OR What age group are you currently teaching?
- 3) Have you been teaching mainly in the North East of England or any other places?
 - a. Is there a difference between students you have taught in different schools/areas?

About their experience of young people, they teach/ have taught

- 4) *How is it to work with young people? Is it easy to get through to them when you are trying to teach them something?*
- 5) *Do you see students applying the things taught, especially behavioural aspects, effectively?*
- 6) *What role do schools play in teaching and developing young people? Do you find that the family plays a more significant role?*

About the law

- 7) What type of exposure do children between the age of 7-14 have with legal ideas and situations?
- 8) Would they know that they are held criminally responsible at the age of 10?
 - a. Was this something you were aware of before this study?
 - b. Do you think children of this age are legally conscious and mentally developed enough to be held responsible?
- 9) Do you think students be made aware of their legal responsibilities, especially in terms of criminal law?
- 10) What do you think would be the most effective way to teach students about the ACR?
- 11) Any further suggestions on making young people in primary schools more legally conscious?

The above shows the initial interview guide that was developed during my brainstorming process. It focused on 3 main areas themes (shown in bold) however, the questions in blue were eventually removed in the final interview guide used in this study.

⁵²⁷ NOTE: The section in blue was later omitted from the final version of the interview guide which was used during the data collection process. This was because teachers' experiences of young people were brought up by them when discussing the questions under the other two headings or in follow up questions when they mentioned something related to it.

The interview guide was organised to start off with background questions. Prior to the interview, I did not know much about the teachers who agreed to speak to me, so the first part of the interview was to find out more about them as individuals. This proved to be a good way to start the interview after the initial briefing which entailed introducing myself, the study, outlining how the interview is going to work, and letting them know that everything in this interview process is voluntary. It helped break the ice and started the interview on a personal note, easing the participants into the interview process and the questions that came after. Furthermore, it permitted me to frame or order the questions better in a manner specific to each individual participant. The information shared from this section was useful to set the context for any examples or experiences they shared during the interview and provide more information for when I had further questions which were not part of the interview guide.

Once I started organising the interviews with teachers, I became aware that the time teachers had available to take part in interviews was often very limited, especially if they chose to speak to me during work hours. Therefore, I had to take this into account when designing the interview questions. This forced me to go back to my initial interview guide and consider the questions again. I planned for each interview to take roughly 15-20 minutes if each question was answered with short, concise answers. This was to make sure that teachers could answer all the guiding questions in the planned time allocated, leaving any time beyond that point to ask further questions based on the information they shared in their previous responses. To make this more feasible and in the interest of asking more direct questions related to the teaching around the ACR, I decided to streamline the initial questions I came up with by removing question 4 and making the other two questions in blue (shown in image 3.1) optional.

Initially, I had included questions about teachers' general experiences of teaching young people within the chosen age group in order to find out more about the students, their approaches to learning and to gain first-hand insight into how they develop within schools. This was intended to set up

for the questions about the law and children's understanding of it, however, I realised that I could weave in questions 5 and 6 as follow-up questions related to the theme of teaching the ACR (as outlined in questions 7-11). This made sure I would get straight to the crux of the interview first, before I tried to gather further details in relation to the teacher's experience of children through follow-up questions and probing. Additionally, to seek teachers' individual opinions on whether they think criminal responsibility should be taught to children between the ages of 7-14, question 8b and 9 were combined and re-worded during the interviews to be less suggestive and clearer.

This set of main and further questions were usually opinion (what the participant thinks about the topic in question), knowledge (this is related to factual information the participant can share) and experience (their understanding of a situation) questions. Although I had full questions written out in my interview guide, I did not use them word for word in many interviews. Sometimes, I would use linking words from the participant's last response or from another context to phrase the question to better suit the tone of the interview. I did this to keep the flow of the interview natural and conversational for the participant. Following this process, the shortest interview I conducted was 19 minutes long and the longest was 50 minutes, with all of them coming to an end naturally without any issues of time constraints.

Being a reflective person by nature, I was constantly evaluating what worked in the interviews and what did not. That way I was able to try and improve myself as a researcher with every interview I did. An example of this was illustrated from the changes made to the interview guide before and during the interview process as mentioned above. However, apart from that I tried to make sure that I was attentive to the participant and their responses at all times, which put me in a better position to ask follow-up questions and use prompts. King et al. distinguished between the two with follow-up questions trying to ask the participant to expand on their initial response and prompts as "interventions" used to clarify the kind of

information the interviewer is looking to gather to dispel any uncertainty in relation to the initial question.⁵²⁸ Following on from the first few interviews, I was able to notice certain probes or prompts that were used during the interviews. These were used, if necessary, at different points in the interview depending on the participant. In addition, I also made it a point to clarify my understanding of the participant's responses to key questions as it made sure that their response was accurately conveyed to me. This meant that when the interview was transcribed, this point was clear for the data analysis process.

All the questions and prompts in the interview guide were used to ensure that I was able to gather the fullest account possible from each participant. The interview guide provided a useful structure for my interviews by having 7-8 key questions to ensure that the participant's time was used effectively and efficiently, whilst also leaving room for further probing to uncover more details. After the interview, each participant was debriefed, as recommended by Brinkmann and Kvale,⁵²⁹ by asking the participant if they had anything more to share, summarising what I learnt from speaking to them (providing them an opportunity to further clarify any points), thanking them for their time and offering to share any findings from this exploration if they are interested. This was not included in the interview guide as they were asked after the recording had stopped however, I still considered the debriefing an important part of the interview structure as it kept the participants guided throughout the process.

3.9.4 Interview Setting

The physical space of the interview can play a key role and so the comfort, privacy and noise level of the setting are important considerations.⁵³⁰ I gave the participants the option to choose the mode of interview (telephone or

⁵²⁸ Nigel King, Christine Horrocks and Joanna M Brooks, *Interviews in Qualitative Research* (2nd edn, Sage 2019) pg 69.

⁵²⁹ Svend Brinkmann and Steinar Kvale, *Doing Interviews* (SAGE 2018) pg 32 and 62-63.

⁵³⁰ Nigel King, Christine Horrocks and Joanna M Brooks, *Interviews in Qualitative Research* (2nd edn, Sage 2019) pg 72.

face-to-face) and consequently the interview setting as well. The trend that emerged was that teachers who chose to speak to me during work hours preferred doing it on the phone whereas, those who were able to make time outside work hours chose to meet in person. When participants chose to have a telephone interview, they were able to remain in the setting most conducive to them without me having to know where that is, maintaining a level of privacy and anonymity. In contrast, the six interviews conducted in-person took place at the participant's house or their friend's house, keeping the setting familiar to them by bringing me into their space. Without much effort on my part, the participants themselves chose interview settings that were comfortable for them, in a quieter and more secluded space to ensure that they were not interrupted or overheard.

As the researcher, although I had control over the interview process, sharing this power over the social space, by allowing the participants to determine the interview time and setting, helped those teachers build trust in me which helped build rapport. There was a perceived reciprocity felt from both ends in the interview process; they were doing me a favour by sharing their knowledge and experience with me, whilst I could make the interview more participant-centred by accommodating their needs. The participants were informed that the interviews were a form of appreciative enquiry and they were also made aware of the general themes covered in the interview beforehand. This gave them an opportunity to think about it if they wished to do so. Having some knowledge of what would happen in the interview reduced the uncertainty around the interview process, as the inherent power of the interviewer in knowing and directing the participants was shifted, making the participants feel more equal in status. This contributed towards balancing the power relations in the interviews which allowed for me as the researcher to learn from the teachers and use these interviews as a means to explore the extent to which children are informed about the ACR through the knowledge constructed from speaking to these teachers.

3.9.5. Equipment used

During the interview process, arrangements were made to keep a record of the consent forms and audio recordings of the interview. Consent forms were printed and kept in a folder for safekeeping. They were subsequently scanned to keep them saved online; in case the hard copies were misplaced. Eleven out of the twelve interviews were recorded, with some basic handwritten notes to highlight key points of emphasis and summarise some of my thoughts during and after the interview. The one interview which was not recorded (due to a technical issue) was conducted on the telephone and hence, detailed notes were taken during the call without disturbing or distracting the participant as there was no visual element to the interview. These notes were used as the transcription for this interview and kept for analysis.

All other telephone interviews were recorded on my personal laptop using Quicktime and the face-to-face interviews were recorded on my personal mobile phone using Voice Memos. The microphone on my phone and/or laptop was kept close to the participant in-person or through the speaker to make sure the audio was picked up clearly without any disturbance. Each of these recordings were saved onto my password-protected laptop and into my personal cloud storage for backup. Only I had access to these recordings and they were kept on password-protected devices for transcription purposes. Once the transcription was done, I used Nvivo for analysing the data collected.

3.9.6 Ethics

Before I started conducting my interviews, I needed to gain ethical approval for my study from Northumbria University. This process involved submitting six documents as part of this process. Below is a list of documents submitted with a brief description of their purpose:

- Document 1: General Aims & Research Project Outline
- Document 2: Plan for Research Activities

- Document 3: People & Personal Data
- Information sheet for participants
- Consent form
- Research plan⁵³¹

My preliminary research into the methodology I planned to use for this study, formed the initial contents of these documents. After further research and finalising the plan for the study, I then wrote out the details of the documents mentioned above. I submitted my Research Ethics Submission on the 19th September 2019 and following an independent peer review of my proposal, I received ethical approval on 23rd September 2019, which was granted subject to continued compliance with the University policies. Some of the key points from these documents and the interview process are discussed below.

Since I chose to speak to teachers, my research was carried out with adult participants who gave their informed consent before taking part, with no vulnerable persons taking part in this study. Following GDPR guidelines, participants were provided with an information sheet with details of the study. They were also given a consent form that outlined their rights, including their right to opt-out of the study at any point. It was ensured that consent was freely given, informed, unambiguous, specific and affirmative. Thereafter, the teachers in this study were asked for some personal details such as their name, the name of the school they are currently teaching at (for geographical purposes), and their teaching experience. All these personal details were anonymised and the confidentiality of the participants was protected so that none of the data can be traced back to them to ensure that it does not put the participants at risk or in a discrediting position. The personal details were not used for the purposes of the study, therefore only the responses in the interview pertaining to the research questions were used and presented here. Furthermore, there were no issues of safety for the participant or myself. Any questions or points of concern in relation to

⁵³¹ Please see the Appendices for further details on the ethical approval documents.

this were dealt with by me, and they were reassured that if they felt uncomfortable during the study, they were free to withdraw from it.

The data collected was not considered of a sensitive nature as the interviews were largely focused on teachers' experiences of teaching the ACR from a practical and curriculum perspective and their views on it. Nonetheless, there were some ethical considerations to be made regarding my conduct during the interviews. Specifically, this was found to be the case when it came to teachers sharing examples of bad or criminal behaviour by their previous or current students. I noticed that all the teachers started off feeling quite apprehensive when it came to sharing specific examples of bad behaviour that they have encountered in their years of teaching. This meant that they mentioned examples generically which only alluded to the presence of bad or criminal behaviour in schools, giving little indication of what these acts were, the seriousness of the issue and how they dealt with it. I quickly understood that this was information that the teachers considered sensitive (even though from a general ethics perspective it may not be⁵³²) as it told me something about one or more of the students that they have taught or currently teach which made them uncomfortable, especially as I was someone they did not know enough to trust with this information. Noticing this, I decided that I would not push the teachers to share more by questioning them about this. Instead, I conducted the interviews in the least intrusive manner possible by asking questions that informed me about the teaching of the ACR in schools, thus giving teachers the opportunity to share examples if they felt it was relevant to this line of questioning.

Taking such an approach gave teachers time during the course of the interview to learn more about what I was intending to understand and do with this information. This naturally led to them opening up and trusting me

⁵³² *Ethical Governance In Research Policy* (Northumbria University 2022) <https://northumbria-cdn.azureedge.net/-/media/misc/research_duplicate/research_duplicate/ethics-and-integrity/ethical-governance-in-research-policy_sept2022.pdf> accessed 9 September 2022.

with more details. As a result, teachers often referred back to the examples they had alluded to earlier in the interview to give me details of instances of bad behaviour, how it was criminal in nature and how they themselves or the school dealt with it. In addition to the trust element, the teachers themselves were able to reflect on their experience of how the ACR is dealt with in schools from both a teaching and disciplining perspective, resulting in them making the link to examples of bad behaviour. The well-being of the participants was of paramount importance during the entire interview process and even after, so I wanted to make sure that the interview did not cause the participants any distress or discomfort. I tried to ensure this by being a good listener and communicating clearly with the participants to make sure that I respected their input and their time.

I also made sure that none of the information obtained during interviews and in the transcription process was edited or added to. This is why the transcription process was done systematically by transcribing it verbatim, keeping integrity as a core value of this research study. Following my Research Data Management Plan, I anonymised the names of all the teachers, anyone they mentioned by name and the name of their school. The only identification would be the description of the school and the catchment area for deeper analysis. Moreover, the data collected was stored with me as I was the sole researcher in this research study. The interviews were audio-recorded on my mobile phone or laptop, and both are password protected. Immediately after the interview was completed this data was saved into cloud storage and emailed to me for backup. My email and cloud storage are also password protected and I am the only one with access to it. All the transcriptions were saved in the same way.

3.9.7 Transcription Process

Once all the interviews had taken place and the recordings were stored safely, the transcription process began. Brinkmann and Kvale, argue that that there is a lot of emphasis on interview quality but the quality of interview transcriptions is often neglected. They outline how transcription changes

data from one form to another, neglecting the difference between oral and written discourse. This can affect the quality of the transcription which consequently affects the data analysis.⁵³³ Keeping this in mind and considering what is useful transcription for my research purpose, I made an outline for how the transcriptions should take place. For the purposes of my research, I chose to write out all words spoken including fillers like “umms” and “ahhs”. This meant that I would have everything that was spoken verbatim. From there, I felt it would be easier to decide which points in each interview relates most closely to the research questions during the process of analysis. Other aspects of the interview such as pauses and expressions of emotions were not noted in the transcription process as the emotional context was not relevant to my study. I was looking at gathering knowledge and learning from the experiences and opinions of the teachers, and this was conveyed through their words and the language used. Moreover, my research was not an emotional topic for the teachers but rather a reflective one, hence them sharing their thoughts and ideas out loud conveyed through the words spoken, was the most important aspect of my interviews.

In spite of, having a clear, general procedure for transcribing, there were some challenges. One of the most confusing aspects of the transcription process was adding punctuation to the transcript. This is because when people speak they often use run-on sentences making it hard to decipher when the sentence begins and ends.⁵³⁴ This was often the case in my interviews and so I wrote out the words in the first instance (with punctuation where possible), and then went back and heard the recording again to add the punctuation such as commas and full-stops afterwards. Going back to it meant that I could pay attention purely to the way the words are spoken without having to try to type the words at the same time. This was a time-consuming process and I had to make sure I did it in circumstances where the meaning behind the words had to be clarified. I also had to be very careful when going back and hearing sections again as there was the

⁵³³ Svend Brinkmann and Steinar Kvale, *Doing Interviews* (SAGE 2018) pg 106-112.

⁵³⁴ Blake D Poland, 'Transcription Quality', *Inside Interviewing* (Sage 2003).

possibility of omitting words when the flow is broken. Once the transcription was done, I did one more listen through whilst reading to ensure it was all correctly noted in terms of the words and punctuations. Other factors such as the accent and speed at which the participant spoke also proved to be challenging. When some parts were very fast, I would often slow down the recording to keep up with the words. This would sometimes exacerbate the difficulty in understanding their accents however, I would come back to re-listen to any unclear sections later with fresh ears. This helped me fill any gaps in my transcription. I was also open to contacting any of the teachers again to make sure that I understood the point they were making by asking them further questions via email however, this was not required. The familiarity gained through the transcription process and revisiting the recording over and over again started the initial analysis of my data.

3.9.8 Researcher Positionality

As the sole researcher in this study, these questions formed the basis of my analysis process and acted as a yardstick to measure the objectivity/neutrality of my analysis. Complete objectivity is hard to achieve in any research study as there are usually subjective decisions made in the analysis process.⁵³⁵ With my study being of an exploratory nature, I relied on my ability to follow the course of the research in the ways I felt were necessary and by letting my curiosity guide me. Taking such a free-flowing approach was an integral part of my research study, but it still required guidelines to ensure the quality of my research. In order to do this, I used Yardley's guidelines for ensuring quality in qualitative research which outlines four main areas to consider: sensitivity to context, commitment and rigour, coherence and transparency and impact and importance.⁵³⁶

⁵³⁵ Nigel King, Christine Horrocks and Joanna M Brooks, *Interviews in Qualitative Research* (2nd edn, Sage 2019), p.212; Lucy Yardley, Demonstrating validity in qualitative psychology, In J. A. Smith (Ed.), *Qualitative Psychology* (2nd ed., London: Sage 2008) pp. 235–251).

⁵³⁶ Lucy Yardley, Demonstrating validity in qualitative psychology, In J. A. Smith (Ed.), *Qualitative Psychology* (2nd ed., London: Sage 2008) pp. 235–251).

As mentioned in the previous chapter, being a lawyer stepping into the realm of school education, I had little understanding of schools work in England and Wales and the Key Stage 2 and 3 curriculum the selected age group follow. In addition, the literature available on the ACR and the education system was limited, therefore the information provided by the participants during the interview process was mostly new to me. This proved to be advantageous as my lack of knowledge in this area allowed me to minimise my input and opinion in the research process. Instead, I could let the information shared by the participants guide me to ask further questions and find out more. The decisions made during this study were based on my understanding of the issue and sensitivity to context, in relation to the participants. Being guided by the information shared allowed me to develop a deeper understanding of the participants' perspectives without being heavily influenced by my own perspectives. As I conducted more interviews, my knowledge of the area of research increased, allowing me to piece together the information gathered and where there were any discrepancies I made sure that they were clarified through follow-up questions. This helped confirm my understanding of the information shared by the participants thus, illustrating the rigorous process I tried to follow to ensure the quality of my research.

This exploratory approach required that I take decisions during the data collection process, and it continued through the data analysis process too. As a result, I have attempted to provide a detailed outlined of how I conducted my data analysis to ensure transparency and to be clear about the rationale behind the decisions I made in this process. Ensuring coherence and transparency will have a significant impact on the strength of my findings⁵³⁷ and the value of its contribution and hence, as per the latter two areas outlined by Yardley, this was considered a priority. The next few sections will outline the steps taken to analyse the interview data gathered during this study.

⁵³⁷ Nigel King, Christine Horrocks and Joanna M Brooks, *Interviews in Qualitative Research* (2nd edn, Sage 2019), pg 213.

3.9.9 Thematic Analysis

The exploratory nature of my research required the approaches taken in my research to be fluid and adaptable to the needs of the investigation. My research looked to map out what is being taught in schools about or related to the ACR and therefore, I needed the study to flow in the direction of the information provided (as long as it was in line with the research questions mentioned above). The lack of a rigid approach was a conscious choice to avoid limiting the scope of the data collected and the findings. Hence, I used thematic analysis to analyse my interview data as it is a method of analysis that is not limited to one research paradigm but rather can be combined with other approaches to analysis and can be used across various theoretical underpinnings.⁵³⁸ The theoretical freedom that thematic analysis provides makes it a flexible and useful tool which can give a rich and detailed account of the data in an exploratory study like mine.⁵³⁹

Thematic analysis is defined as: “a method for identifying, analysing and reporting patterns (themes) within data. It minimally organises and describes your data set in (rich) detail. However, frequently it goes further than this, and interprets various aspects of the research topic.”⁵⁴⁰ This method of analysis allows for the researcher to analyse the data, create codes and formulate themes based on their understanding and interpretation of the data in relation to the research questions of the study. I conducted my data analysis based on Braun and Clarke’s six step guide on how to conduct thematic analysis. This was to ensure that I was methodical in my thematic analysis process, whilst also maintaining the flexibility it affords within the context of my research.⁵⁴¹ Braun and Clarke’s thematic analysis steps are outlined in the image below.

⁵³⁸ Victoria Clarke and Virginia Braun, 'Thematic Analysis' (2016) 12 The Journal of Positive Psychology.

⁵³⁹ Ibid. pg 78.

⁵⁴⁰ Ibid. pg 79.

⁵⁴¹ Ibid. pg 78.

Image 3.2. Braun & Clark’s Thematic Analysis Guide⁵⁴²

Phase	Description of the process
1. Familiarizing yourself with your data:	Transcribing data (if necessary), reading and re-reading the data, noting down initial ideas.
2. Generating initial codes:	Coding interesting features of the data in a systematic fashion across the entire data set, collating data relevant to each code.
3. Searching for themes:	Collating codes into potential themes, gathering all data relevant to each potential theme.
4. Reviewing themes:	Checking if the themes work in relation to the coded extracts (Level 1) and the entire data set (Level 2), generating a thematic ‘map’ of the analysis.
5. Defining and naming themes:	Ongoing analysis to refine the specifics of each theme, and the overall story the analysis tells, generating clear definitions and names for each theme.
6. Producing the report:	The final opportunity for analysis. Selection of vivid, compelling extract examples, final analysis of selected extracts, relating back of the analysis to the research question and literature, producing a scholarly report of the analysis.

The basis of this form of analysis is identifying the themes that can be developed from the data.⁵⁴³ Braun and Clarke define a theme as that which “captures something important about the data in relation to the research question, and represents some level of patterned response or meaning within the data set.”⁵⁴⁴ This requires the researcher to take an active role in the process of analysis where decisions are taken on what is to be included and discarded and how the participants’ words are to be interpreted.⁵⁴⁵ Here the role of the researcher is taken into account and the subjectivity in the analytical process is acknowledged. Although, this can be a concern when it comes to the trustworthiness of the analysis, consistency and cohesion can be achieved through ensuring that the methods and theoretical framework match what the research is trying to find out and by acknowledging the decisions made in the process.⁵⁴⁶ This includes decisions on what is to be included and discarded and how the participants’ words are to be interpreted.⁵⁴⁷ Braun and Clarke provide some clarity on

⁵⁴² This table was taken from Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3 *Qualitative Research in Psychology*, Table 1, pg 87. It was used to inform my thematic analysis process.

⁵⁴³ The use of the word “developed” instead of “discovered” or “emerged” is a conscious choice here. The intention is to demonstrate

⁵⁴⁴ Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3 *Qualitative Research in Psychology*, pg 82.

⁵⁴⁵ Nigel King, Christine Horrocks and Joanna M Brooks, *Interviews in Qualitative Research* (2nd edn, Sage 2019), pg 200.

⁵⁴⁶ Lorelli S. Nowell, Jill M. Norris, Deborah E. White, Nancy J. Moules, 'Thematic Analysis' (2017) 16 *International Journal of Qualitative Methods*.

⁵⁴⁷ Nigel King, Christine Horrocks and Joanna M Brooks, *Interviews in Qualitative Research* (2nd edn, Sage 2019), pg 200.

what types of decisions and distinctions need to be made in thematic analysis as listed below.⁵⁴⁸

1. What is a theme?
2. What is the aim of the research? Rich descriptions of a data set or a detailed analysis of a particular aspect?
3. Inductive versus theoretical thematic analysis
4. Semantic versus latent themes
5. Epistemology: essentialist/realist versus constructionist thematic analysis
6. Distinguishing between the research questions of a study and the questions asked in the interview.

The above points were considered during the earlier stages of my research and provided a sense of clarity and coherence to process of analysis.

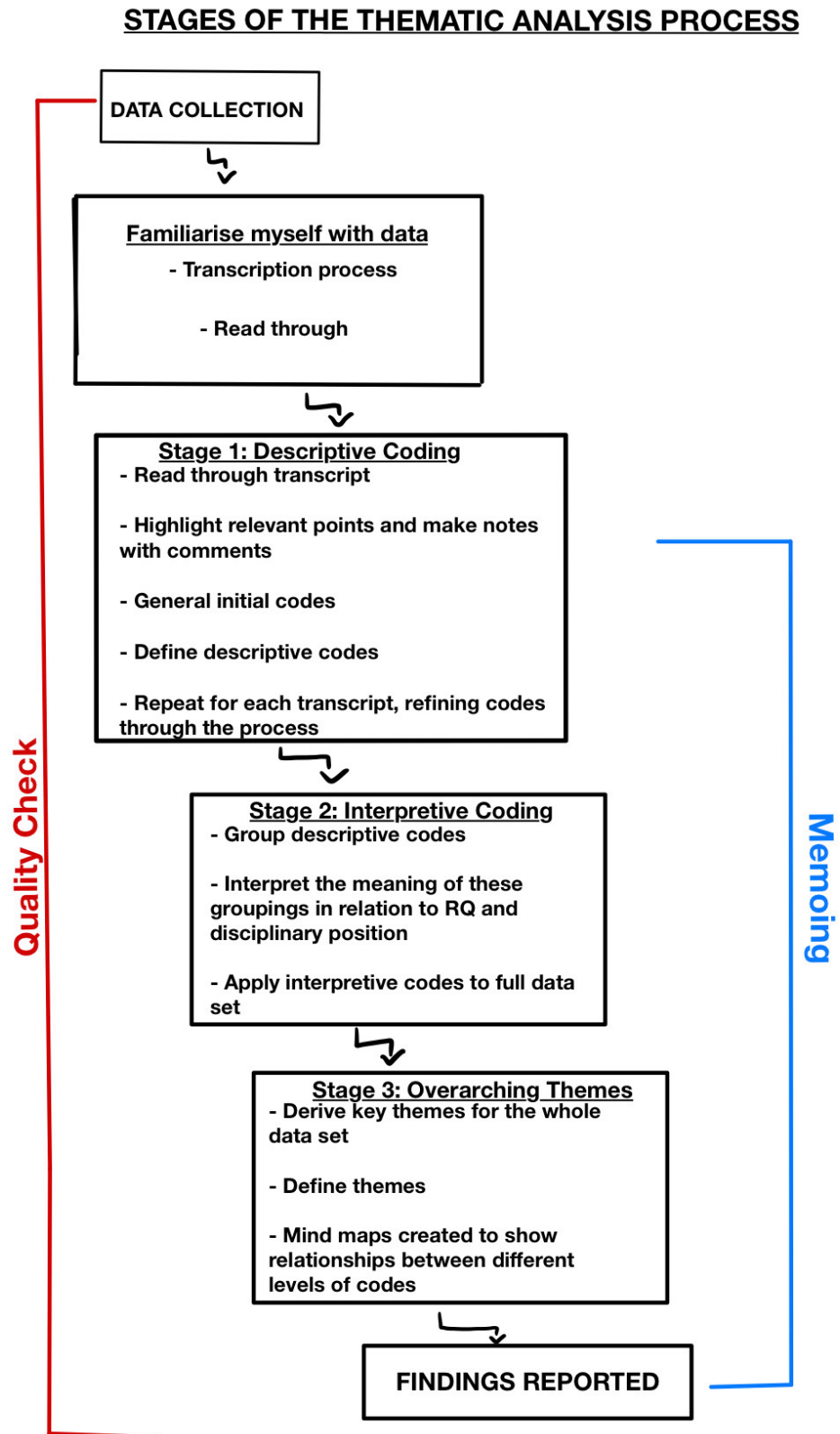
The aim of my research was to develop an understanding of teaching practices in schools that inform children aged 7-14 about criminal responsibility. This was done by hearing from teachers about their teaching experience, knowledge of the curriculum content and inquiring into their perspective on this issue. Based on this, my thematic analysis looks to provide a rich analysis of my data set as a whole. As I conducted an exploratory study into an under-researched area, I could not take a very specific or restrictive approach to my analysis as there was very little information in the literature review to start with. Therefore, without a hypothesis or much prior knowledge about what is taught in schools about criminal responsibility, I decided to start my analysis with a wide lens. I looked to the data to tell me more about the topics covered in school which related to the ACR or other legal responsibilities, and consequently, whether teachers thought the ACR needs to be discussed in schools more prominently. Therefore, I chose to carry out an inductive thematic analysis. The other decisions and/or distinctions mentioned by Braun and Clarke

⁵⁴⁸ Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3 *Qualitative Research in Psychology*, pg 81-83.

(outlined in the list above), will be discussed as I explain the steps I undertook in my analysis that were relevant to it.

A general overview of my data analysis process has been presented in the form of a diagram below. This summarises the steps taken and the stages of analysis.

Figure 3.1. Stages of my Thematic Analysis Process



Researchers are encouraged to have an audit trail when conducting thematic analysis to improve the quality and trustworthiness of the findings.⁵⁴⁹ To help with this process I drew inspiration from memoing, a strategy used predominantly in grounded theory research. Although, it is a practice commonly associated with grounded theory, it is not limited to just that one method of qualitative data analysis and has been known to enhance other qualitative approaches.⁵⁵⁰ The general applicability of this strategy has been outlined by Birks et al. in the mnemonic “MEMO”, which summarises the functions of memoing in the following ways: “Mapping research activities; Extracting meaning from the data; Maintaining momentum; Opening communication.”⁵⁵¹ This mnemonic shaped my understanding of memoing and therefore, these were the main functions of my memo writing process. The notes from these memos have been integrated into the description of my thematic analysis.

3.9.10 Stage One: Descriptive Coding

3.9.10.1 During the Transcription Process

Having conducted all the interviews by myself, I was already familiar with the information shared in the interviews prior to the transcription process. The level of familiarity I had with the data increased through the transcription process which involved transcribing the interviews and checking the transcriptions with the audio recordings. Following this process of listening to the interviews again and checking the transcription, I ended up reviewing the interviews at least twice before I started my data analysis. Doing this, I started to notice some key points that were repeated across the different interviews. At this stage, they were just preliminary points however, I noted them down in my memos. The following is an excerpt of my notes summarised:

⁵⁴⁹ Lorelli S. Nowell, Jill M. Norris, Deborah E. White, Nancy J. Moules, 'Thematic Analysis' (2017) 16 *International Journal of Qualitative Methods*.

⁵⁵⁰ Melanie Birks, Ysanne Chapman and Karen Francis, 'Memoing in Qualitative Research' (2008) 13 *Journal of Research in Nursing*, pg 69.

⁵⁵¹ *Ibid.* pg 70.

“In my findings so far, it seems that there is no general or regional guidance on how and when criminal responsibility should be taught. Schools decide when and how to bring it up. Often schools who do not have students with major behaviour issues, don’t feel the need to bring it up unless it becomes an issue or the child is in conflict with the law. Other areas such as cyber security, bullying and sex education seem to be taught quite consistently across all schools and it is more structured within their PSHE or related curriculum. Some of the teachers mentioned how they don’t bring up the age of criminal responsibility directly, but rather teach young people about right and wrong, teach them British Values and try and instil good behaviour. Despite the fact that the ACR is arguably very low this approach seems generic and inconsistent for informing students of an important legal responsibility they possess.”

The general ideas mentioned in the memo above were checked in later readings of the interview transcripts and throughout the coding process. It formed the foundation to my understanding of the data which was later explored in more depth.

3.9.10.2 After Transcription, Before Coding

Once I completed the transcription process, I read through each of the interviews twice more. In the first reading of each interview transcript, I made note of each participant’s details. This involved noting the name of the school where they teach and its location⁵⁵², how many years of teaching experience, and details of their role (headteacher or teacher). This has been summarised in the table below.

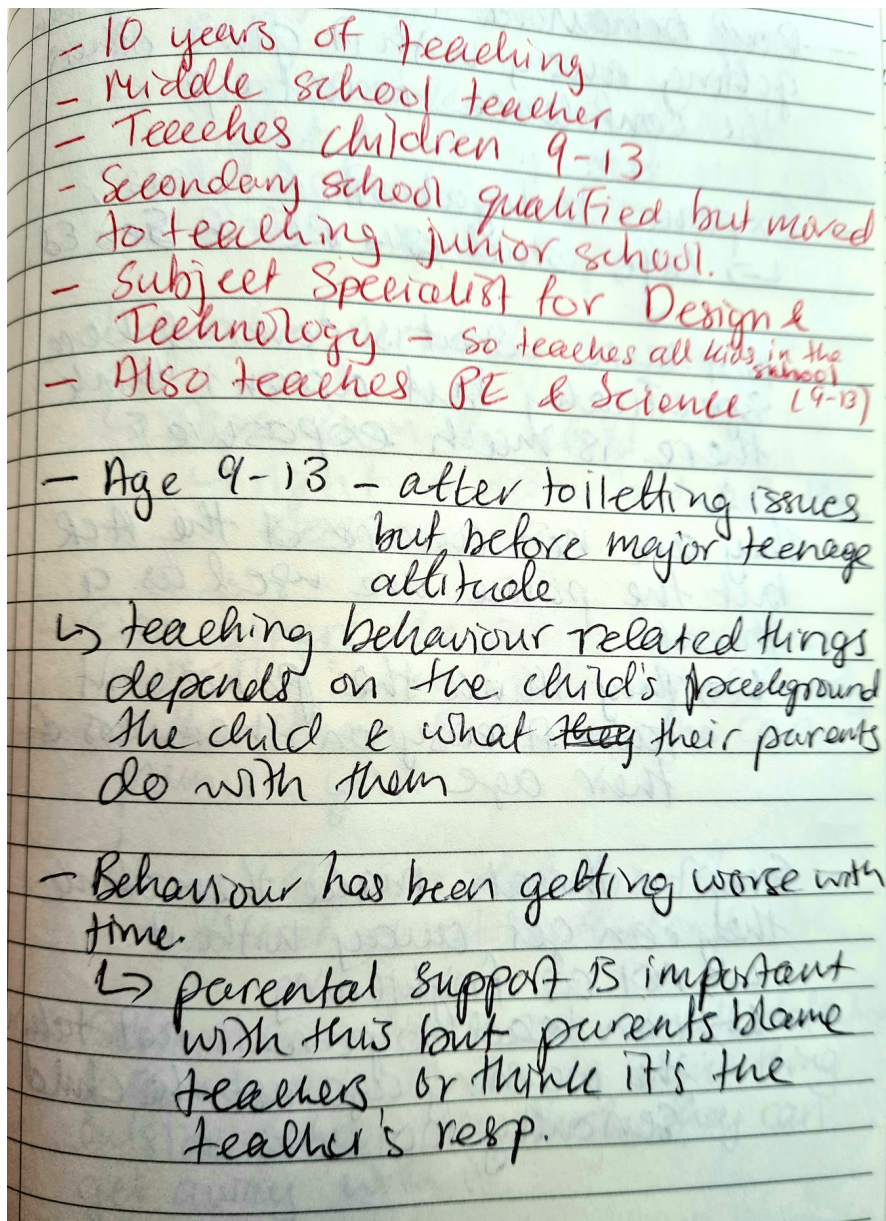
⁵⁵² In the table location has been represented by the percentage of students eligible for FSM.

Table 3.1. Participant Information

Teacher	Role	Years of Teaching Experience	Percentage of children eligible for free school meals
AN	Head Teacher	9	39.5%
CB	Head Teacher	18	29.6%
CF	Teacher	9	12.4%
EB	Teacher	10	12.4%
JH	Teacher	13	15.6%
JS	Teacher	6	70.9%
MM	Teacher	42	10.0%
MR	Teacher	6	43.3%
NJ	Head Teacher	5	61.1%
P	Teacher	15	12.4%
RT	Teacher	17	12.4%
SK	Teacher	6	17.7%

Following on from this, I took notes of the points that stood out to me in each transcript. At this stage, I did not refer to my research questions or interview guide as I wanted to find out the general story that emerged from my data. I treated each interview as a case and took a holistic and immersive analytic position, consciously holding back from a deductive analysis based on my research questions at this stage. This was intended to summarise and contextualise each interview before I began the coding process. I found this to be a very important step in the analytical approach, as later on, I was able to understand the content shared within the context of each individual interview. This proved to be useful as I was familiar with the extracts in their original context and in light of the individual teacher's background. This reading stage further elucidated the recurring points and also highlighted some of the differences in the approaches taken by teachers regarding teaching children about the ACR. Any correlations between the teachers who mentioned similar points and teachers whose points differed from the rest were noted in my memos so that I could come back to it at a later point. An example excerpt of my memos during this process can be seen in the image below:

Image 3.3. Notes from initial reading of an interview transcript

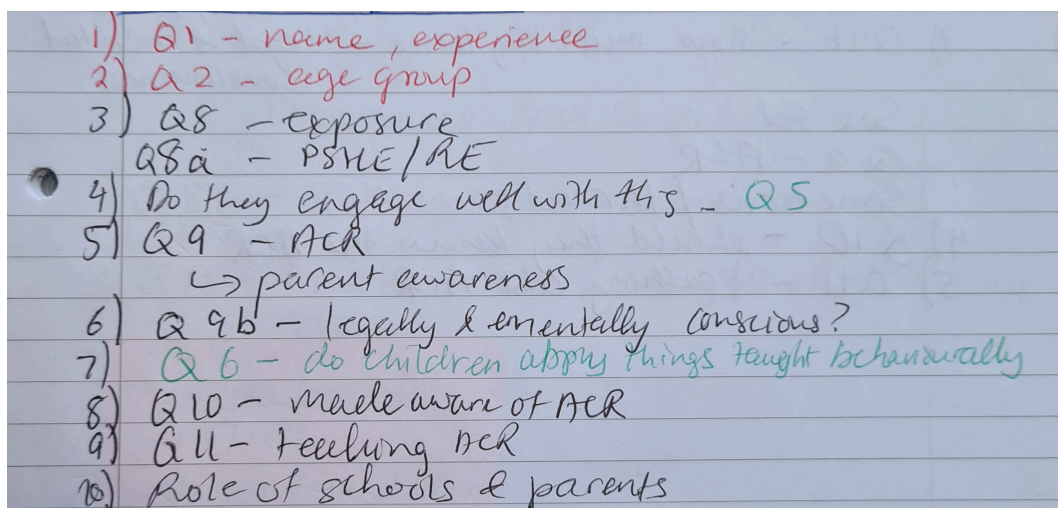


The image above shows a page from the notes taken when reading through one interview transcript. The teacher's details in red and the general notes from the interview transcript in black. This was the same process followed for all the interviews.

Following the holistic immersive phase, I compared the inductively generated themes described above with the alignment of the interview data to my interview guide and research questions. I had a skeletal set of questions for all my semi-structured interviews, which were followed up with questions that asked for further clarification on points they shared or asked

questions based on what the teachers chose to focus on. For example, if teachers mentioned “online safety” in relation to my questions on what is taught to children about the ACR, then I would follow their train of thought and inquire about the school’s focus on “online safety”, how they educate children about it, why they consider it to be important, whether their discussions of online safety acknowledged that young people could be engaging in criminal conduct and other questions relevant to what was shared by the teacher. It is interesting to note what the teachers focused on in relation to teaching the ACR as this was also important to consider in light of my research aim – to find out what is taught about or related to the ACR.

Image 3.4. Example memo



The image above shows an example of the memo from one interview transcript where I noted the questions covered from one of the interview transcripts. The question number as per the interview guide (Image 3.1) and the topic covered is noted.⁵⁵³

⁵⁵³ Please note that the interview guide had questions numbered from 1 to 12 however, I decided not to ask some questions once I started conducting the interviews, namely, Q 3,4,7, as they were not as relevant to the discussion. These were questions about the general behaviour of children in that age group, but these were avoided when the conversation did not allow for it.

I then went through the interview transcripts again to make note of the questions and topics covered by the questions. This iterative process described and shown above ensured that the emergent format of the semi-structured interviews had generated enough data that was sufficiently similar to allow for a commensurable analysis. This step in the process gave me the opportunity to ask any follow-up questions to any of the teachers after the interview process to fill in any gaps and strengthen the validity of my findings. From carrying out this process I was reassured that the skeletal questions were posed to all participants ensuring consistency. Another purpose of this process was to make note of the main topics covered in each interview based on the questions asked. As shown in the image above, this consisted of these areas such as exposure to the law, whether they are made aware of the ACR, their perception of the role of schools, and suggestions for teaching the ACR. This distinguished the interview questions from my research questions, clarifying the differences before I embarked on the coding process. It also indicated how teachers brought up certain points in relation to each question as the link between the question and the response given by the teachers was not always clear. Areas of difference will be analysed within each case and will contribute ideographically to the final discussion of findings.

In addition, I noted down the interview questions and topics covered in each interview to avoid using the questions posed to the participants as the themes identified in my analysis. Braun and Clarke warn against this and describe it as being the “worst examples of ‘thematic’ analysis...in such instances, no analysis has really been done at all!”⁵⁵⁴ Making note of this before starting the coding process ensured that I was aware of the questions asked in all interviews and therefore, could avoid falling into the trap of considering them as themes.

⁵⁵⁴ Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3 Qualitative Research in Psychology, pg 85-86.

3.9.10.3 Initial Coding

Once I was familiar with the data after transcribing and reading it, the next step was to engage further with it. This involved coding the entire data set which was made up of all the interview transcripts. To carry out the coding process, I uploaded interview transcripts onto a software known to help with coding and data analysis called Nvivo. This was used to help organize my data which aided me in the process of conceptualizing and transforming it into themes. This coding process is known to allow researchers to reflect and think about their data by simplifying and focusing on specific characteristics of it.⁵⁵⁵ As mentioned earlier, I took an inductive approach to my thematic analysis which means that the codes and subsequent themes were derived from the data. This is a bottom-up approach that allows the data to drive the analysis without the researcher's analytic preconceptions.⁵⁵⁶ However, since data is "not coded in an epistemological vacuum" the influence of the researcher (or post-conceptions) in data analysis is not completely removed, but it is limited by this inductive approach.⁵⁵⁷ Being the sole researcher in this study, it was important to let each participant's words speak for themselves before I started interpreting it.

I started the coding process with open coding where I broke down the contents of each data item (transcript) into discrete codes based on my descriptions or the words of the participant (called in vivo coding).⁵⁵⁸ Braun and Clarke advise working systematically through the whole data set, paying attention to every data item and identifying any points in the data items that could later form a theme.⁵⁵⁹ To do this, I worked through my entire data set in a systematic manner to keep the process consistent for every data item. Initially, I went through each data item line by line, but soon

⁵⁵⁵ Lorelli S. Nowell, Jill M. Norris, Deborah E. White, Nancy J. Moules, 'Thematic Analysis' (2017) 16 International Journal of Qualitative Methods.

⁵⁵⁶ Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3 Qualitative Research in Psychology, pg 84.

⁵⁵⁷ Ibid.

⁵⁵⁸ Barney G Glaser and Anselm L Strauss, *Discovery of Grounded Theory* (Sage 1967).

⁵⁵⁹ Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3 Qualitative Research in Psychology, pg 87-89.

realised that it was not necessary to code each line, as there were points which were irrelevant to the study. Consequently, I only coded the phrases, sentences or paragraphs that were relevant to what my research aims.

Nowell et al. summarise the key components of a “good code” as one that encapsulates the qualitative richness of the phenomenon with explicit boundaries to avoid overlap and redundancy.⁵⁶⁰ An example of this from my process of analysis would be the code ‘adding the ACR to the curriculum’. It is evidently narrow in its scope, the name of the code makes its boundaries explicit and it is relevant to the aim of my research. This formed the basis of how I determined the codes I developed to illustrate what was happening in my data. Using an inductive approach to my analysis meant that the codes and themes that were identified were specifically related to the questions that were asked to the participants.⁵⁶¹

Once the first data item was coded, I went back to review the codes to check if there were any overlaps (codes that meant the same thing) or irrelevancies and make sure it was relatively close to the data, to avoid speculating or interpreting prematurely. I also checked that the phrases and words used for each code were self-explanatory and easy to understand. Changes to the codes were made where required. Nvivo kept a list of all the codes I created (across the data set) as I was coding the different items individually. So, for each subsequent data item, I was able to use codes that were already developed previously (if they fell under the definition of the code) or create a new code which then was added to the general data code list. The reviewing process was carried out for each data item before moving onto the next one. Memos were kept during this process to note any points of interest, emerging ideas or themes across the data set and extracts that fit into more than one code category. Once I had been through the entire data set I was left with a long list of codes which I then had to

⁵⁶⁰ Lorelli S. Nowell, Jill M. Norris, Deborah E. White, Nancy J. Moules, 'Thematic Analysis' (2017) 16 *International Journal of Qualitative Methods*.

⁵⁶¹ Braun and Clarke confirm that to be a characteristic of inductive analysis in Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3 *Qualitative Research in Psychology*, pg 84.

read through again to check, merge and redefine codes where necessary. This process was conducted multiple times until the descriptive codes were clarified to a satisfactory level.

Image 3.5. Nvivo Coding Process

Name	Files	Reference
SCHOOLS & ACR	11	114
Curriculum and ACR	11	42
PSHE	10	17
Police	10	31
Consequences to actions	9	28
Adding ACR to curriculum	8	13
LEGAL CONSCIOUSNESS	11	94
Outside School Exposure to L	10	55
Children's understanding AC	10	16
DEVELOPMENT & BEHAVIOUR	11	93
Individual Responsibility	8	20
School Support	6	16
Right and Wrong	5	13
Criminal involvement	6	12
Peer Pressure	2	2

Drag selection here to code to a new node

Click to edit

Ways to teach ACR
Parental Responsibility

Individual Responsibility

DEVELOPMENT & BEHAVIOUR

SCHOOLS & ACR

LEGAL CONSCIOUSNESS

Coding Density

Police

Cachement Ar

Family

Outside Schoo

R: All subjects yeah, I've got the same class all the time.

M: So, just to get to what I am looking at specifically in my research, what type of exposure do you think children say in between the age that you teach... What sort of exposure do they have to legal ideas and situations?

R: I think they probably get exposure to it on a surface level in terms of... obviously you talk about responsibility for action and I think especially in like PSHE you would discuss certain scenarios and kind of consequences after those but I don't think at the moment they access that on a deep level. I think it's very... they don't go to a lot of depth in it really.

M: And in PSHE or, I've heard in other schools, they have RE sessions.

R: Yes.

M: You know, there is an emphasis on rights and behaviours and what's right and wrong. So how is that conveyed to the students through PSHE or RE from your experience?

R: I think in PSHE... and I know so in terms of my class, I don't teach my class PSHE. That's taught by the PPA teacher. But I know it's going over different scenarios and talking about feelings. They might watch a video about certain situations happening and kind of discuss that afterwards. I think as well in terms of the RE side, obviously British Values and the rule of law and things like that are kind of covered in that. And British Values, I think we try and weave through as many different subjects as we can and try to talk about it as much as we can. But yeah again, I think it would differ from school to school and class to class how that's taught and like how it's accessed by the kids really.

M: And from your experience, how do the children engage with these topics? Is it something that they are able to take on quite well? Do they understand it?

R: Sometimes I think the background of the children can kind of aid or hinder that. Because I know in my previous school it was in a very deprived area and obviously that meant, unfortunately, that a lot of the children in there had already had dealings with the police, with different kinds of services. So when we were talking about different scenarios in that respect and consequences and just the role of

The above image shows the coding process in one data item. The highlighted bits have corresponding coding stripes as shown in the column on the right-hand side. The left-hand side shows the codes that were developed. This image was taken after further interpretive coding process was done which is why there are multiple levels of coding present in the image.

3.9.11 Stage two: Interpretive Coding

After developing the initial codes as widely as possible to cover any potential points of interest and reviewing them on Nvivo (image 3.5), I started looking at the content of each code. So far in the coding process, the aim was to identify extracts that were interesting and related to the general aims of the study. During the interpretive coding process, this is refined further by checking to see if each code itself is relevant to the research questions outlined at the start of this study. This was determined by looking at the code name and by going through the extracts under each code to consider its relevance to the research questions. During the initial coding process, some of the contextual data was also included to avoid taking points out of context and aid with this process.

The aim of interpretive coding is to group together descriptive codes that have a common meaning and then create an interpretive code that summarises that grouping.⁵⁶² As I was going through this process, I noticed that it would be useful to implement hierarchal coding to analyse my data as there were many codes that noticeably fit within broader codes. The table below shows how the codes were arranged.

⁵⁶² Nigel King, Christine Horrocks and Joanna M Brooks, *Interviews in Qualitative Research* (2nd edn, Sage 2019), pg 205-207.

Table 3.2. Hierarchy of Codes

Codes
Criminal involvement
Arson
Bullying
Drugs or County Lines
Theft
Individual Responsibility
Peer Pressure
Right and Wrong
School Support
Inspiring children
Children's understanding ACR
Outside School Exposure to Law
Catchment Area
Close Community
Deprived Area
Family
Parental Responsibility
Adding ACR to curriculum
Teacher's recommendations
Outside person to teach
Consequences to actions
Curriculum and ACR
PSHE
Online Safety
RSE
Relationship Examples
British Values
Citizenship
RE
Police (Schools & Presence)

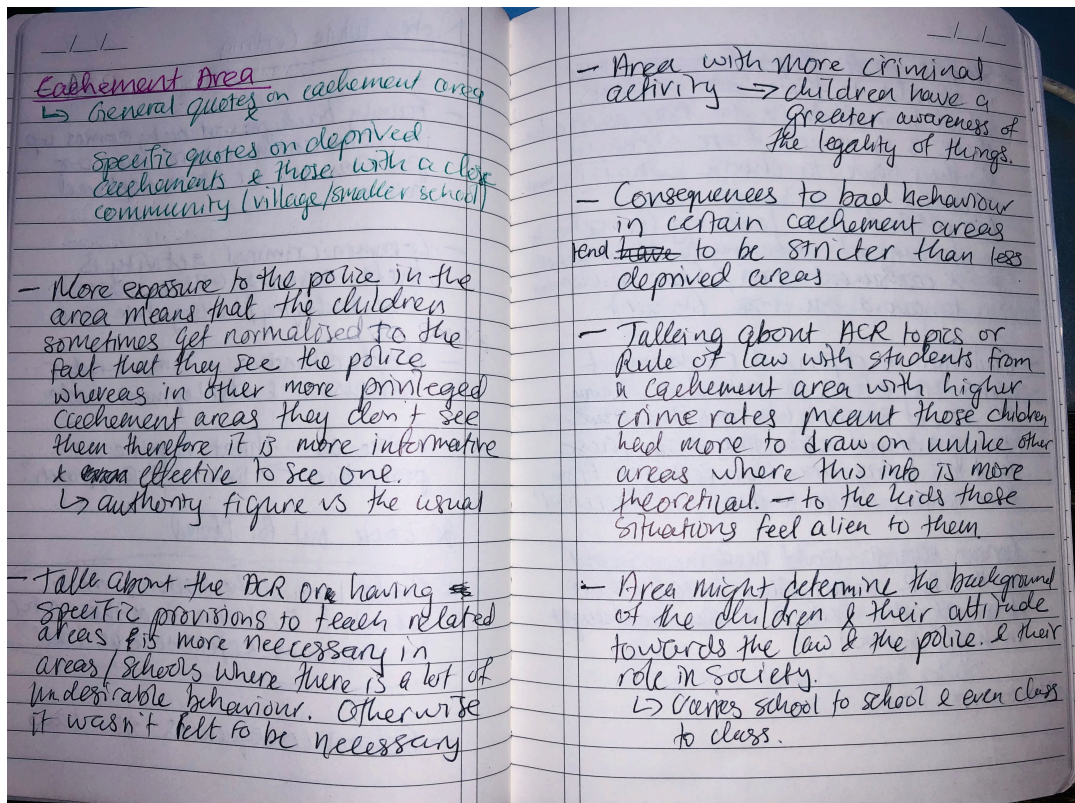
The table above presents thirty codes that were identified in the data set from the initial coding and review process. The indentation indicates the level of coding. I defined higher-order as more general over-arching codes that could incorporate the lower order codes. The codes to the left-hand side were the broad higher-order codes whereas the codes further to the right-hand side were lower-order codes that were more specific to a case, therefore, allowing for distinctions to be made within and between different cases.⁵⁶³ Once, the hierarchy of the concepts represented by the codes was established, I was able to look into the broader codes to interpret the patterns and relationships between them.

Thematic analysis can take place on a semantic and/or latent level.⁵⁶⁴ Based on the aims of my research and the exploratory nature of my study, I decided to identify my themes on a semantic level. As my research aims to find out what children aged 7-14 are taught about the ACR in school, identifying the explicit meaning of the data was more suitable than looking into underlying ideas and assumptions in the data. Staying on the explicit level of the data would allow me to map out what is currently taught in schools more accurately. Making this decision guided my approach to the interpretive coding stage of my research. In order to identify the themes from my data set, I went through each higher-order code, defined the scope of each of these codes and summarised my findings under it. This allowed me to i) go through the extracts in each code within the broader code, ii) understand the context and meaning behind each extract individually and as part of a bigger category of codes, iii) interpret the relationship between these various codes and iv) determine the themes by comparing the various codes and the findings within them. During this process, I noted down any questions or interpretations that came to mind and I investigated them through writing descriptions of each of these codes. This process helped me understand the patterns, relationships, inconsistencies and tensions between the different codes.

⁵⁶³ Nigel King, 'Using Templates in The Thematic Analysis Of Text', *Essential Guide to Qualitative Methods in Organizational Research* (Sage 2004) pg. 257–270.

⁵⁶⁴ Uwe Flick, *An Introduction to Qualitative Research* (SAGE 2018) pg 474- 475.

Image 3.6. Interpretative Coding Notes



This image shows an example of the notes taken during the interpretive coding process. The code is outlined in pink, the green colour text indicates the definition and scope of the code, followed by the summary description notes written in black ink.

The image above shows a middle-order code called “catchment area”. This falls within the broader interpretive code of “outside school exposure to law” (as shown in the table previously) which includes “family” as a middle-order code too. Within the “catchment area” code lies two further lower order codes entitled “close community” and “deprived area”. In order to understand the significance of the catchment area in the data, I needed to understand the relationship differences between the two lower codes of “close community” and “deprived area” whilst also taking into account general extracts where the catchment area was brought up by teachers. How they related to one another was significant to my understanding and interpretation of its significance to this study. This illustrates a shift from semantic coding leading to latent interpretation. The process of writing

descriptions based on my interpretation of the data for the “catchment area” code and the other middle-order code “family”, helped develop the higher-order code of “outside school exposure to law” in the latent interpretive coding process. This was determined based on the contents of these code categories and within the context of the general data set. This process outlined above was carried out for all the codes to help understand the story of my data through the development of interpretive codes. The higher-order codes in the table above included some descriptive codes and interpretive codes. From the thirty codes in total mentioned above, eleven interpretive codes were developed and are indicated as the higher-order codes. At this stage, I was able to group together the higher-order codes based on my understanding of how they related to one another.

3.9.12 Stage three: Overarching Themes

Once the descriptive codes had been arranged based on the hierarchy of relevant concepts and the interpretive codes had been developed, the next phase involved organising the relevant coded extracts into themes. The preliminary themes that were identified from the synthesis of inductive and deductive coding mapped the main themes in the interview questions, namely “The school curriculum and ACR”, “Legal Consciousness” and “Development & Behaviour”. Recognising that this is not considered thematic analysis, as per Braun and Clarke’s experience, I used this as an initial springboard for this stage of my thematic analysis.⁵⁶⁵ I made note of these preliminary themes to help me on two accounts. Firstly, it made sure that the subsequent themes that I identified linked to my research question and my data as a whole and not just the interview question themes as this suggests no analysis. Secondly, bearing these preliminary themes in mind helped me delve deeper into the codes to avoid presenting surface-level findings.

⁵⁶⁵ Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3 *Qualitative Research in Psychology*, pg 85-86.

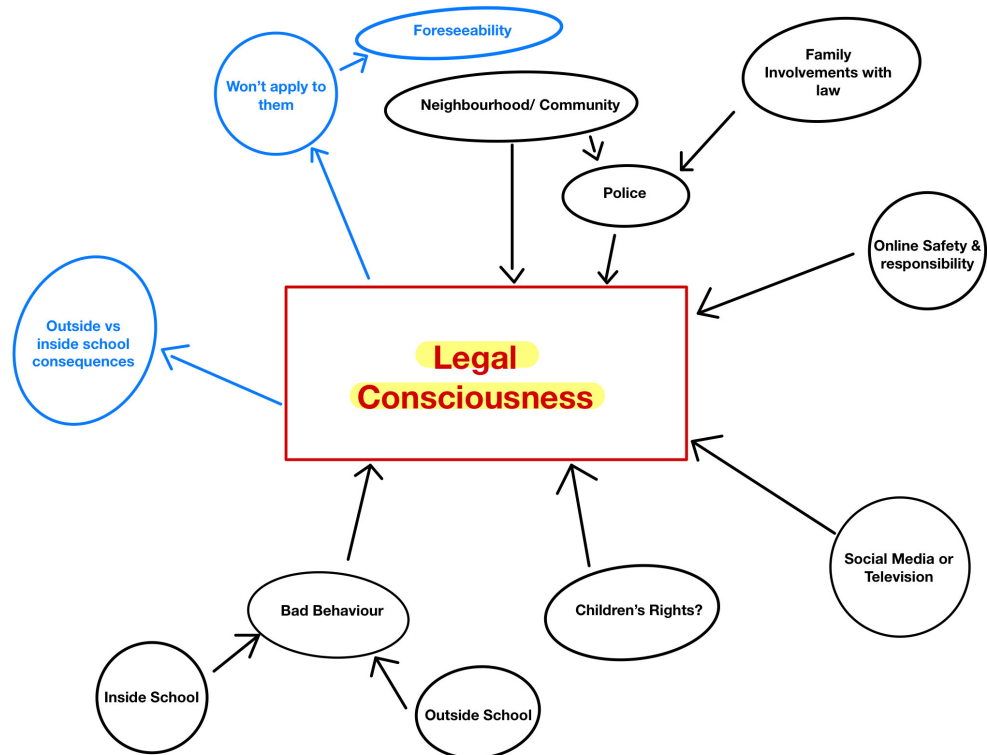
For methodological rigour, DeSantis and Ugarizza define the concept of a theme as:

“an abstract entity that brings meaning and identity to a recurrent experience and its variant manifestations. As such, a theme captures and unifies the nature or basis of the experience into a meaningful whole”.⁵⁶⁶

Since the crux of my research was to find out what children aged 7-14 are taught about criminal responsibility, I needed to understand what my codes meant in relation to this and provide my understanding of what was shared in the interviews. In order to do this, I looked at all the codes and tried to question how they link to one another in light of my research questions. Wherever there were links found between different codes, they were arranged into mind maps to find out what captured and unified the information shared by the teachers. In contrast to looking at the list of codes from Nvivo, at this stage visually representing it in this manner helped me view the codes as more fluid concepts that link to various other codes. This helped me dig deeper into the various links between codes, how they affect one another and question any overlapping codes (codes that fit under two different preliminary themes). An example of how this process worked is shown below with one of the preliminary themes:

⁵⁶⁶ Lydia DeSantis and Doris Noel Ugarizza, 'The Concept of Theme As Used In Qualitative Nursing Research' (2000) 22 *Western Journal of Nursing Research*, pg 362).

Figure 3.2. Mind map – Overarching Theme



From such analysis there were different themes that were understood from the research, however, this was narrowed down to the main overarching themes based on their relevance to the research questions and the aim of the study. These were reviewed by going through the codes again and checking to see if the theme accurately identified what was presented in the data. As a result, three main themes were found based on an exposure model. Each main theme correlates to a particular form of exposure to ACR as shown in the table below.

Table 3.3. Main Themes Based on Exposure to the ACR

Main Theme	Exposure Model
Children’s understanding of legal ideas under the current education system	how children are exposed to this information
Factors affecting children’s exposure to ACR in school	limits and constraints to exposure
Ways schools educate children on the ACR	how or what they are taught in school

Following this, each main theme was defined and the scope of the theme was written out. I then made notes on my findings under each theme using extracts from the data to support these points. A summary of the overarching themes and the sub-themes that formed my findings are outlined below.

Image 3.7. Summary of Overarching Themes

<p><u>CHILDREN'S EXPOSURE TO THE ACR</u></p> <ul style="list-style-type: none">- Development & Maturity- Being Responsible- Consequences to Actions
<p><u>FACTORS AFFECTING CHILDREN'S EXPOSURE TO ACR</u></p> <ul style="list-style-type: none">- Lack of ACR in the curriculum- Catchment area- Family- Behaviour
<p><u>WAYS SCHOOLS EDUCATE CHILDREN ON THE ACR</u></p> <ul style="list-style-type: none">- Direct teaching- Indirect teaching- Police

By writing out my findings during this stage of the analysis, I was able to consider factors beyond the content shared in the interviews. This included considering the sample, what were teachers' over-arching views on teaching their students the ACR and how that affected the responses they gave during the interviews. During this stage of the analysis, my positionality changed. Having started as a researcher gathering information and learning from teachers, in the later stages of my analytical process I was able to learn about their views and experiences on informing children

about the ACR by critically engaging with the language used, the examples shared and their opinions. Here I took a more hermeneutic phenomenological approach by being sensitive to the context, the language and the teaching background shared by the teachers.⁵⁶⁷ This deeper stage of analysis restructured my themes and findings into different headings based on the cultural context of schools in preparation for my findings chapter. The summary notes and key questions used to guide the final stage of my interview data analysis are shown in the image 3.8 below. In the image a), b), c) and d) represent the four main aspects of the overarching themes that I chose to focus and present findings on. These were determined based on my research aims, questions and the data set as a whole, forming the basis for the findings presented in Chapter Four.

⁵⁶⁷ Graham McCaffrey, Shelley Raffin-Bouchal and Nancy J. Moules, 'Hermeneutics as Research Approach: A Reappraisal' (2012) 11 *International Journal of Qualitative Methods*.

Image 3.8. Summary Notes for Final Stage of Analysis

Interview Data:

- a. The first thing that stood out was that there were certain teachers who felt it was less applicable to their school than others and therefore, they were treated as two separate data sets:
 - i. those schools that justified why they wouldn't teach the ACR as they did not feel it was as relevant to their students
 - ii. the other schools that felt it was applicable to their school but still do not teach it.
 1. No direct teaching was found in most cases therefore, for each of these data sets the following was considered:
 - a. How they mentioned the ACR, if at all?
 - b. In what circumstances did they mention the ACR? Is there any correlation between the circumstances and the data set it falls into?
 - c. What do the teachers think they do in relation to informing children about the ACR? E.g., Teaching right and wrong, morals, values, religious principles etc.
 - d. Do they blame it or shift the responsibility to someone or something else?
- b. Further analysis was conducted of the language used to describe bad behaviour. –
 - i. Consider the types of bad behaviour teachers used as examples in the interviews. See how this relates to the teacher and the type of school they teach/taught at.
 - ii. Some of the words/descriptions used to describe bad behaviour were analysed. This also looked at how different types of bad behaviour were clumped together in their descriptions.
 1. Consider whether the examples given were arising from impulse or something else like deprivation of some sort.
 2. The correlation between the descriptions of bad behaviour was compared to criminal offences.
 3. Consider what type of behaviour is allowed in school without the involvement of the police and how this relates to this type of behaviour being criminal in nature. This relates to the point noted by some teachers about the difference between inside and outside school consequences to behaviour.
 - a. Where is the line and are children informed of the line where bad behaviour is a criminal offence?
- c. Suggestions for incorporating the ACR:
 - i. This section looks at what teachers suggest to teach the ACR. The analysis of this will be considered in light of the curriculum:
 1. Do the suggestions made fit into the curriculum? Is it integrated or added on as a bolt-on?
 2. The activities suggested – can they be easily implemented? Do these activities suggest that teaching the ACR will be a priority if incorporated? Are there going to be any attainment targets as seen with other curriculum subjects?

The language used by teachers will be analysed here to determine whether it is going to be an integral part of their curriculum.
 3. Who is going to teach the children about it? How are teachers going to ensure that it is taught consistently?
- d. The role of the police
 - i. This section will look at the references teachers made to the police.
 - ii. In what context were the police mentioned:
 1. As a person from outside school who could teach children about the ACR.
 2. The familiarity that children have with the police based on the catchment area and how that influences their understanding of the ACR. This is often seen as a reason for children knowing about the ACR without the school teaching it.
 3. Role of the police in reality vs what teachers think they could be in relation to the ACR, namely educators.

3.10 Document Analysis

In addition to the interviews, data was also collected through document analysis in this study. Document analysis is the procedure by which relevant documents are systematically reviewed and evaluated to "... help the researcher uncover meaning, develop understanding, and discover insights relevant to the research problem."⁵⁶⁸ May describes documents as "the sedimentations of social practices, (that) have the potential to inform and structure the decisions which people make on a daily and long-term basis..."⁵⁶⁹ making it a useful source of data that allows researchers to develop their empirical knowledge, elicit meaning and understand a phenomenon.⁵⁷⁰ This method is commonly used alongside other research methods to corroborate and find convergence in different data sets, thus providing more credibility to the study.⁵⁷¹ In my research, analysing documents contributed significantly to my knowledge of what is taught to children about the ACR and it allowed me to examine the subject material for any other topic that could contribute to children's understanding of criminal responsibility. Moreover, it was used to analyse key curriculum documents to better understand the context in which my participants operate and to corroborate and/or contradict the findings from the interviews. The idea of finding corroboration and convergences between data sets is one of the key rationales for using document analysis – methodological and data triangulation.⁵⁷² By triangulating data, the findings are supported by multiple (usually two or more) sources of evidence using different methods.⁵⁷³

⁵⁶⁸ Sharan B. Merriam, *Case Study Research in Education: A Qualitative Approach*. (Jossey-Bass 1988) pg 118.

⁵⁶⁹ Tim May, *Social Research: Issues, Methods and Process* (Open University Press 2001) pg 176.

⁵⁷⁰ Juliet Corbin and Anselm Strauss, *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory* (3rd edn, SAGE 2008).

⁵⁷¹ Glenn A. Bowen, 'Document Analysis as A Qualitative Research Method' (2009) 9 *Qualitative Research Journal*.

⁵⁷² *Ibid.*

⁵⁷³ Michael Quinn Patton, *Qualitative Evaluation and Research Methods* (2nd edn, Sage 1990).

My aim was to use document analysis to build on the data shared in the interviews and gain insight into the wider curriculum context in which teachers work, by examining the guidance and resources used on a national level for each subject relevant to the ACR. The following objectives were outlined to achieve this aim:

1. Find relevant documents that outline the teaching content and/or guidance for each subject on a national level (or if required regional level).
2. Analyse each document by asking the following research questions:
 - a. Is the ACR mentioned or taught as part of this subject?
 - b. Are there references made to crime, criminal behaviour, or non-criminal anti-social behaviour which could be regulated by civil orders such as ASBOs?
 - c. What content indirectly relates to the ACR as per the information gathered
 - d. from teachers?
3. Examine and draw links between the curriculum content in the different subjects and the interview data to determine the extent to which children receive an education on the ACR.⁵⁷⁴

I chose to conduct the document analysis after doing my interviews as I wanted to corroborate and build on the interview data. This was mainly because it allowed me to fulfil the aims and objectives of the study to a greater extent. I made this decision after conducting a preliminary search on the NC and finding many different documents for each statutory and non-statutory subject. As I had only conducted a literature review of the curriculum by that point, my knowledge was still developing, and so finding such a large number of documents was quite overwhelming. To help with the process of narrowing down, I decided to rely on the experience and

⁵⁷⁴ This third objective of my document analysis is dealt with in more detail when discussing the findings in Chapter Four.

expertise of teachers I interviewed. This also proved to be an efficient approach to narrow down the number of documents and it allowed for teachers to guide me to the subjects and topics in the curriculum that they considered relevant to teaching the ACR. Additionally, I was curious to see the links that teacher made between the ACR and the subjects they mentioned, which I will revisit in my data analysis. To do this I went through each interview transcript and made note of the main subjects teachers' referred to when providing examples of teaching content related to the ACR, namely, PSHE (including RSHE), BV, RE, Citizenship and children's rights.

Once each subject was noted, I took an organic approach to my research starting with a preliminary search on Google. The teachers I interviewed mentioned that they found many general curriculum documents and teaching materials the same way. From there I was able to sift through the many websites that came up by identifying websites from relevant and authoritative sources. The top link for most of these subject searches were from the GOV.UK website, followed by national associations or organisations specifically for the individual subject, websites providing educational resources and school websites that have published their school curriculum. I focused on reading through the government and subject associations/organisation websites as they were the most reliable and authoritative for understanding each subject and the guidance provided to teachers and schools on a national level. The other sites mentioned were browsed to supplement or develop a fuller picture of the subject in practice by looking through summaries or the topics covered under the subject in some schools. Before finding documents for analysis, I started by learning a little bit about each subject in general by researching what this subject is about, who teaches this subject, what topics are taught within it and how schools are supposed to incorporate it into their school curriculum.⁵⁷⁵ As outlined by Bowen, the document analysis process can be summarised in

⁵⁷⁵ The general research and reading conducted prior to conducting the document analysis informed the literature review section on each of these subjects. See Chapter Two for details.

the following four stages: “finding, selecting, appraising (making sense of), and synthesising data contained in documents.”⁵⁷⁶ Each of these stages will be covered in turn in chronological order.

In the process of developing my understanding of each subject, I came across some key curriculum documents such as programmes of study, teaching resources, and statutory or non-statutory guidance for schools and teachers. This is where the “finding” stage of my document analysis process started. For each subject, all documents outlining what is to be taught to children in Key Stage 2 and 3 were noted. To gather my sample of documents I used theoretical sampling where “the selection of materials was based on their conceptual or theoretical relevance to the research study and focus”.⁵⁷⁷ In order to determine the theoretical relevance of each document, I skimmed through it and applied the criteria I made as shown below:

- A) Does this document outline the national standard of guidance provided for teaching this subject?
- B) Based on the type and author of the publication, is this a document that teachers and schools in England would rely on when teaching this subject?
- C) Does it outline the teaching content for the subject and/or provide guidance as to how to teach it?
- D) Is it the most recent version of this document?

In addition to determining the relevance of the document using the criteria above, the quality of each document was also considered, thus forming the first subset of documents. Scott outlines four criteria for assessing the quality of a document to determine their selection for research studies: authenticity, credibility, representativeness and meaning.⁵⁷⁸ These were

⁵⁷⁶ Glenn A. Bowen, 'Document Analysis as A Qualitative Research Method' (2009) 9 *Qualitative Research Journal*.

⁵⁷⁷ David Altheide and others, 'Emergent Qualitative Document Analysis', *Handbook of Emergent Methods* (The Guilford Press 2008).

⁵⁷⁸ John Scott, *A Matter of Record: Documentary Sources in Social Research* (Polity Press 1990) pg 6.

applied to each document to ensure its genuine origin, accuracy, how representative it is of the research area and its purpose. To fulfil Scott's criteria, each document (except for those on children's rights/human rights⁵⁷⁹) was originally located from a link or reference made from the government website (GOV.UK) and/or a document published by the DfE. This ensured that the origin of the document was credible, and it determined the authenticity of the document as a national standard. Combining Scott's first two criteria (authenticity and credibility) with my criterion outlined above (objectives A, B, D), I made sure that the selected documents for each subject provided information on the subject within the context of the NC and therefore ensuring that it is a document used by teachers in all maintained schools⁵⁸⁰ as the required standard. The last two of Scott's criteria namely, the representativeness and meaning of each document was determined initially by the signposting by the teacher and later by using Flick's thematic coding procedure to conduct an initial reading to appraise them.⁵⁸¹ To do this, I read through each document, highlighting any key points that explained the subject, the way it is taught and how the topics within it relate to teaching the ACR, thus, fulfilling objective C. I made a summary note delineating the contents of each document.

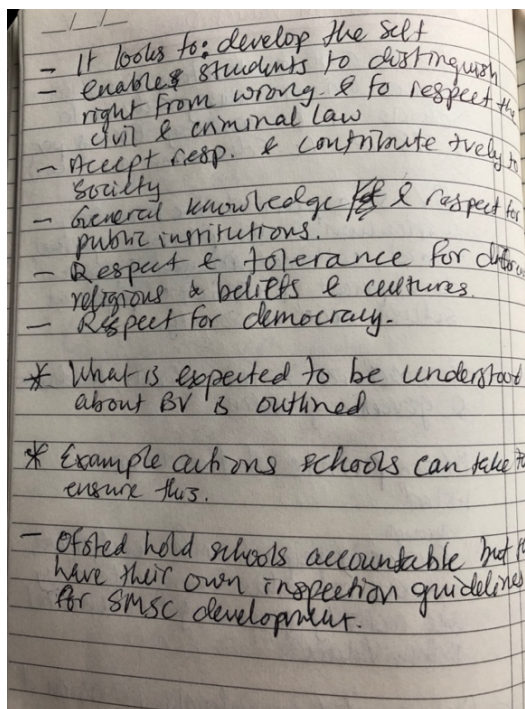
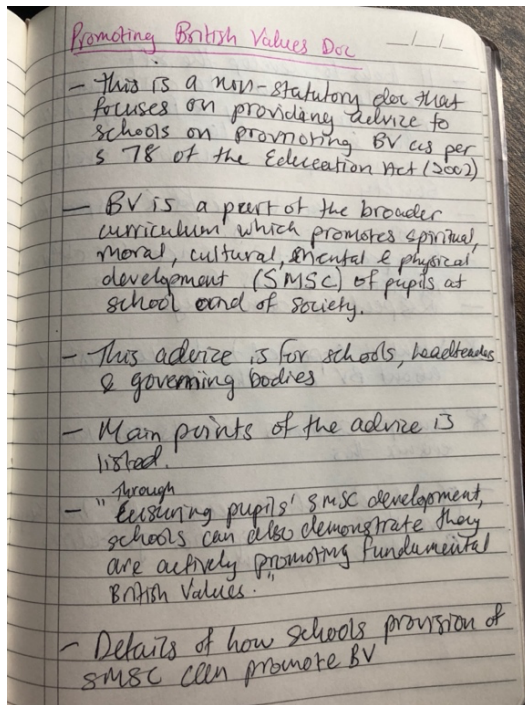
⁵⁷⁹ This has not been implemented into the national curriculum. Instead, the Rights respecting schools programme is used by some schools to incorporate the teaching of children's rights into their curriculum.

⁵⁸⁰ Maintained schools form the majority of primary schools in England and Wales as outlined.

'Education And Training Statistics for the UK, Reporting Year 2021' (*Explore-education-statistics.service.gov.uk*, 2021) <<https://explore-education-statistics.service.gov.uk/find-statistics/education-and-training-statistics-for-the-uk>> accessed 6 December 2021.

⁵⁸¹ Uwe Flick, *An Introduction to Qualitative Research* (SAGE 2018) pg 477- 480.

Image 3.9. Example – Summary Notes taken from a Curriculum Document



This image shows an example of the summary notes taken for one of the documents. The notes go from the image on top to the image below.

Having such an overview made it easier for me to determine the purpose (meaning) and content (specifically from a representativeness point of view) of each document within the teaching curriculum. This step helped me

understand the way in which each document is used and how it fits into the teaching curriculum used in schools.⁵⁸²

In my research, documentary analysis was implemented as a data collection method to complement my interview data, so I needed to make sure that all the relevant documents pertaining to each subject were going to be analysed. Reading and summarising each document helped recognise if additional documents were required for further information on a subject. This was found to be the case for RE where there is a national guidance document on the subject however, each part of England has its own locally agreed RE syllabus. Hence, I had to look up the local RE syllabus relevant to the areas where the interviewed teachers work to thoroughly investigate this subject. In contrast to missing information, the thematic coding process made it clear if some documents were repeating or summarising the same content found in other documents. For example, I found some sections of statutes relevant to teaching BV which I downloaded as a document however, the BV guidance document published by the DfE mentioned and summarised these statutes. In such cases where the same points were repeated in different documents, I decided to narrow down the documents by choosing the one that included more detail on the teaching content and guidelines for that subject.⁵⁸³ Preference was given to documents published by the DfE such as general guidance documents on what is covered in the subject or a document produced by other organisations/associations such as curriculum frameworks or programmes of study, endorsed by the DfE. This process was carried out for all documents found through theoretical sampling for each subject being investigated.

⁵⁸² It is important to note that the national curriculum and subjects that fall outside it form the basic curriculum that maintained schools all over the country can use to inform and determine their own school curriculum. The national curriculum framework within the basic curriculum is compulsory along with some subjects such as RE, some parts of PSHE, namely RSHE, and British Values. Schools can then choose to include or exclude optional elements to form their own curriculum.

⁵⁸³ Examples of how I put this into practice are seen in the findings chapter where each subject and document is outlined.

Appraising the documents in such a thorough manner gave me an overview of the documents which were narrowed down from the 1st subset (the first set after narrowing down the initial documents) based on repetition or relevance. The 1st subset of documents provided a general understanding however, the documents had to be narrowed down further to carry out a detailed analysis. To do this, 1st subset of documents for each subject was considered as a whole, by looking at how they relate to one another. This involved looking at whether the document as a whole or whether specific sections of the document addressed the research questions outlined in my objectives. Documents were narrowed down from thirty in the first subset to fourteen on this basis. This was to ensure that the combination of documents (relevant sections or the document as a whole) provided a clear picture of what each subject is supposed to cover and teach their students in Key Stage 2 and 3. Thus, through this process only all the relevant documents remained, forming the 2nd subset. This helped fulfil the first objective of the document analysis element of my study, whilst also making it more manageable for me as a sole researcher to explore each subject by analysing these documents in detail.

At this stage, the key documents on each subject had been selected by narrowing it down to those that were relevant. By looking specifically for documents that outline what is covered in the subject in terms of teaching content, attainment targets, and general guidance given to schools on teaching the subject, I was able to find out what children are to be taught about the ACR from a curriculum perspective. Hence, analysing the relevant documents based on the aims of this study was essential in helping me obtain a fuller picture of how ACR is taught or not taught in schools and the level of emphasis given to it in schools. To carry out the synthesis and analysis of the data in these documents, I used Nvivo as I had previously done with my interview data. Nvivo is a well-recognised software for qualitative data analysis for its effectiveness in data management and

allowing for further interrogation of data.⁵⁸⁴ Once all the documents were gathered, I uploaded them onto Nvivo, splitting the documents into their respective subjects before starting the coding process. To inform my coding process I used Saldaña's *Coding Manual for Qualitative Researchers* which he divides into two main stages namely, first cycle and second cycle coding.

Saldaña describes a code as usually being a word or short phrase that captures the essence of data with the intention of capturing the primary content of the data source. Coding is "primarily an interpretive act" that helps facilitate "the transitional process between data collection and more extensive data analysis." This is an important process in document analysis as it captures what is in the document, which then allows the researcher to build on, find links and interpret how this relates to the phenomenon being investigated. Hence, I engaged in extensive coding by conducting multiple rounds of it during my document analysis in order to develop potential themes in the documents. There are many different types of coding however, with my study being exploratory in nature, I chose to begin by using descriptive and provisional coding in my first cycle coding. This allowed for a combination of inductive and deductive approaches to the coding process. Descriptive coding took an inductive approach by giving me a "categorised inventory, tabular account, summary or index of the data's content' originating from the document itself."⁵⁸⁵ This set the foundation for my qualitative inquiry and helped me navigate through the document with more ease and ensured that I could focus on the parts most relevant to the aims and objectives of my research. In turn, this formed the basis for more cycles of coding to be conducted to further analyse and interpret the data. I followed this up with a round of provisional coding where I looked out for specific key phrases that teachers mentioned in the interviews in relation to their understanding of how schools help educate

⁵⁸⁴ Natasha Hard, Paige Lee and Sue Dockett, 'Mapping the Policy Landscape of Australian Early Childhood Education Policy Through Document Analysis' (2018) 43 *Australasian Journal of Early Childhood*.

⁵⁸⁵ Johnny Saldaña, *The Coding Manual for Qualitative Researchers* (3rd edn, SAGE Publications 2016) pg 70-72.

children on the ACR. Doing this after the descriptive coding made this stage of the coding process much quicker. The table below shows the list of phrases that I used as codes to build on what was found in the interview data.

Table 3.4. Phrases from interviews used for Document Analysis⁵⁸⁶

Key Words from Interviews for Coding	
Crime/Criminal Activity	<ul style="list-style-type: none"> - Cyberbullying - Arson - Theft - Knife crime - Hate crime - Drugs - Vulnerability to crime
Law/ ACR/ Rules	<ul style="list-style-type: none"> - Justice - Police - Punishment - Legal age
Citizenship/ Rights	<ul style="list-style-type: none"> - Safety and emotions (lashing out) - Online safety
Social and Moral Responsibility	<ul style="list-style-type: none"> - Responsibility - Good citizen
Behaviour	<ul style="list-style-type: none"> - Development and maturity - Respect for the law - Real-world
Right and Wrong	<ul style="list-style-type: none"> - Choices - Decision-making

Both types of coding were carried out for each document within each subject group. Once, this was done for each document, I went through all the codes to avoid repetition and irrelevancies. I then removed any codes that were repeating similar content in different words/phrases, arranged some codes as subcodes and added codes that were missing from the initial analysis. I went through this process for each document and then did the same on a subject group level. During the process of revising the codes, I also made note of the definition of each code in my memos. This was done to ensure that the content highlighted in the document fit the scope of the code. This initial analysis was followed up by analysing the codes between

⁵⁸⁶ When coding the phrases listed above were looked out for either as it is, or related topics were coded.

the subjects as the coding process continued from one subject to the next, eventually reaching a point where the codes could be analysed for all the documents from all the relevant subjects as a whole.

In the second major cycle of coding, I engaged in pattern coding which involves looking at all the codes from the first cycle and summarising them into a few analytical units such as categories, themes or concepts.⁵⁸⁷ This process furthers the analysis by condensing large quantities of codes thus, helping me, as the researcher, understand the content taught in each subject. Moreover, it also allowed me to make links between the teaching content in each subject and the ACR. During this process I engaged in making links to form patterns in a largely instinctive and organic manner, keeping the patterns found in loosely held units of meaning so that the data could take shape based on either recurring phrases or internal differences that I noted. Here I was trying to identify categories or themes of topics covered in the NC/syllabus, the explanations for how it is to be taught and why, what children are meant to learn and how this will help them put this information into practice (assessment/attainment targets). For pattern codes that were used many times, I also broke those codes down further into subcodes so that different aspects of the pattern could be easily identified.⁵⁸⁸ This also helped when I tried to map the pattern codes by laying out the different components that make up the pattern found in the data, in order to see how the codes are interconnected. As I was going through these processes, I was making note of the analytical decisions I made in my memos whilst also jotting down any quick thoughts or reflections on Nvivo using the annotation/comment tool. In my analytical memos I expanded on these jottings by including explanations of what each codes means, summaries possible links between codes, possible contradictions, and preliminary thoughts on how this relates to my research questions among other things.

⁵⁸⁷ Matthew B. Miles, A. Michael Huberman and Johnny Saldaña, 'Fundamentals of Qualitative Data Analysis', *Qualitative Data Analysis - A Methods Sourcebook* (3rd edn, SAGE Publications 2014) pg 79-80.

⁵⁸⁸ *Ibid.* pg 82-84.

From the above processes described it is evident that coding is an important way to trigger analytic thoughts and jotting and memoing plays a crucial role in making note of the thoughts of the researcher.⁵⁸⁹To further this process of analysis, I tried to formalise my thinking “into a more condensed and coherent set of explanations” as a way of synthesising all my thoughts and observations.⁵⁹⁰ Miles, Huberman and Saldaña suggest that one way to do this is by trying to generate assertions and propositions⁵⁹¹ that summarise the findings and conclusions from the data and checking them by going through the data again to see if it still stands, before formally presenting them as my findings.⁵⁹² This process of going back and forth between the assertions and propositions and the coded data helped to gauge the strength of my findings as it was either confirmed or disconfirmed with evidence from the data. Once, the findings from the document analysis were formalized, a more holistic picture of the phenomena was developed through the thematic links made between the curricula analysis and the analysis of interview data, to summarise my exploration of how the ACR features in the curriculum for children between the age of 7-14. The results from these comparisons made between the interview data and document analysis will be elaborated on in the next chapter.

3.11 Conclusion

⁵⁸⁹ Matthew B. Miles, A. Michael Huberman and Johnny Saldaña, 'Fundamentals of Qualitative Data Analysis', *Qualitative Data Analysis - A Methods Sourcebook* (3rd edn, SAGE Publications 2014) pg 93.

⁵⁹⁰ Ibid.

⁵⁹¹ The difference between an assertion and a proposition is important to note. An assertion is a statement that provides a summative synthesis whereas a proposition is a statement that puts forward a conditional event. See Analysis', *Qualitative Data Analysis - A Methods Sourcebook* (3rd edn, SAGE Publications 2014) pg 93. Matthew B. Miles, A. Michael Huberman and Johnny Saldaña, 'Fundamentals of Qualitative Data Analysis', *Qualitative Data Analysis - A Methods Sourcebook* (3rd edn, SAGE Publications 2014) pg 93.

⁵⁹² Matthew B. Miles, A. Michael Huberman and Johnny Saldaña, 'Fundamentals of Qualitative Data Analysis', *Qualitative Data Analysis - A Methods Sourcebook* (3rd edn, SAGE Publications 2014) pg 93.

This chapter has outlined the methodology used to gather and analyse the data collected for this thesis. A narrative voice was maintained throughout to allow the reader to follow my exploratory journey in chronological order as I became acquainted with what is taught in schools about the ACR, whilst simultaneously following my development as a researcher. A detailed overview of my thought process, positionality and epistemological stance through my journey and its evolution has been documented. Furthermore, all the methodological decisions taken during this study have been transparently presented with a clear rationale. During the entire research process, ethical procedures were adhered to and considered of paramount importance. Details of what was carried out during this study were outlined whilst also pointing out any issues, barriers or changes made to my research plans to provide a holistic picture of the research process. Such transparency can only contribute to the reliability of this thesis.

Chapter Four: Findings

4.1. Introduction

The purpose of this study is to explore the role of education in developing children's understanding of the ACR with the view to examine whether children are informed about this legal responsibility in an age-sensitive manner. To investigate this, I carried out an exploratory study into what is being taught about criminal responsibility to children between the age of 7-14, using two key methods – interviews and document analysis. I conducted semi-structured interviews with twelve teachers from a sample of schools in North-East England to find out what children are taught about the ACR in the education system. The data gathered from these interviews was investigated further by analysing key curriculum documents on the subjects the interviewed teachers mentioned in relation to teaching the ACR.

As mentioned in the methodology chapter, both sets of qualitative data were analysed using thematic analysis. There was no numerical analysis conducted of this data as it was found to be unsuitable for the kind of analysis I aimed to do in my research. When analysing curriculum documents I was looking to find any mention of the ACR or other topics covered that could relate to it. As a result, there was little scope for a numerical approach to be taken with my focus being on the details relating to topics covered within the basic curriculum. The interview data was also not analysed numerically as the interview process was found to provide teachers with a chance to reflect on their teaching practices in relation to the ACR. It was found that the interviewed teachers voiced their thoughts and opinions in a specific way in the earlier stages of the interview, and often amended it later based on how their thinking developed over the course of the conversation. This meant it was hard to quantify the information they shared in relation to the main points analysed and therefore, a numerical analysis was not conducted to avoid misrepresenting the data.

This chapter presents the findings from both sets of data collected, starting with the document analysis and followed by the interview data. Here, I have chosen to move away from the chronological presentation of my findings as it allows for the reader to understand the context within which the teachers work before coming to the analysis of the information they shared. I chose to do it the opposite way whilst carrying out my research, so that the teachers could guide me towards areas within the curriculum that relate to the ACR from their knowledge of the curriculum. During the data analysis stage of my study there was a shift in my positionality as a researcher. Having started the research process with little knowledge of the English education system and the basic curriculum used in maintained schools, I grew to become more informed and gained a holistic understanding of the ACR and compulsory education in England. As a result, I was able to understand that whilst data collection, starting with interviews and followed by document analysis, in that order was logical and necessary for me as the researcher, the findings can be more effectively presented by switching the order of presentation in this chapter for the benefit of the reader. Therefore, in this chapter, the findings from the document analysis builds upon the overview of compulsory education established in the literature review before coming to the findings from the interview data. This is a similar approach to what I did by doing preliminary research into the education system before conducting the interviews, it moves from a more theoretical understanding to what is found to take place in practice within the sample. Thus, allowing the structure and presentation of information in this chapter to further elucidate what the teachers are working with for them to say the things they shared during the interviews.

The key findings from both the document analysis and the interview data will be split into the two main sections of this chapter. The document analysis goes through each subject mentioned by the teachers to determine whether it educates children on the ACR and if not, what aspects of it could relate to educating children about criminal responsibility. It provides the

educational context within which teachers work and helps identify the limitations of the current provision of compulsory education in informing children about the ACR. In the second section of this chapter, I present the findings developed from the interview data and explain the general themes that were found through thematic analysis. These themes focus on teachers' experiences of informing children about the ACR and breaks this down based on their perceptions of its relevance and emphasis in schools and their basic curriculum.

4.2 Document Analysis – Key Findings

The interviews conducted with teachers made it apparent that there was little consistency in what teachers taught their students about the ACR. The teachers themselves identified that no reference is made to the ACR in the NC, hence the absence of clear references to a particular subject or aspect of the curriculum that addresses it. Instead, teachers spoke of other subjects and topics taught within the school curriculum that they felt related to the ACR and contributed to preparing their students for this legal responsibility. These references provided some context into the teaching that goes on in schools in relation to the ACR, however, to get a clearer picture of the teaching landscape I carried out a documentary analysis of key texts related to these subjects. These key texts include curriculum documents, programmes of study, statutory guidance and teaching resources used by teachers to determine what they teach in each of the subjects mentioned. Extrapolating from Prior's suggestion that documents can form the identity of an organisation,⁵⁹³ I submit that the content of these key documents form the current identity of each subject which is used as the national standard in primary and middle schools for teaching purposes.⁵⁹⁴ Therefore, conducting a document analysis of these key texts was a necessary process to further explore how the ACR features in

⁵⁹³ Lindsay Prior, *Using Documents and Records in Social Research* (Sage 2011), pg 60.

⁵⁹⁴ 'Collection: The National Curriculum' (GOV.UK, 2021) < <https://www.gov.uk/government/collections/national-curriculum> > accessed 15 November 2021.

compulsory education provided to children between the age of seven and fourteen.

This section of the chapter starts with my analysis of the NC documents to establish the standard content taught at local authority maintained (henceforth shortened to “maintained”) schools, as this forms the foundation of their school curriculum. This is followed by subsections on each of the subjects mentioned by the interviewed teachers when asked about how they educated their students on the ACR, namely: PSHE, RE, Citizenship, BV, and Children’s human rights education. For each subject an outline will be provided of how the document was found, who published or wrote the document, the nature or general contents of the document, and my findings from analysing the key documents of each subject. The analysis conducted looked to find the answers to the following questions:

1. Was there any reference to the ACR?
2. If not, then what were related themes/topics within the subject document that could help inform children of their criminal responsibility?
3. If there were none, was there any reference to other minimum age limits or legal provisions, for the purpose of comparison?

Each of these points will be covered under the individual subject heading found below. Once all the subjects have been considered a general overview of the findings from the document analysis will be outlined to conclude the section. Here, the links and patterns found between the teaching content of each of the subjects and its relationship to the ACR will be established.

4.2.1 National Curriculum

For the purpose of this study, I analysed the NC for Key Stages 2-3 to find out what children in all maintained schools in England are taught between the age of 7-14. During the interviews conducted with teachers, references

were made to the NC and how it determines what they teach. Hence, it was an important starting set of documents to analyse, in order to understand the groundwork of the school curriculum that the interviewed teacher use. Gov.uk had a page with a collection of NC documents published by the DfE. This included documents covering curriculum by Key Stages, programmes of study by subject, “other” curriculum subject documents and documents on curriculum assessments. It is important to note, the NC covers two types of compulsory subjects, as previously mentioned in the literature review, namely “core” and “foundation” subjects and subjects that fall outside the scope of this curriculum are called “other” subjects. The distinctions between these subjects provide context to the subjects that the interviewed teachers mentioned in relation to teaching children about the ACR, and how they relate to one another in the school curriculum as will be discussed in later sub-sections.

To get an understanding of the NC as a whole, I examined two documents entitled, *The national curriculum in England: Key Stages 1 and 2* published in 2015⁵⁹⁵ and *The national curriculum in England: Key Stages 3 and 4* published in 2014.⁵⁹⁶ These are two statutory guidance documents covering the complete curriculum framework for the core subjects taught to children between the ages of 7-14. They outline the requirements for the inclusion of numeracy and mathematics, language and literacy, the programmes of study for the core subjects, and each subject’s attainment targets. They also include the programmes of study for the “foundation” subjects which are also compulsory subjects that form part of the NC.

Within the Key Stage 1 and 2 document, the curriculum guidance makes references to imparting knowledge that children “need as citizens” such as: literacy to help with cultural, emotional, intellectual, social and spiritual

⁵⁹⁵ Department for Education, 'The National Curriculum in England Key Stages 1 And 2 Framework Document' (Department for Education 2013)
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/425601/PRIMARY_national_curriculum.pdf> accessed 5 January 2021.

⁵⁹⁶ Ibid.

development, numerical skills, teaching them how to take risks whilst being resourceful and innovative, and cultivating their creativity and knowledge to make them capable citizens. However, from analysing this document it was found that no reference is made to criminal responsibility or developing children's legal consciousness, thereby suggesting that these are not areas of knowledge that the DfE consider to be necessary for them to be "capable" and effective citizens of society. Instead, the main form of responsibility that is discussed within the NC document for Key Stages 1 and 2 is the responsible use of information and communication technology. In this regard, they are also taught how to recognise acceptable and unacceptable behaviour in online situations, yet there are no explicit provisions in the NC to educate children on behaviour in other contexts which would relate to legal responsibilities they have as citizens. Whilst, online behaviour is an important form of responsibility in the current age of technology and information, there seems to be a lack of regard for non-online legal responsibilities in the NC. This could be attributed to the fact that responsible use of information and technology falls within the remit of Computing and other subjects with online elements outlined in the NC, unlike the ACR.

Moreover, in Key Stages 1 and 2, none of the subjects mentioned by the interviewed teachers in relation to teaching the ACR were considered a "core" or "foundation" subjects. These subjects included PSHE and RE which are in a separate category known as "other" subjects that are still required to be taught in schools, however they are not a part of the NC. This helped corroborate teachers statements on how the ACR is not included in the NC. Instead, the NC emphasises and focuses on the core subjects. This is made clear from the separate category for these subjects, the title of the categories ("core", "foundation" and "other") and the lack of inclusion of the "other" subjects in the content of the NC. The subjects not mentioned in the NC document will be considered separately in the next few sub-sections of this chapter as they still need to be included in school curricula across the country.

When considering the NC document for Key Stages 3 and 4, only the Key Stage 3 content was analysed as Key Stage 4 deals with children between the age of 14-16, and as the focus of my study is on the curriculum content applicable to children between the age of 7-14, only that part of the document was relevant. The findings in this curriculum document were similar to the one mentioned above, where there was no mention of the ACR. However, one key difference was the inclusion of citizenship as a foundation subject in Key Stages 3 and 4. This subject will be considered in more detail in a later sub-section (4.2.5) however, it is important to note that this subject is outlined to provide students with “knowledge, skills and understanding to prepare them to play a full and active part in society.”⁵⁹⁷ In order to do this, citizenship as a subject teaches children about the role of law, the justice system and how laws are made and enforced in our society. This is the only subject in the NC where law, its role and the responsibility of citizens is discussed, thus contributing to the development of some legal consciousness in children between the age of 11-14. Before the age of 11, in the Key Stages 1 and 2 curriculum, the only other context in which responsibility is discussed is in computing where, using technology responsibly, recognising inappropriate content, contact and conduct, and how to report it is explicitly discussed. The analysis above clearly illustrates that the ACR is not included within the compulsory teaching content in Key Stages 1-3, therefore, schools are not required to cover it as per the NC. There may be scope for its inclusion in “other” subjects outside the NC as mentioned by the interviewed teachers. This will be critically evaluated in the following sub-sections.

4.2.2 Personal, Social, Health and Economic education (PSHE)

As per the interview data, the curriculum subject most commonly mentioned in relation to teaching ACR was PSHE. In order to find out more about what this covered within PSHE, I decided to look into the relevant curriculum

⁵⁹⁷ 'National Curriculum in England: Citizenship Programmes of Study for Key Stages 3 And 4' (GOV.UK, 2013) <<https://www.gov.uk/government/publications/national-curriculum-in-england-citizenship-programmes-of-study/national-curriculum-in-england-citizenship-programmes-of-study-for-key-stages-3-and-4>> accessed 5 July 2021.

documents. Although, there is an overlap between PSHE and Relationship and Sex Education, for the purposes of this study, I will consider each of these subjects separately. The interviewed teachers brought up both these subjects in separate contexts when asked about the ACR and therefore, it was important to gather details about how these subjects relate to the ACR individually. PSHE covers a broader range of topics within its scope, so I started by looking on the government website to find guidance on PSHE education. The website provided a brief outline of PSHE as a subject, and how it relates to Relationship, Sex, and Health Education (RSHE) with reference to the statutory guidance. Under the heading “Advice for Schools”, the PSHE Association was mentioned in relation to “signposting schools to resources and in expanding their Chartered Teacher of PSHE programme.”⁵⁹⁸ As I was looking for resources that schools use to develop their PSHE programmes, I went onto the PSHE Association website where they provide resources to guide schools on this.

The main resource I found here was the *Programme of Study for PSHE Education*. In the description it outlines that this programme is offered by the PSHE Association to “integrate and sequence RSHE effectively, by Key Stage, into your broader PSHE programmes.”⁵⁹⁹ This programme guide by the PSHE Association covers the required statutory teaching content such as RSHE, and also covers the non-statutory topics that fall within the remit of PSHE, making it a comprehensive guide that schools can use when developing their PSHE curriculum. Hence, this document was analysed in order to find out more about the wide range of topics schools can teach under this subject, and how these topics relate and could contribute to educating children about the ACR. This document can be split into two main sections, with the first part covering all the topics that could be taught under PSHE between Key Stages 1-5, followed by the final section which maps

⁵⁹⁸ Department for Education, “Personal, Social, Health and Economic (PSHE) Education” (GOV.UK, September 13, 2021) <<https://www.gov.uk/government/publications/personal-social-health-and-economic-education-pshe>> accessed October 20, 2021

⁵⁹⁹ Claire Keech, 'Programme of Study for PSHE Education (KS1-5)' (*Pshe-association.org.uk*, 2022) <<https://pshe-association.org.uk/guidance/ks1-5/planning/long-term-planning>> accessed 14 March 2021.

content from the *Statutory Guidance for Relationships Education, RSE, and Health Education* onto some of the topics covered in the first part of the document. This shows the distinction between different types of topics that are taught under PSHE, namely, those that are mandatory as per the statutory guidance and others that schools can choose to include within their school curriculum. The PSHE Programme of study document starts by outlining learning opportunities based on 3 key themes: “health and wellbeing”, “relationships” and “living in the wider world”.⁶⁰⁰ From analysing this document, there were different topics taught under these three themes that relate to criminal responsibility. These form the basis of my findings.

Under the theme of “health and wellbeing”, I found the following topics taught to children relevant to the ACR: how to manage their feelings and emotions, about the responsibilities that come with more independence, rules and regulations and their purpose, the risks and effects of drugs alcohol and tobacco.⁶⁰¹ As mentioned in the literature review, risky and impulsive behaviour are symptomatic of brain development in the adolescent years of a child’s life,⁶⁰² therefore, teaching children how to identify, articulate, and manage those emotions can have a positive impact on their behaviour. Moreover, learning about this could help children in difficult situations act responsibly, especially as they gain more independence with age. These skills can prepare children to act responsibly especially, with the knowledge that laws, rules, and regulations are there to protect them and society in general. In this context, children are mainly taught about the laws and rules in contexts such as social media, television programmes, games, online gaming, and the use of legal and illegal

⁶⁰⁰ PSHE Association, 'Programme of Study For PSHE Education: Key Stage 1-5.' (PSHE Association 2020)
<[https://fs.hubspotusercontent00.net/hubfs/20248256/Programme%20of%20Study/PSHE%20Association%20Programme%20of%20Study%20for%20PSHE%20Education%20\(Key%20stages%201-5\)%2c%20Jan%202020.pdf?hsCtaTracking=d718fa8f-77a8-445b-a64e-bb10ca9a52d8%7C90ef65f6-90ab-4e84-af7b-92884c142b27](https://fs.hubspotusercontent00.net/hubfs/20248256/Programme%20of%20Study/PSHE%20Association%20Programme%20of%20Study%20for%20PSHE%20Education%20(Key%20stages%201-5)%2c%20Jan%202020.pdf?hsCtaTracking=d718fa8f-77a8-445b-a64e-bb10ca9a52d8%7C90ef65f6-90ab-4e84-af7b-92884c142b27)> accessed 8 March 2021.

⁶⁰¹ PSHE Association, 'Programme of Study for PSHE Education: Key Stage 1-5.' (PSHE Association 2020)

⁶⁰² Royal Society, Brain Waves Module 4: Neuroscience and the law, December 2011, pg 13-14; Enys Delmage, 'The Minimum Age of Criminal Responsibility: A Medico-Legal Perspective' (2013) 13 Youth Justice.

substances. The theme of “living in the wider context” takes this further in Key Stage 2 by teaching children about why we have laws, mentions human rights and the relationship it has with responsibility.⁶⁰³ There is no indication in the document that children are informed of the ACR in any of these contexts, despite discussing laws, rights, and responsibilities.

Under the heading of “relationships”, behaviour in relationships is of particular relevance to the ACR. Between Key Stage 2 and 3, children are taught about hurtful behaviour in relationships such as bullying, teasing, trolling, and harassment. In Key Stage 3, the focus shifts more specifically to the following types of abusive behaviours: grooming, sexual harassment, sexual and emotional abuse, violence or exploitation, bullying, and discrimination.⁶⁰⁴ These forms of harmful behaviours and the effects they can have on others is one of the points covered however, the potential criminal implications are not expressly stated in the programme of study, but it is highlighted in the final section of this document where links are made to statutory guidance on certain topics. Within this section, there are indirect references made to criminal law specifically in relation to topics such as sharing inappropriate images without consent, the law on the use and misuse of drugs and carrying a weapon, but the criminal elements of these acts are not explicitly mentioned in the programme of study section despite its relevance. This suggests that children are taught these topics for the purpose of identifying and reporting these harmful actions and behaviours. This makes an important contribution to safeguarding using education however, the lack of explicit links made between such behaviour and its legal implications is a missed opportunity to develop children’s legal consciousness and inform them about legal responsibilities, especially with the ACR being ten.

⁶⁰³ PSHE Association, 'Programme of Study for PSHE Education: Key Stage 1-5.' (PSHE Association 2020)

⁶⁰⁴ PSHE Association, 'Programme of Study for PSHE Education: Key Stage 1-5.' (PSHE Association 2020)

The PSHE Association guidance also recommends that students are taught strategies to manage pressure in relationships, like peer pressure. This particular form of pressure has been a known factor that contributes to children's vulnerability to criminal activity.⁶⁰⁵ In relation to this, the guidance discusses the factors that contribute to young people joining gangs and the social, legal, and physical consequences of gang behaviour. This topic has direct links to the ACR, yet the legal consequences are not expressly stated in the document. This is another example of how crime and criminal law are not mentioned in a context where it is clearly relevant. The other context in which pressure is discussed is in relation to sexual consent which is discussed from Key Stage 3 onward. Sexual consent is discussed in considerable detail such as what consent means in law, with whom the responsibility for consent lies, and the risks of unprotected sex. With the age of consent set at sixteen, this ensures that by the age of fourteen children are taught about the age of consent and given adequate opportunity to learn about issues around it. Unfortunately, within the PSHE context, the same cannot be said about the ACR, even though children can be held criminally responsible from the age of ten. This begs the question of why the ACR is not mentioned in any of the above-mentioned contexts, despite there being sufficient scope within the range of topics covered by PSHE for it to be included. These findings show that ACR is evidently not a part of both the compulsory and non-compulsory topics that fall within PSHE, therefore, the onus seems to lie with the teachers to include it, if it is to be taught within the school curriculum.

⁶⁰⁵ Christopher J. Sullivan, 'Early Adolescent Delinquency' (2006) 4 Youth Violence and Juvenile Justice; Jinho Kim and Jason M. Fletcher, 'The Influence of Classmates on Adolescent Criminal Activities In The United States' (2017) 39 Deviant Behavior; May Omogho Esiri, 'The Influence of Peer Pressure On Criminal Behaviour' (2016) 21 IOSR Journal Of Humanities And Social Science.

4.2.3 Relationship Education (RLE), Relationships and Sex Education (RSE) and Health Education (HE)

As mentioned in the previous section, RLE, RSE and HE are subjects that are often covered by schools under the umbrella of PSHE. During the interview process, teachers often brought up RLE, HE or RSE (the combination is referred to as RSHE) in two contexts. The first context was to give an example of teaching content that is a compulsory part of their school curriculum, unlike the ACR. In bringing this up the interviewed teachers acknowledged the difference in the level of emphasis they placed on teaching RSHE in comparison to the ACR, as RSHE is a statutory requirement whereas criminal responsibility is not mentioned in their school curriculum, even though it is a law that is directly relevant to the age group of children they teach. The other context in which teachers linked RSHE and ACR was to draw a comparison between two age-sensitive topics that relate to children's development namely, age of consent and the ACR. Here, the teachers compared the content in each of these topics in terms of the responsibility that children have and the legal consequences that follow. As I found both these contexts interesting, I sought to investigate the emphasis placed in schools on RSHE by comparing the teaching content and the level of detail provided in the guidance for teachers, especially concerning any legal provisions taught.

The interviews I conducted focused on exploring what is taught to children between the age of 7-14 about the ACR. This meant that there was limited scope during the interviews to investigate more about RSHE. Subsequently, I decided to take a closer look at these subjects in my document analysis to understand the context in which RSHE is taught and what is expected to be taught on these topics in terms of content. Doing this helped elaborate on the information provided by teachers and also allowed for deeper comparisons to be made between teaching RSHE and the ACR. In order to do this, I went onto the PSHE guidance published by the DfE, where I came across a heading explaining how RSHE is an important part

of PSHE education.⁶⁰⁶ The links below this heading took me to pages on the consultation that was undertaken to gather views on the draft regulations, the new statutory regulations, and the Secretary of State's guidance on this statutory duty.⁶⁰⁷ From this, three documents of interest were found, namely:

- *Government Consultation Response on RLE, RSE and HE in England, The Relationships Education*⁶⁰⁸
- *Relationships and Sex Education and Health Education (England) Regulations 2019*
- *Statutory Guidance for governing bodies, proprietors, headteachers, principals, senior leadership teams, teachers on RLE, RSE and HE*⁶⁰⁹.

Upon considering these documents, there were many overlaps found in the content covered by each one, so I decided to focus on the Statutory Guidance document on RLE, RSE and HE published by the DfE in 2019 for details on the curriculum, as it sets out “what schools should do and sets out the legal duties with which schools must comply when teaching Relationships Education, Relationships and Sex Education (RSE) and Health Education.”⁶¹⁰ It was the most comprehensive document of the three, as it refers to the consultation and provides key details, references to statutory regulations relevant to making teaching RLE, RSE, and HE

⁶⁰⁶ 'Personal, Social, Health and Economic (PSHE) Education' (GOV.UK, 2021) <<https://www.gov.uk/government/publications/personal-social-health-and-economic-education-pshe/personal-social-health-and-economic-pshe-education>> accessed 18 November 2021.

⁶⁰⁷ Department for Education, “Personal, Social, Health and Economic (PSHE) Education” (GOV.UK, September 13, 2021) <<https://www.gov.uk/government/publications/personal-social-health-and-economic-education-pshe>> accessed October 20, 2021.

⁶⁰⁸ Department for Education, 'Relationships Education, Relationships and Sex Education, And Health Education in England Government Consultation Response' (Department for Education 2019) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/780768/Government_Response_to_RSE_Consultation.pdf> accessed 26 October 2021.

⁶⁰⁹ Ibid.

⁶¹⁰ Ibid.

compulsory and provides details on what these subjects cover in both primary and secondary school. It was also the most relevant document as it aligned with the main aim for my document analysis which was to find out what is supposed to be taught under these subjects and to understand the context in which it is taught.

Whilst analysing curriculum documents, there were considerable overlaps found between the PSHE Programme of study document discussed in the previous sub-section and the Statutory guidance on RLE, RSE, and HE. The content was found to be similar in both documents, so I chose to focus on topics within the RSHE subject guidance that related specific legal provisions such as, “marriage, consent (including the age of consent), violence against women and girls, online behaviours including image and information sharing (including ‘sexting’, youth-produced sexual imagery, nudes, etc.), pornography, abortion, sexuality, gender identity, substance misuse, violence and exploitation by gangs, extremism/radicalisation, criminal exploitation (for example, through gang involvement or ‘county lines’ drugs operations), hate crime, and female genital mutilation (FGM)”.⁶¹¹ The guidance outlines that students should be taught about these topics and the relevant legal provisions, however, this is expected to be achieved by the end of secondary school. It was found that all these topics are covered in Key Stage 3 but with less emphasis on the legal provisions in comparison to Key Stage 4. It is important to note that these topics are covered after children reach the ACR and the coverage of legal provisions is more explicit only beyond the age of fourteen, therefore it is unlikely to have an impact on children’s knowledge until they are quite a few years beyond the ACR.

Nonetheless, students are introduced to these laws by the age of fourteen, indicating that the DfE believe that children are able to learn and understand

⁶¹¹ Department for Education, 'Relationships Education, Relationships and Sex Education (RSE) And Health Education' (Department for Education 2019) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1019542/Relationships_Education__Relationships_and_Sex_Education__RSE_and_Health_Education.pdf> accessed 30 October 2021.

legal provisions on topics that are applicable to them. This finding is supported by the statutory guidance document in a section titled “The Law”, where it explicitly states the importance of teaching children about the relevant legal provisions, as it provides them with knowledge of what is right and wrong in law.⁶¹² In addition, the guidance calls for a more head-on approach to teaching children the relevant legal provisions related to the topics they cover in the subject so that they can be protected by the law and take responsibility for their actions.⁶¹³ Despite mentioning “right and wrong” in the eyes of the law and “relevant legal provisions”, there is no explicit mention of the ACR in both the Key Stage 2 and 3 subject guidance within this document. From this, it can be deduced that the ACR is not deemed to be a “relevant legal provision”, even though criminal responsibility underpins so many of the laws discussed in RSHE as they are often criminal in nature. RSHE seems to have paved a path in the school curriculum to educate children about laws that are relevant to their lives and topics they learn at school. Moreover, the content and guidance provided in this document presents an argument for the importance of relevant legal education and how it can contribute to the holistic development of children. Even though this reasoning strongly applies to educating children about criminal responsibility, no such link is made, therefore, as there is no statutory requirement to teach the ACR, it remains absent from the curriculum.

4.2.4 Religious Education

Another subject that was often brought up in relation to teaching children about the ACR was RE, as teachers often made links between responsibility and religious/moral values. On the NC Collection webpage, RE is found under “other” compulsory subjects.⁶¹⁴ The link to the guidance

⁶¹² Ibid.

⁶¹³ Ibid.

⁶¹⁴ 'Collection: The National Curriculum' (GOV.UK, 2021) < <https://www.gov.uk/government/collections/national-curriculum> > accessed 15 November 2021.

available on this subject took me to a page with a document titled *Religious Education in English schools: non-statutory guidance 2010* which was published by the DfE in February 2010, with the latest update made to the page in October 2019. This document provides guidance for all maintained schools on RE in the school curriculum and the roles of those who are involved or interested in it.⁶¹⁵ It does not, however, include what is taught in RE as a subject as the syllabus for schools is locally determined by each SACRE, and therefore, I chose not to analyse this document. Instead, I used this document to provide more context to the subject as the contents of the 2010 guidance has not been updated.

From January 2011 to July 2013, the DfE undertook an extensive review of the NC for schools in England however, RE was not included in this review as it falls outside the remit of NC subjects.⁶¹⁶ As a result, the RE Council for England and Wales (REC) decided to conduct a review of RE as part of a strategic plan to develop the subject.⁶¹⁷ As REC is national council aimed at working with national organisations, faith communities, RE professionals, and the government with the aim of improving the teaching of RE, they felt “a new RE curriculum document is needed to support those teachers and schools, laid out in the same style as the documents for the NC”.⁶¹⁸ This 2013 REC review was recognised by the DfE in the *Research review series: religious education* published in May 2021, as the review included a non-statutory curriculum framework for RE.⁶¹⁹ This was one of the notable developments applicable to the provision of RE in primary schools since

⁶¹⁵ Department for children, schools and families, 'Religious Education in English Schools: Non-Statutory Guidance 2010' (Department for Education 2010) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/190260/DCSF-00114-2010.pdf> accessed 31 October 2021.

⁶¹⁶ 'A Review of Religious Education in England - The Religious Education Council of England and Wales' (*The Religious Education Council of England and Wales*, 2013) <<https://www.religiouseducationcouncil.org.uk/resources/documents/a-review-of-religious-education-in-england/>> accessed 26 October 2021.

⁶¹⁷ <https://www.religiouseducationcouncil.org.uk/resources/documents/a-review-of-religious-education-in-england/>

⁶¹⁸ *Ibid.*

⁶¹⁹ 'Research Review Series: Religious Education' (GOV.UK, 2021) <<https://www.gov.uk/government/publications/research-review-series-religious-education/research-review-series-religious-education#appendix-b>> accessed 22 October 2021.

2013.⁶²⁰ Based on this, I decided to analyse the summary report of this RE review titled, *A Curriculum Framework for Religious Education in England* by the REC, in order to better understand what they have decided should be taught as part of the RE curriculum.⁶²¹ This document complemented the 2010 guidance produced by the DfE hence, its analysis provided me with a further understanding of how RE is taught and consequently how it relates to schools teaching the ACR.

Once I found the main documents covering the national guidance for RE, I examined the locally agreed RE syllabus for each of the regions relevant to my study namely, Newcastle, Durham, Northumberland and Gateshead. These documents were analysed to provide more context to my interview data based on where the interviewed teachers were working at the time of data collection. It also gave me insight into the general topics covered in the RE syllabus. Each of these documents were found from the local council websites in the relevant areas and confirmed by cross-checking it with either local primary school websites⁶²² or one of the interviewed RE teachers. This ensured the authenticity of the syllabus documents.

From conducting a document analysis of the REC curriculum document that lists out the non-statutory requirements of teaching RE as a subject for Key Stages 1-3, one main theme was found which related to the ACR: the concept of “right and wrong”.⁶²³ This theme was brought up in the REC document and by the interviewed teachers. This concept is also brought up

⁶²⁰ Ibid.

⁶²¹ 'A Review of Religious Education in England - The Religious Education Council of England And Wales' (*The Religious Education Council of England and Wales*, 2013) <<https://www.religiouseducationcouncil.org.uk/resources/documents/a-review-of-religious-education-in-england/>> accessed 26 October 2021.

⁶²² Schools are required to publish their curriculum for each subject every year online. Department for Education, 'The National Curriculum in England Framework Document' (Department for Education 2014) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/381344/Master_final_national_curriculum_28_Nov.pdf> accessed 12 August 2021, pg 4.

⁶²³ 'A Review of Religious Education in England - The Religious Education Council of England and Wales' (*The Religious Education Council of England and Wales*, 2013) <<https://www.religiouseducationcouncil.org.uk/resources/documents/a-review-of-religious-education-in-england/>> accessed 26 October 2021.

in other subjects where there is a focus on SMSC development such as PSHE, BV, and Citizenship. The locally agreed syllabuses such as those for Newcastle and Northumberland have a designated section on SMSC development and they also made links to the abovementioned subjects within their syllabus. The Newcastle RE syllabus also made links to literacy and mathematics. In Key Stage 1, the retelling and meaning behind religious stories are to use sources of wisdom to understand concepts like “right and wrong”. It starts like this in Key Stage 1, then in Key Stage 2 this develops into a discussion on ethical questions on distinguishing between right and wrong, justice and fairness and in Key Stage 3 students are encouraged to “explore and express insights into significant moral and ethical questions posed by humans”⁶²⁴ from their own understanding. By Key Stage 3 students are required to respond to philosophical, ethical and religious questions drawing from their own experiences and examples. In RE, these discussions on right and wrong instigate students to think about the values and the moral codes that the different religious traditions teach and how they can be used to inform a student’s own understanding and behaviour towards others.

A common feature found in the analysed locally agreed syllabuses was that they had a strong focus on cultivating critical engagement and personal reflection amongst students through this subject. In particular, the Durham and Gateshead syllabus deemed this to be two out of the three key elements of RE. The cultivation of critical thinking or engagement is used as a way to encourage students to explore religious stories or teachings and see how they apply to moral decisions and ethical questions in life. Students are encouraged to learn about these religions and develop their own understanding of moral codes, ethics, and justice. This is related to the other key element in RE which is reflection. Students are encouraged from Key Stage 1 to think about what they learn with reference to the different religious traditions and develop a sense of self-awareness through this subject. This is possible because the syllabus provides opportunities for

⁶²⁴ Ibid.

students to reflect and refine their own ideas, attitudes, beliefs, and values⁶²⁵ and apply them when making decisions or responding to ethical questions.

From my analysis, these elements in the context of thinking about right and wrong are what form a strong foundation for thinking about behaviour. For example, the Northumberland RE syllabus explicitly states it gives children a chance to “talk about their own behaviour and that of others, its consequences and know that some behaviour is unacceptable” and consider right and wrong in these contexts.⁶²⁶ Discussing the impact of actions, words, behaviour, and the consequences that follow can be a helpful way to teach children about criminal responsibility and what this type of legal responsibility entails. In this regard, the link made between the two by the teachers who mentioned it in their interviews is a valid one. RE provides some content relevant to criminal responsibility, such as knowledge of different types of religious and moral values, and it simultaneously works to cultivate the necessary skills to develop this understanding such as reflection and critical engagement. However, as seen in other subjects, there is no actual reference made to the ACR within the REC Curriculum Framework document, the locally agreed RE syllabuses from four regions in the North-East of England and the RE non-statutory guidance document from 2010. In fact, the main form of law mentioned in the syllabus is religious law (e.g. law of karma in Buddhism and Hinduism), moral codes and in rare instances, a link is made to rights, such as those enshrined in the CRC. This shows that any connection made between the ACR, and religious laws, moral codes, and rights by teachers, is not found in the RE curriculum or syllabus. Instead, the onus lies on individual teachers to make connections between the abovementioned RE subject material and legal responsibilities like the ACR. The interview data

⁶²⁵ Durham City Council, 'Agreed Syllabus for Religious Education in Durham' (Durham City Council 2020).

⁶²⁶ Northumberland City Council, 'The Northumberland County Council Agreed Syllabus For Religious Education' (Northumberland City Council 2016).

suggests that although teachers made this connection during the interviews, they have not implemented the ACR when teaching this subject.

4.2.5 Citizenship

Another subject that was often raised by teachers during the interviews conducted was citizenship. The latest guidance on teaching citizenship in England was published in 2015 by the DfE.⁶²⁷ This page provides guidance for school staff and leaders through a document outlining citizenship programmes of study for Key Stage 1 and 2. This can be used by schools to plan how they can teach citizenship.⁶²⁸ This page also has a link to “the statutory programmes of study and attainment targets for citizenship at Key Stages 3 and 4” which was published in 2013.⁶²⁹ In Key Stage 3 and 4 all maintained schools are required to teach citizenship, as it is considered a foundational subject in the NC for students aged 11 and over. These citizenship programmes of study outline what students should be taught by each Key Stage for effective citizenship education and to promote SMSC development amongst their students.⁶³⁰ Hence, both these documents were chosen for analysis, in order to find out what is taught in citizenship education and how it relates to educating children about the ACR. However, it is to be noted that for the Key Stage 3 and 4 programmes of study, the focus will be on the subject content for Key Stage 3, as it is applicable to the age group relevant to my study which deals with children aged 7-14, unlike the Key Stage 4 content which is applicable to 14-16 year-olds.

⁶²⁷ Department for Education, 'Citizenship Programmes of Study: Key Stages 1 And 2' (Department for Education 2015) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/402173/Programme_of_Study_KS1_and_2.pdf> accessed 21 October 2021.

⁶²⁸ Ibid.

⁶²⁹ Department for Education, 'Statutory Guidance: National Curriculum in England: Citizenship Programmes of Study For Key Stages 3 And 4' (Department for Education 2013) <<https://www.gov.uk/government/publications/national-curriculum-in-england-citizenship-programmes-of-study/national-curriculum-in-england-citizenship-programmes-of-study-for-key-stages-3-and-4>> accessed 28 September 2021.

⁶³⁰ 'Early Years and Primary Citizenship | Association For Citizenship Teaching' (*Teachingcitizenship.org.uk*) <<https://www.teachingcitizenship.org.uk/about-citizenship/citizenship-curriculum/primary-curriculum>> accessed 26 February 2022.

The programmes of study for Key Stage 1 and 2 encourages students to learn about themselves as “developing individuals and as members of their communities” through their own experiences.⁶³¹ The main difference between Key Stages 1 and 2 is the acknowledgement of children’s increased level of maturity and independence. Therefore, as they grow older the way in which their actions and decisions affect themselves and the wider community is emphasised. The nature and description provided of citizenship as a subject makes it a promising place in the NC to teach children about the ACR. During the document analysis process, I was looking for themes in the citizenship programme of study that relate to the ACR. These were developed from the document itself and were often corroborated by how the teachers I interviewed related the teaching content to the ACR as will be seen later on in this chapter.

In Key Stage 1 children are taught to recognise what is right and wrong and what is fair and unfair, by thinking about how they feel and what they like and dislike. This is developed further in Key Stage 2 where children are encouraged to take this further by “seeing their mistakes” and “making amends” in relation to how it affects themselves and others.⁶³² Here children are guided to develop their sense of social justice. This concept is linked to the idea of “right and wrong” and the role of rules, which features in the Key Stage 1 programme. However, in Key Stage 2, this evolves into looking at rules and laws, why they are needed, and how they are made. There are no specific references made to any laws pertaining to children and thus, the ACR is not mentioned in this context either. Instead, the programmes of study in both Key Stage 1 and 2 highlight issues such as road safety, taking care of the environment, and anti-social or aggressive behaviour such as bullying. Key Stage 2 builds on this and focuses on physical contact that is acceptable and unacceptable and issues such as racism and teasing.

⁶³¹ Department for Education, 'Citizenship Programmes of Study: Key Stages 1 And 2' (Department for Education 2015).

⁶³² Department for Education, 'Citizenship Programmes of Study: Key Stages 1 And 2' (Department for Education 2015)
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachmen_t_data/file/402173/Programme_of_Study_KS1_and_2.pdf> accessed 21 October 2021.

There is no mention of the criminal aspect of any of these behaviours in the programme of study. The only other discussion of law is in the context of “developing a healthy” and “safer lifestyle” where legal and illegal substances such as drugs are explicitly mentioned.⁶³³

Another strong theme that comes through in the teaching content of this subject is moral responsibility and how an individual’s behaviour affects others. In Key Stage 1, students are taught to recognise that they have responsibilities in relation to their own health and well-being, the environment, and others in the community. Key Stage 2 takes a more nuanced approach with this and explains how citizens have different kinds of responsibilities in different contexts like in school, at home, and in the community. Students are encouraged to take responsibility in these different contexts and participate in society by making informed choices even in conflicting or high-pressure situations by assessing the consequences and risks involved. They are taught to understand this knowledge and learn these skills by considering social and moral dilemmas in their everyday lives, participating in their communities, and taking responsibility. Here social and moral responsibility is explicitly mentioned as a concept that should be taught to children in Key Stage 1 and 2, however, the document does not indicate there being any links between these forms of responsibility and criminal responsibility. Although, the interviewed teachers often mentioned teaching “right and wrong”, “moral choices”, and “responsibility”, from this document it is evident that the connection between these 3 phrases and the ACR is not made clear. Notably, teaching citizenship in Key Stage 1 and 2 is not compulsory and the document analysed is non-statutory therefore, it is up to individual schools to decide whether they choose to incorporate elements of citizenship within their curriculum. This means that the provision of citizenship education across primary schools in England will vary as schools may place different levels of emphasis on the subject. Therefore, even if individual teachers make links between the concepts of “right and

⁶³³ Ibid.

wrong”, “moral responsibility”, and “social justice”, citizenship is not the most reliable subject to ensure that all children across England learn about the ACR in an age-sensitive manner (i.e. before they reach the age of ten).

Between the age of 11-14, in Key Stage 3, children are taught citizenship as one of the foundation subjects. As mentioned briefly in the section on the NC, this subject teaches children the knowledge, skills, and understanding to prepare them for their role as active citizens in society. The main aim of citizenship education at this level is to teach students how democratic systems work, the role of law and the justice system, and participation in forms of responsible activity. The teaching content in Key Stage 3 has a different tone to what was seen in the Key Stage 1 and 2 document. In Key Stage 3, there is a greater emphasis placed on “understanding democracy, government and the rights and responsibilities of citizens”, hence content to be covered here is mainly about the formalised systems of democracy and the law, and where the student’s role as a citizen fits into that. As a result, individual responsibility is not the prominent feature in citizenship education as it was in the Key Stage 1 and 2 programmes of study. This is evidenced by a shift away from ideas of “right and wrong”, “moral behaviour”, and “responsibility” in the teaching content to a focus on understanding how the systems in England work. Although this is useful information for students to know, it is not child-centric. The subject content focuses less on developing children’s understanding of their legal responsibilities and their rights as citizens, with little detail provided about this, apart from stating that students should be taught about “precious liberties enjoyed by the citizens of the United Kingdom”.⁶³⁴ There is also no mention of specific laws applicable to children such as the ACR. Since knowledge of rights and responsibilities applicable to children are not explicitly stated in the programme of study, it seems like these topics are not the intended focus of this subject in its current form. This points to the fact that even though there is scope for including the ACR

⁶³⁴ Department for Education, 'Statutory Guidance: National Curriculum in England: Citizenship Programmes of Study for Key Stages 3 And 4' (Department for Education 2013)

within the discussions on responsibilities citizens possess, the emphasis on state systems keeps the subject content away from making such links.

4.2.6 British Values

Another subject that was brought up by teachers in relation to informing children about the ACR in England and Wales was BV.⁶³⁵ The first webpage I found on GOV.UK was the *Press release: Guidance on promoting British Values in schools* published by the DfE.⁶³⁶ This page gave me an overview of how BV are being promoted in schools and led me to other related webpages with relevant guidance documents. The two that I found from these links were *Promoting fundamental British Values as part of SMSC in schools: departmental advice for maintained schools*,⁶³⁷ and The Education (Independent School Standards) (England) (Amendment) Regulations 2014. Although the statutory regulations are for independent schools, I considered it as a potential document to analyse as it outlined details of what “promoting” BV means. This was helpful however, as I found the same details in the *Promoting British Values* document, I chose to analyse that one document instead. This includes further details such as guidance and expectations for BV that the statutory regulations did not cover.

This *Promoting British Values* document provides advice for headteachers and members of staff at all maintained schools and therefore, is intended to be used as a guide to inform the development of the school curriculum. BV is not a subject on its own but rather the guidance suggests that promoting students’ SMSC development can also “demonstrate that they

⁶³⁵ Here British Values are mentioned however, it is to be noted that there is no British ACR as the ACR varies in some of the devolved nations such as in Scotland it is 12 unlike England and Wales where it is 10.

⁶³⁶ 'Press Release: Guidance on Promoting British Values In Schools Published' (GOV.UK, 2014) <<https://www.gov.uk/government/news/guidance-on-promoting-british-values-in-schools-published>> accessed 26 October 2021.

⁶³⁷ Department for Education, 'Promoting Fundamental British Values as Part of SMSC in Schools' (Department for Education 2014) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_t_data/file/380595/SMSC_Guidance_Maintained_Schools.pdf> accessed 6 November 2021.

are actively promoting fundamental British Values”.⁶³⁸ SMSC development ensures that students are self-aware, able to distinguish between right and wrong, accept responsibility for behaviour, participate in the community, and respect civil and criminal law, democracy, institutions and other people regardless of their religion, beliefs and culture.⁶³⁹ Here, a reference is found to “right and wrong” in relation to promoting BV, making it yet another subject where this concept is mentioned. The inclusion and repetition of this concept highlight the importance it plays in the all-rounded (SMSC) development of a child for life in school and outside it too. Interestingly, in this context, civil and criminal law is also mentioned linking the concept of “right and wrong” behaviour as citizens of the country and the law of the land. Although the link made between the two could make it a promising avenue to educate children about the legal responsibilities they have, it is not taken any further in the guidance provided. Instead, details of the role of law and how the legal system works is mentioned when promoting BV.

The document explains how provisions for SMSC development align with promoting BV through developing students’ knowledge and understanding of democracy, rule of law, separation of powers, and tolerance and acceptance of others from different faiths and traditions. These points are listed in the guidance with some examples of actions schools can take to promote it. The examples provided are open-ended and do not specify which parts of the curriculum may be effective for promoting BV.⁶⁴⁰ It is also important to note, however, that the guidance itself is quite brief and lacks precision as teachers are not advised on how to actively promote knowledge and understanding of these values at each Key Stage, and how these values can help children become law-abiding citizens. The brevity of the document in such matters leaves a lot of the “promoting” to be determined by schools. From the general descriptions and advice given in

⁶³⁸ Ibid.

⁶³⁹ Ibid.

⁶⁴⁰ Department for Education, 'Promoting Fundamental British Values as Part of SMSC in Schools' (Department for Education 2014)
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/380595/SMSC_Guidance_Maintained_Schools.pdf> accessed 6 November 2021.

the document, there is scope to include the ACR when informing children about the role of law and the legal system, by discussing examples of law that directly affects them, however, this is not currently the case. Since the document itself, does not link the promotion of BV to teaching children about legal responsibilities applicable to them, like the ACR, it is up to teachers to do so if this is to be taught as part of BV. First, they would need to make the link between criminal responsibility and BV. Secondly, they need to determine how they are going to promote BV and teach children about the ACR as part of their school curriculum, by figuring out how to weave all these elements together. All these steps would need to be taken without any guidance provided by the DfE making it seemingly burdensome for the teachers.

Considering this, an interesting point I came across in my analysis of this document was that citizenship, a foundation subject in the NC, was not mentioned, despite the considerable overlap between its teaching content and BV. By connecting the two subjects, both could be taught simultaneously so that teachers do not need to make room in the curriculum for the two subjects separately. Similar to citizenship, the promotion of BV focuses on teaching children about the formal democratic and legal systems in place to protect citizens, with a particular emphasis on respect and tolerance. The main difference between the two, however, would be the lens through which the subject material has been developed. Citizenship education takes a wider view on the role and responsibilities of citizens, whereas BV focuses more on the active promotion of values amongst citizens which are deemed “British” in nature and is less universal. This is because the promotion of BV in education ensued to prevent discrimination and extremist views in British society, therefore, the active promotion of these values is explained in this document as challenging opinions and behaviours that oppose BV. As this subject transpired predominantly as a political response rather than a purely educational initiative, the guidance provides little detail or clarity on how BV could be embedded into the curriculum.

Even though, links between BV and citizenship (a subject in the NC) can be made, the lack of reference to this connection within the guidance document suggests that the separation between the two is intentional. One of the reasons for this could be that Citizenship only becomes a compulsory subject in Key Stage 3 and 4, which means children younger than 11 would not be taught BV, thus reducing the effect it can have against protecting young, impressionable children from extremist views. This disconnection between BV and citizenship sheds light on the wider incoherence between the various subjects that make up a school curriculum. Amidst the disorder and ambiguity around how to incorporate and teach subjects outside the NC, making links to topics like criminal responsibility, which are not mentioned in the subject guidance seems challenging as I have attempted to illustrate from my analysis above. This will be explored further in the discussion chapter.

4.2.7 Children's rights and Human Rights Education

A few teachers that were interviewed related teaching children about the ACR to children's rights. They talked about how their schools were either trying to teach young people about their rights or were already doing so through the Rights Respecting Schools Award (RRSA). As a result, I decided to investigate this as well during my document analysis. Children's rights fall within the remit of human rights and therefore, both these subjects will be considered in my analysis, starting with the former and with the latter providing additional context to this form of rights-based education.

UNICEF's Private Fundraising and Partnership Division published a *Children's Rights Education Toolkit* document in 2014 to support practitioners and decision-makers with incorporating a children's rights approach and rooting the CRC into early years education, primary, and secondary schools.⁶⁴¹ It emphasises the need to take a whole-school

⁶⁴¹ UNICEF, 'Child Rights Education Toolkit' (UNICEF Private Fundraising and Partnerships Division (PFP) 2014) <<https://www.unicef.org/media/77146/file/UNICEF-CRE-Toolkit-with-appendices.pdf>> accessed 20 October 2021.

approach to CRE and presents three main approaches namely, child-friendly schools, rights-respecting schools, and Amnesty International's Human Rights Friendly Schools. The Toolkit document mentioned examples of CRE in the UK, with quotes from English schools in relation to the rights-respecting schools approach.⁶⁴² Upon carrying out further research, UNICEF UK's RRSA was found to be the main approach taken by schools to provide CRE, with around 5000 schools in the UK adopting the award.⁶⁴³ It was found that signing up for the RRSA helps schools work towards teaching their students about the CRC and how these rights apply to their lives. I systematically went through the RRSA section of the UNICEF website and shortlisted three documents that outlined the outcomes of the RRSA, for document analysis.⁶⁴⁴

- *The Journey*
- *Bronze Award Checklist*
- *Silver and Gold Award Outcomes*⁶⁴⁵

The UNICEF website also had many resources such as starter packs, training, and teaching materials. Not all of these documents were accessible as some required registration however, I analysed all the documents available to me and shortlisted a set of three CRE core materials entitled *Know Your Rights*.⁶⁴⁶ This set included a student workbook, teacher guidelines and a booklet on the CRC aimed at children aged 11-12 however, the documents state that it can be adapted for children older and younger by making small changes.⁶⁴⁷ These documents

⁶⁴² Ibid.

⁶⁴³ 'About The Rights Respecting Schools Award - UNICEF UK' (*Rights Respecting Schools Award*) <<https://www.unicef.org.uk/rights-respecting-schools/the-rrsa/about-the-rrsa/>> accessed 16 October 2021.

⁶⁴⁴ 'Bronze Forms and Guides - UNICEF UK' (*Rights Respecting Schools Award*) <<https://www.unicef.org.uk/rights-respecting-schools/resources/teaching-resources/rrsa-forms-and-guides/bronze-forms-guides/>> accessed 19 October 2021.

⁶⁴⁵ The Journey; Bronze Award Checklist; Silver and Gold Award Outcomes documents accessed from 'Bronze Forms and Guides - UNICEF UK' (*Rights Respecting Schools Award*) <<https://www.unicef.org.uk/rights-respecting-schools/resources/teaching-resources/rrsa-forms-and-guides/bronze-forms-guides/>> accessed 19 October 2021.

⁶⁴⁶ 'Know Your Rights - Child Rights Education Core Materials - Rights Respecting Schools Award' (*Rights Respecting Schools Award*) <<https://www.unicef.org.uk/rights-respecting-schools/resources/teaching-resources/guidance-assemblies-lessons/know-your-rights-child-rights-education-core-materials/>> accessed 16 November 2021.

⁶⁴⁷ Ibid.

were also included in my document analysis as they covered specific CRE content that teachers can use in their teaching even outside the RRSA if they wish to make their school more child friendly. Both the RRSA and the CRE core material documents cover the main teaching content outlined by UNICEF, that schools in England may choose to use to teach their students about children's rights.

The 2011 United Nations Declaration on Human Rights Education and Training set out how education on human rights involves learning *about* rights, learning *through* rights, and learning *for* rights.⁶⁴⁸ As CRE is a component of HRE, it also takes a similar approach as the abovementioned documents illustrate. To understand how CRE fits into the wider context of HRE I also explored the other approach outlined in the toolkit, Amnesty International's Human Rights Friendly Schools. On Amnesty International's website, I found a resource called *Learning about Human Rights in the Primary School*.⁶⁴⁹ This document presents activities for children aged 5-11, that teachers can use to teach their students about human rights and was selected for analysis. I also came across an older source on the Office of the High Commissioner for Human Rights (OHCHR) website published in 2004 entitled *Teaching Human Rights – Practical activities for primary and secondary schools*.⁶⁵⁰ I also shortlisted this source for document analysis to provide additional context to what HRE covers in terms of content at primary school level worldwide. Both these documents take a universal approach and so they are not specific to English schools however, the content covered is applicable to them.

⁶⁴⁸ Office of the United Nations High Commissioner for Human Rights, 'United Nations Declaration on Human Rights Education and Training', OHCHR, Geneva, 2011, <www.ohchr.org/EN/Issues/Education/Training/Pages/UNDHREducationTraining.aspx>, accessed on 20 July 2021.

⁶⁴⁹ 'Learning About Human Rights in Primary School Resource Pack' (*Amnesty.org.uk*, 2019) <<https://www.amnesty.org.uk/resources/learning-about-human-rights-primary-school-resource-pack>> accessed 19 November 2021.

⁶⁵⁰ Office of the United Nations High Commissioner for Human Rights, 'United Nations Declaration on Human Rights Education and Training', OHCHR, Geneva, 2011, <www.ohchr.org/EN/Issues/Education/Training/Pages/UNDHREducationTraining.aspx>, accessed on 20 July 2021.

I started by examining the RRSA documents to find out more about the Award and how teaching children's rights relates to the ACR. The main document that was analysed on the RRSA was called *RRSA Outcomes at Silver and Gold*.⁶⁵¹ This document lists various outcomes of teaching children about their rights as enshrined in the CRC at the silver and gold level. One of the general outcomes of this is the empowering effect that it has on them, encouraging them to speak up and voice their thoughts in a safe school setting thus, reducing instances of harmful behaviour in these schools. It was also found in this document that rights are used to "clarify moral dilemmas and consider rights-respecting approaches".⁶⁵² Discussing the rights that children possess is used as a means to get them to think about their actions and how they can affect one another. Although, the word "responsibility" is not mentioned here, the outcomes seem to suggest that the RRSA looks to develop a sense of responsibility within children by teaching them to act in ways that respect the rights of one another. Nevertheless, there is no mention of the ACR as it focuses only on educating children and their wider community (including adults as duty-bearers) on children's rights.

The *Know your rights* documents are teaching resources used to provide a clear outline of all the CRC rights. The exercises get children to think about the minimum standards they should be awarded to grow up "safe and healthy".⁶⁵³ It goes through all the different rights and informs students of what they mean and how it applies to themselves and other children around the world. The student and teacher workbook does not mention the ACR

⁶⁵¹ Silver and Gold Award Outcomes documents accessed from 'Bronze Forms and Guides - UNICEF UK' (*Rights Respecting Schools Award*) <<https://www.unicef.org.uk/rights-respecting-schools/resources/teaching-resources/rrsa-forms-and-guides/bronze-forms-guides/>> accessed 19 October 2021.

⁶⁵² 'Know Your Rights - Child Rights Education Core Materials - Rights Respecting Schools Award' (*Rights Respecting Schools Award*) <<https://www.unicef.org.uk/rights-respecting-schools/resources/teaching-resources/guidance-assemblies-lessons/know-your-rights-child-rights-education-core-materials/>> accessed 16 November 2021.

⁶⁵³ 'Teacher's guide: Know Your Rights - Child Rights Education Core Materials - Rights Respecting Schools Award' (*Rights Respecting Schools Award*) <<https://www.unicef.org.uk/rights-respecting-schools/resources/teaching-resources/guidance-assemblies-lessons/know-your-rights-child-rights-education-core-materials/>> accessed 16 November 2021.

however, the CRC booklet does mention the rights that children possess when they break the law and enter the youth justice system. These include the right to legal aid and fair treatment⁶⁵⁴ and it also mentions that no child should be subjected to torture or other cruel inhumane or degrading treatment or punishments.⁶⁵⁵ If teachers in schools engage in a discussion specifically on these children's rights, then the ACR can easily be introduced and taught to children in this context. However, as was found in the RRSA documents, the ACR is not directly mentioned, and it would depend on individual teachers to make the link between the two. The interview data gathered shows that the teachers did not teach the ACR with children's rights, but instead brought it up during the interview to describe one way in which they develop their students' legal consciousness.

On the other hand, Amnesty International's *Learning about Human Rights in the Primary School* document provides a range of resources, including exercises that can be used in schools to teach children about human rights.⁶⁵⁶ The NC and none of the core subjects refer to human rights, therefore, this is something that schools choose to include in their curriculum on their own accord with no statutory guidance. When analysing this document, I was trying to examine how teachers could use human rights to teach their students about the ACR. Once again, there was no mention of the ACR or criminal law in general, however, there were certain points raised that could be related to it, such as behaving fairly, fair treatment of individuals, respecting and acknowledging human rights in everyday life, and the rights one possesses when they break the law. Each of the rights discussed in this document were explained and applied to scenarios to develop children's understanding of their rights and the laws that protect them.

⁶⁵⁴ Article 40 UN Convention on the Rights of the Child

⁶⁵⁵ Article 37 UN Convention on the Rights of the Child

⁶⁵⁶ 'Learning About Human Rights in Primary School Resource Pack' (*Amnesty.org.uk*, 2019) <<https://www.amnesty.org.uk/resources/learning-about-human-rights-primary-school-resource-pack>> accessed 19 November 2021.

The *Teaching Human Rights* document is not very different in its approach.⁶⁵⁷ The content starts by outlining the importance of human rights education, to encourage the teachers using this resource to embed HRE into their school activities from classroom responsibilities to group discussions. The approach taken in this resource is informative as it explains different human rights and makes children aware of wider issues, ranging from how everyday goods are produced to child soldiers. Unlike the other rights-based teaching resources analysed, it emphasises the responsibilities that come from having rights. In this case, a link could be made to legal responsibilities that children possess like the ACR, however, in both these human rights resources, similar to the children's rights documents, there was no mention of the ACR. However, it was found that the "teaching *about* and *for* human rights" approach can be a useful way to go about teaching children about criminal responsibility, as it links and applies rights to the everyday lives of students and their behaviour. Although the ACR is not taught as part of CRE and HRE, the approach taken to educate children on the relevance of law in their lives could be adapted by schools to teach children about this legal responsibility in a child-friendly manner. Both CRE and HRE highlight how awareness of laws relevant to individuals can have an educational effect on behaviour and standards in society, making it a compelling reason for teaching children between the age of 7-14 about the ACR.

4.2.8 Document Analysis Summary

Upon reviewing the selected documents, the most prominent finding was that the ACR is not mentioned in the NC and any of the other relevant subjects that fall outside it. The interview data gathered points to this fact however, I was also able to confirm this through my document analysis. I found that although the NC states that it looks to provide children with

⁶⁵⁷ Office of the United Nations High Commissioner for Human Rights, 'United Nations Declaration on Human Rights Education and Training', OHCHR, Geneva, 2011, <www.ohchr.org/EN/Issues/Education/Training/Pages/UNDHREducationTraining.aspx>, accessed on 20 July 2021.

knowledge that makes them “educated” citizens⁶⁵⁸, it does not include teaching children about legal responsibilities like the ACR, in this category of knowledge. Instead, the focus remains on the core and foundation subjects where the only two compulsory subjects that explicitly discuss responsibility include computing, from Key Stage 1 to 4, and citizenship in Key Stage 3 and 4. The former focuses solely on responsibility in online contexts, and the latter refers to the individual and collective responsibility of children as members of society without mentioning legal responsibilities in this regard. All the “other” subjects taught as part of the school curriculum were also investigated. None of these subjects made any reference to the ACR, but they included some concepts within their subject material that could help children understand criminal responsibility. These concepts can be outlined as responsibility, right and wrong, and the role of law and the legal system. I found these to be the only concepts within the subject materials that could be directly related to criminal responsibility. This was confirmed in the interview data by references that teachers made to these concepts when asked about teaching the ACR. This will be discussed in the next section (4.3).

The diagram below summarises which subjects mentioned these concepts.

Table 4.1. Key Findings from Document Analysis

⁶⁵⁸ Department for Education, 'The National Curriculum in England Framework Document' (Department for Education 2014)
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/381344/Master_final_national_curriculum_28_Nov.pdf> accessed 12 August 2021.

	Responsibility	Right & Wrong	Role of Law & the Legal System
PSHE	☑	☑	
RSHE	☑	☑	
RE	☑	☑	
Citizenship	☑	☐	☑
British Values	☐	☐	☑
CRE/HRE	☐	☑	☐

The table above uses dark circles to represent explicit references and light circles to represent indirect references made to the three concepts outlined. This summary takes into account teaching content for children between the age of 7-14.

As illustrated in the table above, responsibility is quite a common concept amongst all these “other” subjects. This is because as children grow older, greater independence often comes with the expectation of more responsibility and all these subjects help prepare students not only for their life at school and society at present but their adult life too. This is mentioned specifically in the RSHE statutory guidance document, PSHE Association Programme of Study, and the non-statutory guidance on citizenship education in Key Stage 1 and 2.⁶⁵⁹ In all these contexts, this particular concept is taught to encourage children to take responsibility for their actions and behaviour. The emphasis here is on social and moral

⁶⁵⁹ Department for Education, 'Relationships Education, Relationships and Sex Education (RSE) And Health Education' (Department for Education 2019) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1019542/Relationships_Education__Relationships_and_Sex_Education__RSE_and_Health_Education.pdf> accessed 30 October 2021; PSHE Association, 'Programme of Study for PSHE Education: Key Stage 1-5.' (PSHE Association 2020) <[https://fs.hubspotusercontent00.net/hubfs/20248256/Programme%20of%20Study/PSHE%20Association%20Programme%20of%20Study%20for%20PSHE%20Education%20\(Key%20stages%201-5\)%2c%20Jan%202020.pdf?hsCtaTracking=d718fa8f-77a8-445b-a64e-bb10ca9a52d8%7C90ef65f6-90ab-4e84-af7b-92884c142b27](https://fs.hubspotusercontent00.net/hubfs/20248256/Programme%20of%20Study/PSHE%20Association%20Programme%20of%20Study%20for%20PSHE%20Education%20(Key%20stages%201-5)%2c%20Jan%202020.pdf?hsCtaTracking=d718fa8f-77a8-445b-a64e-bb10ca9a52d8%7C90ef65f6-90ab-4e84-af7b-92884c142b27)> accessed 8 March 2021; Department for Education, 'Citizenship Programmes of Study: Key Stages 1 And 2' (Department for Education 2015) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/402173/Programme_of_Study_KS1_and_2.pdf> accessed 21 October 2021.

responsibility. This is because schools in England have a duty to provide SMSC development and this explicitly underpins all the subjects mentioned in the table above except CRE/HRE.⁶⁶⁰ Responsibilities that children possess as per the law, on the other hand, are treated differently to these other types of responsibilities, as unlike the others it is not mentioned in all the curriculum documents analysed. The document analysis shows that it remains absent even in parts of the curriculum on social and moral responsibilities, despite legal responsibilities having strong conceptual links in a moral (right or wrong) and social (duty to the public or community) sense. For example, in PSHE, RSHE and RE, Key Stage 2 and 3 students are encouraged to engage in the process of thinking critically about responsibility in contexts such as relationships, health, online, and in the environment around us,⁶⁶¹ without knowledge of laws relevant to them in such contexts like the ACR.

Instead, it was found that teaching children the concept of “right and wrong” was deemed to be sufficient. This was evident from the emphasis placed on this concept in all subjects as shown in the table above. Once again this is another concept that falls under children’s SMSC development, therefore it features widely in all subjects. As demonstrated in the table above, citizenship education and BV were found to make more indirect references to right and wrong. In Citizenship, this concept is only explicitly mentioned in the programme of study for Key Stage 1 and 2 where this subject is not compulsory and therefore, it is left to schools to decide whether to teach children about this. Moreover, in Key Stage 3 the focus shifts from right and wrong to the “role of law and the legal system” instead. BV does not mention covering right and wrong explicitly but makes it clear that promoting these

⁶⁶⁰ Children’s HRE is not compulsory and therefore it is separate to the basic school curriculum. It is up to schools to incorporate HRE into their curriculum. There is no DfE guidance available on this.

⁶⁶¹ PSHE Association, 'Programme of Study for PSHE Education: Key Stage 1-5.' (PSHE Association 2020); Department for Education, 'Relationships Education, Relationships and Sex Education (RSE) And Health Education' (Department for Education 2019); 'A Review of Religious Education in England - The Religious Education Council of England and Wales' (*The Religious Education Council of England and Wales*, 2013) <<https://www.religiouseducationcouncil.org.uk/resources/documents/a-review-of-religious-education-in-england/>> accessed 26 October 2021.

values can help schools fulfil their duty towards SMSC development which includes making sure that children understand the concept of “right and wrong”.⁶⁶² This shows that BV are found to contribute to children’s knowledge of right and wrong by teaching them about tolerance, respect, and behaviour expected in “British” society.

In the other subjects, right and wrong are taught in terms of acceptable and unacceptable behaviour or safe and harmful behaviour. PSHE and RSHE, both mention specific types of behaviours towards ones’ health, the living environment, and relationships. In this context, teachers can often inform children about serious issues by teaching them to recognise such issues as “wrong” or harmful so that they can then do the “right” thing by taking action against it. In such contexts, there are often legal implications to the harmful behaviours discussed like violence, hate crime, sexual abuse, and the misuse of drugs, yet even when legal provisions are brought up as recommended in PSHE and RSHE⁶⁶³, especially in Key Stage 3, no link is made to criminal responsibility or the age at which an individual is held responsible under criminal law for such behaviour. This is an example from my analysis that presents a more explicit link between the concept of “right and wrong” and the law, yet the ACR is not included in this context. In RE, the concept of “right and wrong” seems to be taught in a wider sense, drawing from the concept of moral and social responsibility, with little detail provided on specifically what these cover, resulting in the legal ties to this concept being left out of it.⁶⁶⁴ Children’s HRE takes a wider approach too as it covers “right and wrong” by teaching children about their rights and what

⁶⁶² Department for Education, 'Promoting Fundamental British Values as Part of SMSC in Schools' (Department for Education 2014) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/380595/SMSC_Guidance_Maintained_Schools.pdf> accessed 6 November 2021.

⁶⁶³ Department for Education, 'Relationships Education, Relationships and Sex Education (RSE) And Health Education' (Department for Education 2019); PSHE Association, 'Programme of Study for PSHE Education: Key Stage 1-5.' (PSHE Association 2020)

⁶⁶⁴ 'A Review of Religious Education in England - The Religious Education Council of England and Wales' (*The Religious Education Council of England and Wales*, 2013) <<https://www.religiouseducationcouncil.org.uk/resources/documents/a-review-of-religious-education-in-england/>> accessed 26 October 2021.

behaviour against them contravenes that. Even though legal provisions in the form of rights under the CRC are linked to this concept, little connection is made to the concept of legal responsibilities, and therefore, once again, the ACR is not taught in this context.

Although reference to the law is made in almost all these subjects (excluding RE where only religious laws are mentioned), the intention behind teaching children about this plays a big role in what aspect of the law is taught. As mentioned earlier, in PSHE and RSHE the law is taught in relation to some topics within the curriculum in order to educate and empower children to recognise harmful behaviour, and to protect them from harm, especially from adults. Here, the law is brought up mainly for safeguarding purposes.⁶⁶⁵ On the other hand, in Citizenship and BV, children are taught about law mainly to educate them on the role of law and the way in which the legal system in the country works.⁶⁶⁶ The intention here is to inform children about state systems like the justice system, to help them understand their role as citizens in this country and what values these systems expect of them. The document analysis found that the teaching content in these subjects covered formalised systems of democracy and of the law without making any references to legal responsibilities that form part of one's role as a citizen in relation to the legal system. The lack of explicit links made to how the law applies to children by teaching them about legal provisions that are directly applicable to them like the ACR points out another context in which the content could easily be related to the criminal responsibility but remains left out. This does not seem to be because all legal responsibilities or the law, in general, are left out of the school

⁶⁶⁵ Department for Education, 'Relationships Education, Relationships and Sex Education (RSE) And Health Education' (Department for Education 2019); PSHE Association, 'Programme of Study for PSHE Education: Key Stage 1-5.' (PSHE Association 2020)

⁶⁶⁶ Department for Education, 'Statutory Guidance: National Curriculum in England: Citizenship Programmes of Study for Key Stages 3 And 4' (Department for Education 2013); Department for Education, 'Promoting Fundamental British Values as Part of SMSC in Schools' (Department for Education 2014)
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/380595/SMSC_Guidance_Maintained_Schools.pdf> accessed 6 November 2021.

curriculum, as RSHE explicitly teaches children about the age of consent, what consent means and the criminal offences that take place in the absence of consent. Instead, this highlights the fact that the ACR is not deemed as important a legal provision to be included or explicitly taught in the school curriculum.

The findings above illustrate that there are some relevant topics in each of these subjects where children can be taught about the ACR. This could range from mentioning that the ACR in England and Wales is ten in moral or philosophical discussions in RE, to explaining what such a legal responsibility means and what are its implications in PSHE and/or citizenship. In the current provision of compulsory education,⁶⁶⁷ no links are made between subject material that could be relevant to teaching children about criminal responsibility and the ACR. This makes educating children about criminal responsibility an initiative that must be taken by individual teachers or schools if children are to be taught about this. The onus lies completely on individual teachers or schools with an interest in taking up such an initiative without support or guidance from the DfE or relevant curriculum documents. In fact, the document analysis conducted shows that there are very few instances in the curriculum where specific legal provisions are taught or referred to, with most of them being in PSHE and RSHE. With only a few opportunities in the basic curriculum to teach legal content similar to the ACR, schools and their teachers may not have much experience of teaching children about specific laws, possibly adding to the challenge of taking on such an initiative without sufficient guidance from the curriculum documents. The exception to this would be schools where children's HRE is incorporated within the school curriculum.

The CRE and HRE teaching materials present a promising approach to educating children on the laws that are applicable to them in a child-friendly manner. Teachers who have experience with HRE and teaching children

⁶⁶⁷ This refers to compulsory education in local authority maintained schools, foundation schools and voluntary schools as all of them base their school curriculum on the National Curriculum, and they also follow similar guidelines for teaching "other" subjects.

about rights specific to them may be able to use similar approaches to incorporate the ACR into the school curriculum. Unfortunately, the onus is still on them to make the link between the ACR, and relevant content covered in HRE, like the rights that children possess when they are in contact with the criminal justice system, as no such link is made in the documents analysed. Notably, children's HRE is not included in the basic school curriculum for most schools in England therefore, teachers will have to rely on the content covered in "other" subjects if they choose to include it. This leaves some scope for including the ACR into the school curriculum, but to a lesser extent without the content covered and the approaches used in children's HRE. Moreover, the seemingly unintentional and disorganised overlaps between the different "other" subjects, and the ambiguity around some of the non-compulsory teaching content that forms part of a child's holistic development in compulsory education, could illustrate that lesser attention is given to "other" subjects within the school curriculum. Therefore, the absence of the ACR in the current curriculum context is unsurprising and can be confirmed by my document analysis.

4.3 Interview Data Findings

The first mode of data collection used in this study were semi-structured interviews conducted with a sample of twelve teachers from schools in various parts of North-East England. The interviews were conducted prior to my document analysis because I found it helpful to learn about the subjects and resources that teachers use directly from them, due to their experience and knowledge as practitioners in this area. However, when it came to analysis and presenting my findings, the interview data illustrates how children are informed about the ACR by shedding light on what happens in practice within different school curriculums. The interview data builds upon the key findings outlined from analysing general curriculum documents, by explaining how these relevant subjects are used in practice to teach children about the ACR. This was guided by the three main questions I explored during my interviews:

1. What is taught to children between the age of 7-14 about criminal responsibility?
2. What exposure do they have to legal ideas and situations in criminal law?
3. Do children aged 7-14 need to be made aware of their criminal responsibility? And if so, what is the most effective way to inform them of this?

These questions formed the basis of the interviews conducted and subsequently my thematic analysis process as well. The key findings start out by addressing the abovementioned questions more generally, followed by a closer look into the teachers' perceptions on teaching the ACR and how they think they contribute to children's knowledge of criminal responsibility. It then takes a closer look into three of these points namely, bad behaviour, suggestions on how to incorporate the ACR into the school curriculum, and the role of the police. Each of these will be discussed in the sub-sections below.

4.3.1 Relevance of the ACR

The first two questions outlined above investigate what children are taught about criminal responsibility. There are two main elements to this: one which looks into whether teachers inform children aged 7-14 about the ACR, and the second explores what they teach to prepare children for being held criminally responsible at the age of ten. The main finding in this regard was that ten out of twelve teachers did not explicitly teach their students about the ACR. This was not just from their teaching practice in their current school, but it also includes all their previous teaching experience as well. From this, it became evident that the schools in which these teachers have taught in do not generally consider the ACR to be an essential topic to include within their school curriculum. To explain why it is missing, many teachers mentioned how the ACR is not a part of the national or basic curriculum, as corroborated in the document analysis. Another explanation given by some teachers for why the ACR may not be mentioned in certain

schools is because it was not as relevant to them and their students. This is summarised in the following quote:

“I think certain schools would need more input, whereas other schools, it is probably not really be on their radar as much. So, in two contrasting schools or if I had never worked in any other schools other than my school, I would be thinking, oh no we don’t need to know about that at this age, it should be something that should be introduced in high school. But, knowing my previous school, where we had the police come to school to try and restrain children and things, there is a need for it there because they need to know.”

(Teacher SK)

This quote shows Teacher SK making a distinction between two different types of schools they have taught in and how there may be a need for it “there” when referring to a previous school where the police needed to get involved to deal with children’s behaviour. It was found that according to some teachers, the ACR, as a topic, is considered more relevant and applicable to schools where behaviour issues may be more prevalent. This was found to be a common perception held by many teachers in the sample, in addition to the lack of provision in the curriculum documents. As a result, I decided to split the sample into two data sets based on whether teachers felt that the ACR was a relevant topic to teach at their school.⁶⁶⁸

⁶⁶⁸ Please note that this is only referring to the school each teacher was working at the time of the interview. Their experience at previous schools may have influenced their stance, but this is not reflected in the percentage mentioned in the table and subsequently the analysis of that follows.

Table 4.2. Interview Sample Data Set based on the Relevance of the ACR

Data Set 1 ACR not considered relevant	Data Set 2 ACR is relevant
<i>*the "(x%)" refers to the percentage of children who are eligible to FSM</i>	
Teacher MM (10.0%)	Teacher AN (39.5%)
Teacher MR (43.3%)	Teacher CB (29.6%)
Teacher P (12.4%)	Teacher EB (12.4%)
Teacher CF (12.4%)	Teacher JS (70.9%)
Teacher SK (17.7%)	Teacher JH (15.6%)
	Teacher NJ (61.1%)
	Teacher RT (12.4%)
Average Percentage (%)	Average Percentage (%)
19.2	34.5

Those in data set 1 felt that teaching the ACR is not as relevant to their students as it may be to students in other schools (as indicated in the quote above), whereas data set 2 were more readily accepting of teaching their students about the ACR as they found it applicable to their students. As indicated by Table 4.2, the average percentage of children who are eligible for FSM is higher in data set 2 than 1. This suggests that where this percentage was higher, teachers were more likely to argue that the ACR was relevant. The general perception in the second data set is summarised in the quote below:

"... with regard to the criminal legal age, I don't think the children understand that and I think that is something we need to add into our programme so that they are aware that there are consequences to their actions. They do know that, but I don't think they are aware of, actually when you get to the age of ten, legally, there could be things that could happen because of your actions. So, I think, that is definitely something that we would benefit from having in there."
(Teacher CB)

Here, Teacher CB does not seem to make a distinction between students in their school and any other school but instead seems to focus on the relevance of the ACR to children aged 7-14. It is worth noting, however, that despite this most schools do not teach the ACR so, both these data sets were analysed further to find out about how children are prepared for knowing and understanding criminal responsibility through compulsory education.

4.3.1.1 How Did Teachers in Each of These Data Sets Mention the ACR?

Regarding whether criminal responsibility is taught in schools, teachers from both data sets mentioned the ACR in a similar light. Both sets used phrases like “I don’t think”, “they probably get exposure to it through...”, “wouldn’t talk about the legal aspect”, and “wouldn’t necessarily teach them”, thus, summarising the uncertainty around the coverage of the ACR in schools amongst the interviewed teachers. This suggests that there is little to no explicit mention of criminal responsibility, as indicated by the struggle to respond with a more direct response to whether they teach the ACR.

*“I don't even know if they're told about it.”
(Teacher EB)*

*I don't know. But actually I don't think they've got much exposure to it. I don't think... There's times that people will do things and you'll say like, you know if this had happened outside of school and they'd have rung the police, you could get arrested for that. This is pretty serious stuff and they don't understand that, I don't see that. I don't think they've got an understanding of it.
(Teacher RT)*

These quotes indicate that most teachers I interviewed were unsure about whether the ACR is taught, as they may not have taught students about it themselves. In the second quote, Teacher RT draws from their experience of dealing with children aged 7-14 and reaches the conclusion that their students may not have sufficient understanding of the ACR. Here the

teacher is attributing this lack of understanding to their student's minimal exposure to knowledge about the ACR.

As such, it was found that teachers could provide more details on teaching topics such as sex education and/or online safety that they could with the ACR. This was confirmed in the interview data when I asked teachers, including those who admitted that they were not necessarily specialists in such subjects, to compare the teaching practices in these topics to their coverage of the ACR.

*"But in these subjects like PSHE it's like the sexual ed is more indirectly taught in a sense about periods for example at a certain age, positive relationships in another way. Yeah, there is a bit that's a bit more biology, if you'd like. But there's also the other nuances around it."
(Teacher P)*

*"A lot of it [social and moral responsibility] is covered within that [RE] but have set lessons as well. For example, when we do anti-bullying, they will be covered in set lessons. Online safety is covered in set lessons because that is a topic in the curriculum as well. So, there are times that they are not within the RE lesson, it stands alone as well."
(Teacher CB)*

The inconclusiveness in the way teachers spoke of teaching children about the ACR was further demonstrated by the use of the aforementioned phrases which suggest a level of uncertainty, followed by a shift in focus to other topics that teachers felt contribute to children's understanding of criminal responsibility. This is illustrated in the quotes below:

*"I think they probably get exposure to it on a surface level in terms of... obviously you talk about responsibility for actions and I think especially in like PSHE you would discuss certain scenarios and kind of consequences after those but I don't think at the moment they access that on a deep level."
(Teacher MR)*

"Yeah, so we wouldn't necessarily teach them how the rule of the law works. I mean we are, as part of British values, the children are taught the laws of Britain take precedence over religious laws. Obviously as the children get older you can look at the nuances of that and how that can be challenging. But it is more about the, sort of, dilemmas and how do

you know whether you following a rule is right or wrong, where do you take your moral guidance from? That kind of thing.”
(Teacher JH)

These examples indicate that the absence of the ACR from the basic curriculum leaves teachers from most schools with little to draw from when it comes to teaching children about criminal responsibility. They mention it with uncertainty and often attempt to make connections to other, more concretely set out parts of the curriculum that they feel could help inform children about their responsibility in criminal law. The link between these relevant topics and the ACR is not clearly outlined, and this will be explored further in the next few sub-questions outlined in this section.

Most of the interviewed teachers took this approach, however, there were two exceptions to this in the second data set, where two teachers specifically mentioned teaching their students about the ACR. These teachers provided clear and concrete examples of how this takes place. For example, Teacher AN mentioned how criminal responsibility was taught as part of PSHE and Citizenship education and this was reinforced by bringing in a person from the fire service to cover various topics related to crime such as cyberbullying, arson, theft, knife crime, and county lines. The other example was presented by Teacher NJ who said that the crime element is focused upon in PSHE and their school also reinforced this knowledge by bringing in speakers from the fire service or the police to teach students about how some types of behaviour can be a crime. When comparing how these two teachers mentioned teaching the ACR to the rest of the sample, it is evident that a majority of them did not teach ACR. Instead, they attempted to make connections to other topics that could show how they prepare their students for this legal responsibility without explicitly talking about it.” Hence, most teachers spoke about teaching the ACR in quite a vague manner, unlike the two teachers who did teach their students about criminal responsibility.

4.3.1.2 In What Circumstances Did Teachers Mention the ACR?

During the interviews, I asked all the teachers about what exposure their students have to legal situations or ideas in a criminal context. This question was usually posed before I asked about teaching the ACR, and it was worded loosely to see what teachers would bring up. Interestingly, most of the teachers did not mention the ACR in response to this question. Instead, teachers talked about the law in relation to topics in subjects such as PSHE, RSHE, RE, Citizenship, CRE and BV. This provided an initial indication of the fact that the ACR was not explicitly taught in these schools. The teachers themselves recognised that the ACR was missing from their teaching and attributed this to the fact that the curriculum does not contain provisions requiring schools to teach children aged 7-14 about the ACR as confirmed by the document analysis conducted. Although, the ACR was not explicitly taught in most schools, there were two main circumstances in which the ACR was explicitly mentioned to students. The first is when individual teachers and schools take the initiative separate from the curriculum to teach children about it and the second is when students behave badly.

As seen from the document analysis, there are places within the basic curriculum where links to the ACR can be made however, the guidance provided in the documents did not do this. In such cases, individual teachers can take the initiative to make such links to inform their students about the ACR through the existing curriculum content. The headteacher from one of the two schools in the sample that teaches their students about the ACR, gave an example of how individual teachers take the initiative to link their curriculum-based teaching to criminal responsibility. This is outlined in the following quote:

“So, if they were reading a text on crime...so I know they have been reading ‘Street Child’ and he’s a pickpocket and steals food from the market to survive. So, I think things like that could crop up and it’s not planned but I think any good teacher would be able to help children relate that...so if that happened to you today, what would happen. So, it wouldn’t be planned, it would just crop up as and when.”
(Teacher NJ)

This quote shows how links made between any related curriculum content and the ACR by individual teachers could be an effective way in practice to weave in knowledge about criminal responsibility without explicit measures being put into place. For this to take place, the individual teacher must consider it relevant to their students. Moreover, as the quote suggests this would not be planned and therefore, may not ensure that this knowledge is consistently provided to all students in one year group, let alone one school. For these individual initiatives to be more effective it needs to be a part of a wider school initiative.

The interview data showed that the most explicit initiative to teach children about the ACR was found in two schools where the school vision and ethos supported and encouraged knowledge of criminal responsibility. The two headteachers who taught at these schools explained that the ACR was included into their teaching because their students were from mixed catchment or deprived areas where criminal activity is more prevalent, thus educating them about the ACR was used to spread awareness about this amongst both the students and their parents.

“We chose to highlight that because we know that it affects our children. Another school might choose to do...I can’t think of anything...something different that’s not relevant to our children. That we would drop and that is not necessary as it means nothing to our children anyway.”
(Teacher NJ)

This quote makes it clear that the school made an active choice to teach the ACR, which suggests that all other schools may also possess the choice to include it into their curriculum, but they have chosen not to take this option. This seems to come down to the issue of relevance and whether teaching the ACR is deemed to be applicable to the school. This is explained in the quote where Teacher NJ clearly states that the main reason why the ACR is taught in their school is because they consider it relevant to the needs of their students. Here, it is worth noting that the “needs” of their students seem to refer solely to their family and socio-

economic background, rather than a need arising from the fact that the ACR is a law that is applicable to all children from the age of 10. Despite, these two schools being the exceptions by explicitly teaching children about the ACR, the thought-process behind the relevance or need for teaching the ACR is the same as those used by other teachers from data set 1 who felt it was not relevant to their students.

“Even when I worked in a school, down South, where it was, you know they would have had family members in prison, they were a lot more street smart. Whereas the children who I am dealing with now, that is so far removed from their radar that it [ACR] never would really come up.”
(Teacher SK)

“Whether we should've touched on that, I don't know. Maybe it's different if you're in a school where you've got a lot of undesirable behaviour going that you would do that. Whereas it wasn't really necessary in our local schools.”
(Teacher MM)

This shows how the split in the data between teachers who felt that the ACR was less relevant to their students as opposed to others who felt that it was applicable to them seems to be determined by the type of students attending the school. The interview data suggest that most teachers made judgments on the type of students by linking their background and behaviour, in order to determine whether the ACR is relevant to a school and its students. They often made comparisons to other schools they have taught at to explain these judgments, as seen in the quote by Teacher SK and as is alluded to by Teacher MM. It is noteworthy that the teachers made these distinctions regardless of which data set they belonged to. The only difference is that in schools where teachers claimed there were fewer instances of bad behaviour, the ACR was found to be less relevant.

The other instance in which students are spoken to directly about the ACR is when they have misbehaved or engaged in an activity that could be criminal in nature. In such cases, teachers or headteachers bring up the ACR in the process of disciplining. This comes up in the form of a conversation with the student or students involved rather than teaching in

a classroom. Notably, in such circumstances, whether a child learns about the ACR is dependent on whether they have done something wrong. Moreover, teachers expressed that they only mention the ACR in quite exceptional situations as they are careful not to be “heavy-handed” in their approach or “scare” the children by bringing up something as serious as criminal responsibility. The examples in the data indicate that it is used in circumstances where children need to be warned to watch their behaviour and to inform them of the legal consequences that could arise from those actions:

“Umm...but I am certainly not aware of any teaching. I have heard heads of year say to children, ‘Do you know the ACR is 10? And you are responsible in law and you can be arrested.’ I have heard that sort of thing go on.”
(Teacher RT)

“Because that's the age I actually work with, we do sometimes have discussions about the fact that you have reached this point in time where if you do X you are judged to be able to make a choice about what you are doing and to know what you did was a thing you weren't supposed to do. But that's not really specifically listed in the curriculum anywhere. That's something that tends to come up in conversation as a bit more of a casual approach.”
(Teacher JH)

The context of these quotes shows that these circumstances mainly come about once an act of bad behaviour has already taken place. It can be questioned whether it is sufficient to bring it up in such circumstances and limit knowledge of the ACR only to students who have engaged in wrongdoing. This approach seems to be in line with the “relevant to our students” approach, where the ACR is only discussed with students who are perceived to “need” it based on their socio-economic background and/or behaviour, rather than being a topic for all students. This shows that initiatives taken by teachers and schools are dependent on how narrowly or widely “relevance” to their students is construed by those in charge of the teaching curriculum. The interview data shows that the ACR is only directly mentioned in the aforementioned circumstances. Teachers did,

however, bring up topics and subjects that they teach that contribute to children's understanding of criminal responsibility.

4.3.1.3 What do the teachers think they do in relation to teaching children about the ACR?

Since the basic curriculum does not mention the ACR and it is only explicitly brought up when individual teachers and/or schools choose to include it into their teaching or when dealing with bad behaviour, the teachers ended up speaking about topics they do teach which they feel contribute to developing an understanding of criminal responsibility. The interview data shows that concepts related to the ACR are prominently taught within the school curriculum, and so teachers believe that teaching through these avenues provides some awareness of the ACR. This is outlined in the extract below.

"I think we've got to, sort of, educate them on it, which I think we do through various things, but I am not... personally at my school, I don't think we have ever talked about the legal age very explicitly but I do think through different avenues, there is an awareness of it. I wouldn't say it is completely zero but yeah, I think the role of the school is important just to educate them on what is right and wrong, really and, kind of, build good people and that is what we try to do. If they do come in and something is not quite right, we try and change their behaviour and it does sometimes take over time."

(Teacher JS)

This quote brings up the idea of "right and wrong" which is a recurring concept throughout the data set. According to all the interviewed teachers, educating children on what is "right and wrong" seems to form an important basis for the teaching that takes places in these schools in relation to the ACR and legal responsibilities in general. Although the ACR is not explicitly mentioned or directly linked to this concept, different topics are used instead to talk about aspects of right and wrong which teachers claimed relates strongly to it. Some examples they mentioned were topics like bullying, online safety, types of crime, such as arson and theft discussed in talks by the police or fire service, citizenship, and BV with a specific focus on rule of law. These topics, the teachers explained, fall broadly under the heading of

subjects such as PSHE, BV, RSHE, RE and Children's rights. These subjects allow teachers to bring up issues of right and wrong behaviour, individual responsibility, and what expectations we have in society in relation to citizenship and being a good person. Teachers explained how this is done through the discussion of scenarios, case studies, incident narratives, Circle Time, talks from people outside school such as the police/fire service, assembly topics, and teaching core values each month.⁶⁶⁹

PSHE was the most mentioned subject in relation to teaching ACR or topics related to it. Within this subject, teachers often brought up how they teach their students the concept of right and wrong by educating them on their social and moral responsibilities. In fact, during the interview process, the teachers recognised that the focus during PSHE lessons typically surrounded these specific topics. However, it should be noted that the consequences and the legal impact of these concepts are not usually discussed. This presents a surface-level discussion of responsibility for one's actions where references to knowing the difference between right and wrong are made with no explicit link to ACR. The only exception to this, where the ACR is mentioned, is if someone does something wrong. Teacher SK explains this in the extract below:

“So, within the curriculum, it used to be called PSHE (Personal, Social, Health Education), recently it has changed to RHE (used to be RSE, Relationship and Sex Education), which stands for Relationship and Health Education. So within that, we talk about right and wrong and we talk about making good choices and things like that but not from a lawful perspective. So, we don't talk about further up, how that would impact the decisions that they would make. It is much more toned down than that. If someone gets into trouble, especially when they are little or if they have hit someone or something like that, then we talk about you know, you can't do that to other people, and then it might come up that if they are older, then that could involve people making complaints or speak to the police about it but that is very rare and there isn't a set structure in place where we talk about the impact of the law later on and how their decisions and choices can end up that way.”
(Teacher SK)

⁶⁶⁹ This list of different ways teachers discuss concepts like right and wrong, individual responsibility and good citizenship was compiled from the examples shared by all 12 teachers who were interviewed.

Most teachers also mentioned social media as the topic within PSHE that discusses the law. Within this area, topics like cyberbullying and online safety were also given as examples of topics where right and wrong, and legal responsibilities are discussed. This is mainly from a safeguarding perspective however, in instances where there has been wrongful behaviour on social media, criminal responsibility is sometimes brought up.

“I think it's definitely mentioned. We've talked about at the moment there is a big focus on social media and responsibility on social media and what is legal and what isn't legal and the line between that. I think they are aware that they've got that responsibility. In terms of consequences and things like that afterwards, I'm not entirely certain that they are.”
(Teacher MR)

“I know where they get it a lot, you know, social media is huge problem in schools and we have a lot of what they call 'cyber-bullying' instances to deal with. And I'll often hear 'do you know that such and such's parents could involve the police and you could have a criminal record.' And they don't! They don't know what they are talking about. 'What! What!' They hear the word 'police' and they panic.”
(Teacher RT)

BV are a compulsory part of the basic curriculum which was commonly mentioned by the interviewed teachers in relation to the ACR. They outlined that it has strong links to aspects of citizenship, especially in terms of informing children on how to be a good citizen in British society. This is done through topics such as democracy, rule of law and within that it discusses legal right to choose belief, right and wrong, respect for the law, the relationship between the court, parliament, and the police amongst other things. It was found that sessions on BV are taught through different methods such as focusing on core values in class or assembly, getting children involved with the community to do good through charity or community service, teaching them about rules and why we have them, and weaving these values through different subjects so that it is widely discussed. Despite the existence of such methods for teaching children about BV, there seems to be a lack of clarity around what children need to be taught under this subject. In fact, some teachers suggested that this lack

of clarity around what BV are makes it difficult to know what the children need to be informed of, as expressed in the quote below.

“So, for example, if you are going to say that children have the age of criminal responsibility at 10, do they need to know about that before they turn 10? Looking at the documentation that I've got on British Values, children should know about British law which protects and helps citizens, well that's very general. The legal right citizens have to choose their own beliefs. The relationship between parliament, police, and the court again that's very general. And develop the understanding of right and wrong and respect for the law, again very general. Take responsibility for their behaviour, be involved in the community. I think maybe it could do with a little bit more refinement and a bit more definition. That would probably be helpful so that everybody knows, right ok, I work in Key Stage 1 and by the end of Key Stage 1 the children should know, by the end of key stage 2 the children should know, maybe something like that.”
(Teacher JH)

In the above quote, we see this teacher making a connection between the ACR and BV as they considered the ACR to be a law that “protects and helps citizens”. The focus here is on a child’s right to know about the laws that protect them and to help them understand their legal responsibilities for the protection of society. As recognised by some of the interviewed teachers, the issue with teaching the ACR within BV is that this link needs to be made consciously if it is to effectively inform children of their legal responsibility. This is because there already seems to be uncertainty around the details of the content included within BV amongst some teachers, which could make the inclusion of the ACR within this context and the links to it quite vague and incoherent. The quote below shows how some teachers in data set 2 found that teaching values, right and wrong and citizenship can help children’s understanding of responsibility, but it cannot replace the explicit provisions for teaching the ACR within the curriculum.

“In our school, we have core values, so each month is a different core value, so for example in July it is integrity. So, in our assemblies, we talk about doing the right thing even if nobody is looking. So, you know, we get those constant messages about being a good citizen, all the way through. Umm. but I do think, the ACR needs to be somewhere on the curriculum, for them to know that from a young age.”
(Teacher NJ)

Another subject mentioned by some teachers, specifically those with experience of teaching in faith schools, was RE. They brought this subject up in relation to teaching the ACR as they said it taught their students about moral choices, right and wrong, and consequences from religion/religious teachings. This is outlined in the extract below by Teacher JH:

“But the one that is most closely linked to legality is the engage strand which is learning from religion so that it is about morals, choices, right and wrong, consequences. So if I do x, y might happen. There isn't a specific reference to the law, the only time that the law would come into the RE curriculum really is when... there is going to be a clash between that [religious attitudes] and the law.”
(Teacher JH)

The teachers from faith schools, also linked another element of RE to the ACR through the discussions they have on why religion has rules, why rules are important, and why certain things are wrong by discussing the significance of moral choices. In this subject, teachers explained that links could be made between rules and laws when discussing religious laws such as the 10 commandments. Here, the focus is on teaching children the importance of rules but how this translates into their understanding of the importance of the law, especially the ACR, is not explained. The link made in this case is quite an abstract one that does not educate children on the ACR or any other legal responsibility in explicit terms. For children between 7-14, making this link on their own could be a stretch. Apart from that, the only reference to the law in RE is when there is a clash of religions or in relation to religious tolerance.

“ And through things like RE when you're talking to children, I mean sometimes the actual religion can be an issue because of parental beliefs and their attitude towards it. But as you go on they realise that every religion has got rules, why are they there? They understand why they're rules. Something basic like the 10 commandments or Muhammed and all that. They realise why those rules are there and why it's wrong and it's the inter practice that I suppose is the difficulty. But all the time that they're given situations: 'how would you respond?', 'why do you think this is a bad way for this particular person to go? And from my

experience, they can think quite deeply about that and give a sound answer.”
(Teacher MM)

Some schools have incorporated children’s rights into their school curriculum where they discuss what rights children possess by outlining what they can do, but also what they cannot do. This subject area was mentioned by teachers to show how their school provides students with exposure to legal ideas like rights and responsibilities.

“I know places in [mentions an area] that have a few schools, but that is all about the rights of the child, rights that you have, and I think that feeds in nicely to their responsibility; what they are entitled to but also what they can’t do outwardly to other people, like crimes and things like that. So, they get it through that, sort of History teaching, PHSE; what’s right, what’s wrong.”
(Teacher JS)

Here, Teacher JS makes a link during the interview to one aspect of their school curriculum that deals with the law, namely children’s rights, in order to show how teaching children about this can also feed into their understanding of responsibility. However, once again, no explicit link is made in the curriculum between teaching children’s rights, PSHE, History, the general concept of right and wrong, and the ACR. Even though the teachers mentioned these various topics that they think relate to informing children about the ACR, they themselves admitted during the interviews that these links are not made in their teaching practice.

“...I would say that I accept that we don’t link them, but I agree that it would be easy to link it up, but I think the problem you have with some schools who don’t want to see this as an issue for their area, are not going to link it up purposefully...”
(Teacher NJ)

In this quote, Teacher NJ, clearly recognises that they do not make links between these various topics and the ACR in their teaching practice. This was surprising as they are one of the two teachers interviewed that taught at a school where the ACR is explicitly included in the school curriculum, and to see that they do not make such links makes it clear that the ACR is

considered separate from the rest of the curriculum even in these schools. This brings to question the effectiveness of teaching these related topics in educating children about criminal responsibility when they are not taught how it connects to the ACR. As it stands, the interview data shows that currently these links only exist in the minds of these teachers, and whether children are adequately informed about the ACR through teaching the abovementioned topics and subjects is still questionable as it is dependent on how relevant schools or teachers think the ACR is to their students.

4.3.1.4 What concerns did teachers raise about teaching the ACR?

From the findings above, it is evident the schools examined are unlikely to include the ACR into their school curriculum unless they feel it is relevant to their students, resulting in the two data sets outlined previously.

4.3.1.4.1 *The curriculum or lack of it*

The only other way in which teachers envisaged the ACR would be explicitly taught within school curriculums across the country is if it is made a statutory requirement like RSE and BV. It was found that this mindset is reinforced by the new Ofsted guidelines⁶⁷⁰ which require schools to tailor their curriculum, specifically to the needs of their students. As this is one of the points that Ofsted evaluate during their inspection, it was expressed as a contributing factor to whether schools choose to include or exclude the ACR.

“And that’s just new because the new Ofsted framework came in 2019 and that new framework allows schools to be much more selective on what they teach and they are looking for schools to create that curriculum for the children’s needs and not do a one size fits all off the shelf. You need to look at your community, you need to look at your surrounding areas and you need to factor in all of those things when you build your curriculum...so that’s quite new.”
(Teacher NJ)

⁶⁷⁰ See 'Education Inspection Framework' (GOV.UK, 2021) <<https://www.gov.uk/government/publications/education-inspection-framework/education-inspection-framework>> accessed 14 January 2022.

The quote above shows the emphasis placed on Ofsted inspections and ensuring that their requirements are effectively covered by the school. Here, it was stated that the “needs” of the students play a significant role in Ofsted’s evaluation, suggesting that the inclusion of the ACR would have to be considered a “need” based on the community and catchment area for criminal responsibility to fit this requirement.

4.3.1.4.2 Pressure on schools

Furthermore, with the ACR not being a part of the NC, making the effort to include it into the school curriculum was also referred to as an added pressure on schools due to the amount they already have to cover. This is expressed in the quote below.

*“I think, as well, with the lots of changes in the national curriculum and there have been a lot of changes with the Ofsted framework, as well, you can only fit so much into a day. There is almost this pressure, I don’t know if you know much about the new Ofsted framework or anything, but it used to be that they would be looking at your test results and things like that. Whereas now, it is more a balanced curriculum, so the children have to have the right amount of other curriculum coverage... So, there is a huge amount of pressure on schools now and I just think that if you introduce something else as well as all of the curriculum then that puts more pressure on schools, as well.”
(Teacher SK)*

Here, it is important to note that Teacher SK is part of data set 1, meaning that they do not necessarily think that teaching their students about the ACR is as much of a priority as it may be in other schools where the students “need” it more, therefore this could also be a contributing factor to this opinion. However, when compared to the opinion of Teacher NJ who is part of data set 2, the underlying mindset is similar. Both teachers argue that a “balanced” curriculum achieving the “right amount of curriculum coverage” for their respective schools requires the students “needs” to be considered.” They measure these needs using the same factors; the community around the school and the background of the student majority which varies from school to school.

Teacher SK also refers to the pressures that schools face in terms of the recent changes in the educational landscape and their apprehension around covering all the existing curricula and Ofsted requirements. In this context, they express concerns about the increased levels of pressure that would arise from the inclusion of another topic within the curriculum, insinuating that adding the ACR to their already packed curriculum would make things more difficult for schools. Therefore, the quote above summarises the concerns that some teachers in data set 1 have with teaching content outside the basic curriculum due to the increased pressure experienced by schools and their underlying opinion that the ACR is not as relevant to their students. This shows that both sets of teachers are more likely to teach things that are required by statute or that have sufficient guidance on it as they already have so many things to tick off their list. This is outlined in the quotes below:

*“Certainly, for schools, because we wouldn’t know the legalities of it so we would need to have that so that it was clear and we weren’t just researching it off our own backs. So, if there was a programme that we could use then that would be much better. But obviously, it would need to be constantly updated because laws change all the time, don’t they?”
(Teacher CB)*

*“Kinda balanced throughout the year and not just do it as a one off, I think for me, unless it is made statutory and it is built into the curriculum, we are not going to get it...a broad coverage of it across the country.”
(Teacher NJ)*

Both quotes above are from teachers in data set 2. This is noteworthy as teachers in this data set were more inclined to try and include the ACR into the teaching that goes on in their schools. Whereas other teachers from data set 1 recognised the significance of the law and making children aware of it, but the way they spoke about it during the interviews suggests that they did not feel the need to include it into their curriculum as a matter of importance. Instead, they voiced more apprehensions and concerns about it than the teachers in data set 2.

4.3.1.4.3 *The nature of the topic*

Once such apprehension around teaching children about the ACR, that a few teachers from data set 1 expressed was to avoid scaring them with talks of criminal responsibility and allowing children to take in the seriousness of their actions by slowly developing their knowledge and understanding of these topics as they grow older.

“It’s a very community-based area. Some of the last children I’ve taught I’ve known since their mums were pregnant. I’ve seen them come into school as new-born babies and we used to baptise them in our lessons and things like that. So, they were very sheltered, really, from a lot of the violence that occurs if you were in a city school. And they were often horrified when you tell a story that had a certain situation in it and they very quick to say how they would deal with it and how it made them feel.”
(Teacher MM)

“I do think it is important that they know but I think that it needs to be done in a tactful way so as to not scare them. I would also say for my children who are 6 and 7, I think they’re too young but could be something potentially in their upper Key Stage 2 curriculum (years 5/6) where they are more mature and can have those discussions which might just go over my children’s heads.”
(Teacher SK)

Here, both these teachers seem to suggest that their students may be too young or may come from “sheltered” backgrounds that require a more “tactful” approach to teaching the ACR. This suggests that explicitly mentioning the ACR may “scare” their students due to their lack of exposure and knowledge of criminal activity unlike students from other schools like those in the city as was mentioned by Teacher MM. Other interviewed teachers who are a part of data set 2 did not express the same concern of trying not to scare children by discussing the ACR, as they felt their students may already be exposed to serious topics like criminal responsibility. Furthermore, they felt that it may help children behave better with a more understanding of the real-world consequences as shown in the quotes below.

“But if someone comes in and goes ‘I went to jail when I was 10 years old’, I think that might not like, ‘scare’ is probably the wrong word, but I think really wake them up because there are some kids who have got

some real attitude problems for one reason or another and sometimes the hard-hitting way of doing things is effective. So, I would say, maybe, something that causes shock value?”
(Teacher JS)

“I think that kids would need a better understanding and I think they need more education around it. I can’t think of a proper example but even just punching somebody and a punch can kill really and all of the kind of stuff around that. They might get a 20-minute detention for it, well what is a 20-minute detention realistically?”
(Teacher EB)

In contrast, these teachers from data set 2 reveal more interest in teaching children about the ACR rather than the more concerned approach taken by teachers from data set 1. Here, Teacher JS brought up this example as a way in which children could be taught about the ACR. They felt that bringing in someone with experience of the youth justice system would be an effective way to make children aware of how bad behaviour can have serious consequences in law that affects them due to the ACR. The word “hard-hitting” indicates a more explicit approach to informing children about the ACR as opposed to waiting till children are more mature to have this discussion. A similar approach is seen in the quote by Teacher EB, where they question whether the sanctions placed in schools, like detentions, do enough to teach children about the consequences of their actions outside school. This brings Teacher EB to call for “more education” around this topic rather than taking a slower approach by waiting for children to mature. However, what “more education” looks like is also questioned by teachers in data set 1 as shown below:

“So, it is how do you ensure that the children are aware of these responsibilities that they have but also keep them children as well. You don’t want to kind of make them grow up too quickly, but they have to be aware of what could potentially happen in the future.”
(Teacher SK)

This quote shows how some teachers are concerned that explicit knowledge of the law on criminal responsibility will take away from them being and feeling like children, even though the ACR is set at the young age of 10. Other teachers recognised that children may learn about the

ACR or criminal activity in general through other means and therefore, did not think of this as a concern as seen in the quote by Teacher P below.

“Yeah, because it's on the telly and games and... whether they understand it fully is another thing. But there is probably more exposure than like years and years ago. Because crime on the telly that they watch and these computers games that they play.”

(Teacher P)

In fact, teachers from data set 2 presented this as a reason for ensuring that children are taught about it properly in the school environment rather than this knowledge coming after children learn about such things from outside sources as shown below:

“A lot of people are saying ‘oh children are too young to know that’ but then they are knowing other things that we can't control, so why don't we take control back, and give them more protection? So, I think that is where we are failing; we are waiting until they have seen all the wrong things to start telling them what the right things are, and I don't think that's right. So, definitely early years for me for most things, to answer your question.”

(Teacher JS)

Some further concerns on teaching the ACR were expressed by two teachers in data set 1 who felt that although children may be educated about it, that may not stop them from doing things they are advised not to do. They provided the example of sex education and questioned its effectiveness in preventing children from engaging in sexual activity to support this point. They put forward that children may not be able to manage their thoughts and emotions in the moment and do it anyway as summarised below:

“ I do wonder though if you think really horrendous cases of things that have happened with children so whether you'd told those children and whether it would've made any different, I really doubt it. Do you know what I mean? Because they're in a moment aren't they and in a space and time and I know when I deal with a lot of angry children, when somebody is angry and they can't manage the anger telling them it's

illegal ain't going to help manage their anger. Do you know what I mean? I'm not sure how much that would help. It's a bit like the sexual health one, they can have all the information in the world but we still have high levels of teenage pregnancy. Do you know what I mean? So it's like people don't always do that thing where they stop and breathe and count to 10 and then think about doing something. Quite often they just do it.”
(Teacher P)

Here, Teacher P seems to question the effectiveness of teaching children about the ACR as they claim that such acts take place “in a moment” and may not be controlled unless children are able to control and manage strong emotions like anger. In such cases, this teacher argues that telling children that something is illegal and providing them with “all the information” would not prevent them from acting against the law. This suggests that there are factors beyond education that can play a role in how children understand criminal responsibility.

“So, some children know quite a lot, have experienced quite a lot. The parents might've been inside... I've worked in prison. So, those children have a different understanding than other children. It's a really difficult thing to say... it's a continuum really. Some children have a lot of knowledge about things that probably children shouldn't have knowledge about. And then other children... no they're quite innocent and they don't.”
(Teacher P)

4.3.1.4.4 Children's Level of Development and Maturity

During the interviews, teachers were asked whether they think children aged ten are capable of being held criminally responsible. There was no clear or definitive answer found as there were some teachers who felt that children around the age of ten were legally conscious and mentally developed enough to understand their criminal responsibility and those that felt like children may look like they are but internally are not. Teachers with the former opinion associated it with children's exposure to things they see online and outside school whereas the latter, believe that children act older than they really are. These two varied opinions can be seen below:

“Researcher: And do you think that the children around that age group, say from about 8-14, do you think that children of that age group are

legally conscious and mentally developed enough to be held responsible when they're 10?

*Participant: I would say as they get towards the end of Key Stage 2; 9, 10 and 11. I would say yes because of what they've seen online”
(Teacher MM)*

*“Because you know, its... They are kids at 10. Yes, they are very tall. You know... when I...they're year 6, isn't it? So, when I go to school and I see year 6 and they're taller than me, the boys are starting to get a bit of facial hair. The girls are you know, they know what is going on social media. They're all... they look like... they almost look like functioning teenagers. But then you have those moments where something upsets them and something's gone on and you see them when they are vulnerable and you see them and you realise that you look like an adult but actually you have no idea what you are going through. They don't have that experience so, the maturity... some do and some don't; it's different rates of development. I do think 10 is far too young like they are just kids. A lot of what they see is mimicry of other people, like older siblings like 'oh I will go and act like this and I'll be like this' but they are still figuring out their personalities, who they want to be.”
(Teacher JS)*

The most cited reason for the uncertainty in response to this question was the varying levels of development and maturity amongst their students. The quote below shows why teachers are unable to give a simple answer to this question:

*“Again, I think that depends on the child. Because there are some children who are 10 and are fairly switched on about what is expected of them and what they could do and would really have access to that information out with school. Whereas there's other children who are that age who would be quite young and immature. It is a difficult one, isn't it? If you could say, definitely everyone at that age would know, we would hope they would understand the difference between right and wrong, but for others, possibly not?”
(Teacher CB)*

“I think it would change per class. When I think back, last year when I know I had a year 6 class... some children in that class were very mature and very responsible and they were very sensible. But then in the same way they seemed a lot older than some other children in that class who maybe didn't have that sense of maturity or were still developing. But yeah, at 10 especially, thinking of year 5's, I think it would change class to class. I think you'd have some that are very responsible and understand the morals and what's right and what's wrong but I think there'd be a lot that maybe don't have an understanding yet.”

(Teacher MR)

Furthermore, when looking at children's understanding of the ACR, all teachers made a distinction between children's understanding right and wrong and them realising the consequences of their actions. These two were often treated as separate by teachers. Children were said to have an understanding of right and wrong however, teachers felt that they may not necessarily understand the consequences of their actions.

"And I remember having a conversation with my class about it and I'm sure it goes in one ear and out the other because you tell them again later and they're like "wow we're older than 10!". But no, I don't think that they have that understanding at all. Most kids will have the understanding of the sense of right and wrong, but I don't know that they realise the actual consequences of what would happen."
(Teacher EB)

Here Teacher EB describes how children may lack the ability to foresee the consequences of their actions. This is corroborated and further elaborated upon in the quote below where Teacher JH gives an example to support this.

"Ok, in terms of knowing whether what they are doing is the right thing to do or the wrong thing to do, I believe that 99% of children that age do. But what I am not so sure about is whether they can think through the consequences. So, for example, say they threw a brick through a window. I am confident that most of the children that I've worked with would know that that was wrong, and they weren't supposed to do it. What I would be less confident of is them being able to see through the consequences. So, for example, if it was an elderly person's home they might be frightened or they might cause damage and that sort of thing."
(Teacher JH)

In fact, teachers expressed that some children may be more impulsive than others depending on their level of development therefore, this can affect a child's ability to foresee the consequences of their actions. Moreover, it was noted that even teachers who were certain that their students were aware of their responsibility under the ACR and understood it, could not be sure about whether those students would understand the consequences. This is mentioned by Teacher MR below:

“I think they are aware that they've got that responsibility. In terms of consequences and things like that afterwards, I'm not entirely certain that they are.”
(Teacher MR)

Therefore, teachers found it difficult to say for certain that children fully understand what is meant by criminal responsibility around the age of ten. This is because they claimed that children do not think about what their actions mean or what they could result in, but instead assume that the consequences may not apply to them. Although education could help children navigate through this, it was still a concern when it came to teaching children about the ACR as some felt that children lack the level of development and maturity required to understand this topic fully by the age of 10.

4.3.1.4.5 Role of the Parents

In relation to this, one major factor of concern that all the interviewed teachers mentioned was the role of parents and how that affects what schools may teach about the ACR as illustrated below.

“I mean obviously when you're talking about behaviour things, depends on your child and it depends on their background and what their parents do with them at home.”
(Teacher EB)

“Schools have limited impact as the families play a role too. For example, when the parents defend crime or refer to the police officers as ‘pigs’, this creates a barrier in the students, making it harder for the schools to get through to them.”
(Teacher NJ)

Both these quotes indicate that teachers feel limited in their ability to teach children about the ACR if parents teach their children something else. Teacher NJ refers to this as a “barrier” that could limit the openness that these students could have to learning about criminal responsibility. As a result, some teachers emphasised the importance of working closely with parents to make sure that children have a consistent understanding of topics like the ACR.

“I think it's really important having a partnership with parents as well, I think having that open dialogue... again at my previous school I think that was really important. I think when something had happened or if parents had noticed certain behaviours in their children I think they were very very quick to let school know. And then obviously, the staff, we'd make a decision based on do we need address in an assembly? Is it going to be just one class or two classes? Should it be a workshop? But yeah, I think sometimes I think it's identifying areas of need as and when they appear rather than just taking a blanket approach to the whole school.”

(Teacher MR)

Teachers found that working with parents was often a useful way to ensure that children receive consistent information. Some shared that parents were likely to work with schools depending on the topic being taught as shown in the quote below.

“But certainly, if they are there, I know when we do the relationship and sex education, we get a good turnout of parents coming to that because, obviously they will have questions they will want to ask and will want to check what is being said but not always with the online safety stuff which actually is very important as well. So, we are trying lots of different ways to do that so that we can get them involved in it.”

(Teacher CB)

The quote above highlights how teachers found parents more likely to get involved when certain topics like sex education are taught as opposed to others. Relating this to the ACR, it can be questioned whether parents would get involved in a session on this topic. Based on the similarities in content between online safety and ACR, it could be argued that getting parents involved when teaching the ACR could be a challenge. Yet, teachers seemed to think that it is important to ensure that children are receiving consistent information from their parents and school because otherwise, they felt that young people's upbringing could negatively impact their perceptions, behaviour and understanding of the ACR. Thus, teachers were found to raise concerns about the effectiveness of teaching the ACR without consistency and support from parents.

Overall, the abovementioned findings show that although all teachers thought that it was important for children to know about the ACR, albeit whether it will be taught within the school curriculum is dependent on how focused they are on the concerns they raised.

4.3.2 Bad Behaviour

“Well, a lot of 'breaking the law' comes down to bad/poor behaviour; disregard for rules, for other people, for property etc. And I think we teach it all the time... it's constant and ongoing. It's getting that into the mindset...”

(Teacher MM)

As summarised in this quote, most teachers brought up bad behaviour when they spoke about teaching their students the ACR. This because of they recognised an inherent link between bad behaviour and coming into conflict with the law. Teacher MM makes it clear that behaviour is something that teachers focus on quite strongly in schools and this point is reiterated by all teachers in the interview data. Having discussed what subjects and topics teachers think they teach to develop this “mindset” where rules, people and property are respected in the previous subsection, here the examples of bad behaviour shared will be analysed. First, the examples will be considered more generally in relation to the data sets and then a closer analysis of the types of bad behaviour will be conducted.

When teachers provided examples of bad behaviour there were two main types that could be identified. One type referred to behaviour that was disruptive in nature, whereas the other was reported as behaviour that would be criminal in nature. I use the word “would” here as teachers identified them as criminal behaviour but did not always deal with it as a crime. The table below summarises all the examples of bad behaviour from the interview data separated into two categories based on the type of behaviour.

Table 4.3. Types of Bad Behaviour

Disruptive Behaviour	Criminal Behaviour
Foul language in class	Destroying/damaging school property (vandalism)
Throwing stuff around	Theft
Name-calling	Assault
Running out of class	Hate Crime
Bullying	Sexual harassment
Causing a nuisance	Arson

Examples of both disruptive and criminal behaviour were mentioned by most teachers however, the context in which these examples were brought up were of particular significance. Notably, teachers only brought up examples of bad behaviour when they spoke of schools that they stated had behaviour issues mainly due to the catchment area or the family background of the students. This was particularly evident amongst teachers from data set 1, who taught at schools where the ACR was claimed not to be as relevant to their students because they experience fewer issues with student behaviour. These teachers often referred to their “previous school” to draw examples as illustrated below.

“It does make you think about, like I think a lot about children in my previous school, I think it would be so easy for them to do something quite unlawful, especially because they were just out on the streets after school. They would be getting into trouble and causing a nuisance and I think with a lot of the anger that came from family backgrounds as well...”
(Teacher SK)

This is in stark contrast to the teachers from data set 2 who were able to draw examples of bad behaviour without having to think too much or look back at their previous teaching experience.

“...though we have had plenty of theft, shoplifting whatever...children causing grievous bodily harm to other children...we have had that sort of thing before but I have never known it go to court.”
(Teacher RT)

These examples bring up the issue of how relevant the ACR is to their students and the role it plays in their inclination to teach it. The general finding was that teachers who provided more examples of bad behaviour from their teaching experience, were more likely to consider educating their students about the ACR to be relevant to their students. This highlights the role that teachers' experience of bad behaviour plays in creating the two data sets earlier in this section. Looking more closely at the examples of bad behaviour mentioned by the teachers, there were three prominent points of analysis derived from the interview data: what teachers attributed bad behaviour to, how they were compared to criminal offences and the treatment of these types of behaviour inside and outside school. Each of these will be discussed in turn.

In the descriptions that teachers gave of bad behaviour there was often an indication of what they felt may have been the cause for it. These were either external factors such as family background (including the area they live) and peers, or developmental factors that are intrinsic to children such as impulse and learning difficulties. The most referenced external factor was children's family and the upbringing they provided.

“...there are some children who are quite young who are clearly committing crimes and clearly know that what they are doing is right or wrong. However, I would say 90 odd percent of those children have been raised incorrectly and so it's not their fault. And it's because of their upbringing that they are doing that. ...and those children who have been anti-social, they know they have been anti-social and annoying. And they know that they are bothering people and they know they shouldn't be doing it. But is it their fault because at the end of the day, they are children. Children are what is created from their upbringing and their family.”
(Teacher NJ)

“Some children have a real sense of justice. Just like some adults have a real sense of justice. You know it depends on the child and it also depends on their upbringing and their family circumstances and the stuff

that's going on at home. Just the same as it does for adults, it's not an excuse but it's like if there's an adult... you are struggling financially and you've got lots of problems and their debt in the household your boundaries are probably more blurred because for you to survive it probably has to be. So, children are no different, do you know what I mean?"

(Teacher P)

This reinforces a point acknowledged by teachers in the previous subsection (4.3.1.4.4) when their time with the students finishes each day, the same children spend the rest of the time mainly with their families or in the community with peers. This means that despite teaching and enforcing good behaviour in schools, external influences can affect a child's behaviour. Teacher P takes an even wider approach by drawing a comparison between adults and children and arguing that the external factors that push an adult to bad behaviour also influences children in the same manner. This could imply that children's behaviour can be influenced by the adults in their life and additionally, the same external factors that affect adults also may them. This makes them susceptible to bad behaviour on both fronts, especially as children often look to others, especially adults and peers, during the developmental stages of their lives.

"But I think the other kids witnessed him getting away with that, even though he wasn't getting away with it, obviously there were things in place. ...But it means the behaviour within my class now, they've seen somebody getting away with it, so there are a few of them, not all of them, there are one or two of them trying it more because they've seen that so they've learned that."

(Teacher EB)

"Some children do it to show-off to their friends, it is as simple as that."

(Teacher RT)

Here, Teacher EB deduces that one disruptive student had an influence on other students in the class who witnessed this bad behaviour. There is a sense of encouragement that students feel when they see their peers doing it and this is supported by Teacher RT's observation. These are examples where teachers explicitly attributed bad behaviour to a particular cause.

However, in most of the examples shared during the interviews, teachers did not make such deductions.

“...we do have some children who have been in trouble with the law, sort of vandalism and in school as well. We often have, obviously I am not saying this is everyone, probably a small percentage, but I would say 2-3% of children, specially at the top end of school, who you’ll see will be walking around punching walls, kicking a radiator.”
(Teacher JS)

“They're just small adults so all the things you come across in the real world, you come across in school. All of it. Absolutely everything. From anger, aggression, discipline, you just come across it all. So, you know people arguing on the street, kids nicking things from the shop, you come across it all don't ya”
(Teacher P)

“...that one wrong person saying something in the wrong way would cause them to react. In that heat of the moment, that almost fight or flight mode and then it is not until they have come out of that that then they were able to reflect. But there was no teaching about what would happen to them.”
(Teacher SK)

None of these quotes expressly attributes cause to the bad behaviour described. Instead, the recounting of these examples shows how random or erratic this type of behaviour can be, thus alluding to more intrinsic causes for such actions. Even though these words are not used in all the above-mentioned quotes, “anger” and “aggression” seem to be a prominent underlying cause. These emotions seem to cause strong reactions that lead to bad behaviour. The quote by Teacher SK explains this and makes reference to impulsiveness through the use of the words “react”, “fight or flight” and the fact that reflection takes place after. It is important to note that impulse affects everyone, but children are more prone to it due to their brain still being in its developmental stages.⁶⁷¹ Some impulsive behaviour that was deemed to be disruptive by teachers was attributed to special educational needs.

⁶⁷¹ Age of Criminal Responsibility Bill [2015-16]. HL Deb 29 January 2016, Vol 768, col 1554; Kathryn L. Modecki, Addressing gaps in the maturity and judgment literature: age differences and delinquency”, 32 *Law and Human Behaviour* (2008) 78-91.

“And then I think there are children, so um...children with special education needs, we’ve autistic children and children with ASD and ADHD, who just can’t help themselves even though they are 13, 14. Impulsive behaviour – it’s a condition they have.”
(Teacher NJ)

“Yeah, there’s people from my class whose behaviour has changed very much from last year. Like I taught them quite a bit last year, and his behaviour became very erratic this year because he’s got learning difficulties they kind of went down that route but they can’t explain expel somebody until they’ve gone through certain platforms. They have to go through these platforms first, but the language was disgraceful, he was throwing stuff around the classroom, some of the comments were aimed at people as well which was just awful.”
(Teacher EB)

These examples were mentioned when Teacher NJ shared their opinion on whether the ACR is set at an appropriate age and when Teacher EB narrated behavioural issues they experienced generally in school. Phrases such as “can’t help themselves” and words like “erratic” illustrated how this behaviour is caused by impulse. Notably, Teacher EB goes on to use some strong adjectives like “disgraceful” and “awful” to describe their student’s behaviour. This language is harsh to describe behaviour that can be attributed to disabilities and raises the question of how teachers described more serious and dangerous behaviour in comparison.

In light of this, the language used to describe behaviour of a criminal nature will be analysed and compared to the descriptions of disruptive behaviour.

Theft was cited to be one of the most common types criminal behaviour of those listed in Table 4.3. The following quotes narrate incidents involving theft.

“We have had a child who shoplifted...no he didn’t shoplift...stole things from members of staff and they have been arrested in school. Umm...but now...it’s opposite....supermarkets and school we get a lot of shoplifting incidents. Ummm..And poor behaviour in the shop...kids being, you know, rowdy, loud, damaging in the shop, shoplifting.”
(Teacher RT)

"I mean there was one that shoplifted from the local supermarket and I wouldn't have said that that was my place to take them back into the shop to take stuff back and to apologise. But it ended up being my responsibility because the parents weren't available or whatever. So, I ended up taking this child back over and kind of saying "so and so has done this" and I remember the supermarket saying "well if you're caught doing something like that again you'd get banned from all of the branches of the supermarket" which is a massive chain of supermarkets. So, to me, that frightened me. The fact that he's getting told this."
(Teacher EB)

"Even theft from school is quite a regular occurrence that kids will come into the classroom and take something. And again, if I catch them I have that conversation with them and especially if it's off my desk or something like that I'd say that "I wouldn't go through your pencil case. That is theft because you took that from me". And again, the sanction would be potentially a 10 minute break time, it's not going to be anything substantial. Whereas if you go out and start burglarizing places, it will be a bit more serious. I think kids get away with it because it's the same as that supermarket that didn't do anything about it really."
(Teacher EB)

Unlike, the words used to describe disruptive behaviour in the classroom, teachers used very few adjectives or opinionated words to describe criminal behaviour. The only words used to describe the behaviour in the examples above were "rowdy, loud and damaging" by Teacher RT, which referred to the disruptive behaviour rather than the shoplifting, even though such "poor" behaviour could be considered public nuisance. This seems to contrast the more toned-down references made to behaviour that could be in conflict with the law, where only one phrase, "frightened me", was used. All the other references were naming the act itself such as "shoplifting", "stealing", "theft" and "burglarizing". These quotes also showed that teachers viewed theft that takes place in schools and shops as examples of both bad behaviour and a criminal offence. In the second quote by Teacher EB, they clearly attempted to point out that stealing is theft and referred to the fact that it has serious consequences. These descriptions show that teachers view both types as serious acts that could potentially have legal consequences however, the sanctions imposed on children in both contexts were noticeably different. Teacher EB very strongly expresses their discontent with the sanctions imposed in schools as they do not consider it

to be “substantial” enough to have an impact on children’s understanding of criminal wrongdoing and bad behaviour.

Another common example of criminal behaviour that teachers mentioned was damage and destruction to property as illustrated in the quotes below.

“...it was quite a rough, at times violent, area. And we had a lot of contact with the community policeman and we had a very bright child, extremely clever academically but he had quite a hard side to him that wanted to cause damage. And it wasn't my doing, but we also had a community teacher and we had a community policeman who came in a lot, talked to the children mainly about keeping safe. But this child was setting fires, he was only 7 at the time, and he was setting fires and causing damage and destruction. With his parents' permission, he was taken down to the local police station and was told this is what will happen if you continue to do this and it was all very serious and then that night when the community teacher went out to her car, he had slashed all her tyres. So generally, the legal side was cold, you know, a policeman is somebody you can trust and "we are here to keep you safe" but this is what you should do to keep yourself safe. But generally, in the RE and PSHE lessons it was... "is it right or wrong" but not the legal consequences as a follow-up if you continue to behave in a particular way.”
(Teacher MM)

“Actually, just this morning I've been up to Year 6 because some boys had been... we've got this Perspex cover on the sandpit and some boys had been barging into it. And a couple of years ago another boy barged into it and broke it and it cost 400 pounds to replace. And so, I have been up to see the boys and said 'you know if every you've got 400 pounds, then if ever you break it then that's vandalism and you have to pay for it because you are both 10. And that's just...I've forgotten that I have said that. So, things happen...sometimes it's after the event as well as being proactive before the event. But yeah, I did. I said that this morning. That you could be charged for vandalism and you would have to pay for it. They were very red in the face and they were very sorry and they won't do it again...until the next time.”
(Teacher NJ)

The incidents described here have all been related to the damage or destruction to property caused by students. Both teachers recognised the criminal nature of the students’ actions. The involvement of the police in Teacher MM’s examples indicates this and Teacher NJ illustrates this through what they told the student when reprimanding them. When comparing this to the descriptions of disruptive behaviour, the teachers in

these quotes give less indication of their personal opinions on the behaviour as they do not use many adjectives to describe the behaviour. Instead, the only phrase describing the behaviour itself was “very serious”. From these descriptions it seems that when bad behaviour is criminal in nature then teachers use the legal name of the offence such as “vandalism” or other words meaning the same thing such as “causing damage and destruction”, to describe and convey the intended effect on the listener or reader. Whereas, teachers indicated through their language that disruptive behaviour needed more description to convey how disruptive they found it. In addition, Teacher MM, from data set 1, provides context to their example as they were describing an example from a “city school” they taught at previously which was located in an area that they described as “rough” and “violent”. This context is used to explain why the community teacher and policeman were involved. On the other hand, Teacher NJ, from data set 2, does not discuss context and goes straight into their example as they are drawing from a recent experience at their current school.

This is significant as it shows the difference in how the two teachers link the example given of bad behaviour to the law on the ACR. Teacher MM recounts the “legal side” as “cold”, due to the involvement of the police and the emphasis on the legal consequences to a student’s behaviour. The use of this word suggests that Teacher MM finds the “legal side” involving the police at odds with the message that the police are “here to keep you safe” and is someone that children should “trust”, hence the implied discomfort with it. However, Teacher MM also seems to acknowledge the importance of the “legal side” as the current provisions on “right and wrong” within PSHE and RE do not explicitly discuss the legal consequences of such actions. Bringing this up, implicitly suggests that informing children about the legal consequences could be useful when there is persistent bad behaviour, as seen in the case of the student from the example. This can be contrasted by the approach taken by Teacher NJ who goes directly into mentioning “vandalism” and the cost of replacing the Perspex to the students involved. Here, no reference is made to the police but rather the teacher takes this opportunity to discuss the “legal side” with the students

to make them aware of the seriousness of their actions and the consequences that could follow. The narration of these examples from both these teachers from each data set show how one set of teachers are more readily prepared to bring up the ACR, whereas others may have some hesitations and may feel that it is “cold” or unnecessary until the behaviour calls for it.

Another point that is brought up in the example by Teacher NJ is information children are given before such an instance of bad behaviour (“event”) takes place and what they are taught after it. The example here describes the teacher mentioning the relevant criminal offence that such behaviour could amount to and the consequences applicable to them as a result of the ACR. Notably, this takes place only after the act. The timing and the description the students’ response to it, suggests that mentioning such information to the students was used as a way to discipline them and it seems to form part of the sanction for such behaviour. Even with this, teachers found it difficult to say for certain that children fully understand what is meant by criminal responsibility. This is because they found that children do not necessarily think about what their actions mean or what they could result in, but instead assume that the consequences may not apply to them. Hence, the seriousness of their actions is not always understood. This is described in the quote below:

*“I think one of the problems we have is that they think it doesn’t apply to them. ‘Oh yes, when you’re 10 you can be charged with an offence’ but with anything they are young and they are untouchable. And they think it won’t happen to me. Not all of them, but some of them think that this doesn’t apply to me. I am not going to get caught. Or things I do aren’t going to be a crime...they don’t see it as that and so if something does happen. There’s been some name-calling...that can be a hate crime. You called someone a name because of the colour of their skin...you’re 10 now and that is a hate crime. So then, you bring it up again, sometimes the penny drops and they think that this is quite serious now.”
(Teacher NJ)*

This illustrates doubts that teachers have about the effectiveness of such a disciplining process as indicated by the quote prior to the one above which suggests that “they won’t do it again...until next time”. Here Teacher NJ makes it clear that repetition is an important part of ensuring that they understand. However, in schools where these are the only instances where the ACR is mentioned, this may not be as effective and therefore the impact of sanctions needs to be considered. The most common forms of punishment given in schools for bad behaviour as outlined by the teachers were detentions, sending students out of class (which not always seen as a punishment by children), school exclusions (only in extreme cases), calling parents (usually used as a part of other punishments), and exclusion from events like school trips. In spite of this, some teachers mentioned how children may not be concerned about the punishments given in school as they do not view them as very severe. This could be because schools were found to warn students with punishments without following through on what they say. Linking this back to Teacher EB’s concerns about the effectiveness of sanctions given to students in schools and teachers questioned whether it prepares children for the world outside school.

“Yeah, I think you have to be careful because it’s not, if you are going to say something to these kids, you have to follow through with that, because otherwise, they won’t ever have that understanding that if I am being warned about something, they will get the consequences...I am trying to word it. Their consequences won’t ever be sort of, followed through and that is bad for them, because if they go out into the world, they’ll think that’s okay, they can do what they want.”
(Teacher JS)

Therefore, many teachers emphasised taking a proactive approach by following through with sanctions they warn students of and informing them of the real-world implications of their actions. The interview caused teachers to reflect on the difference between the consequences of bad behaviour inside versus outside school. They claimed that taking part in this study made them notice how school acts as a practice arena for children to learn about the consequences of their actions however, the link between

children's actions inside school and outside school is not made as clearly as it could be.

“But one thing I think about is...it's funny that within school, if something like that happens, its not treated as a crime...it's a behaviour thing. But had they broken something outside of school it becomes a crime and I don't think we are making that link because...so the boy that broke it two years ago...we didn't phone the police about that, we dealt with it in school. But actually it was vandalism...he'd broken it but for some reason those crimes don't happen within school and that's just dawned on me and I don't know why that is. So if somebody does...umm..call somebody a name for their disability or whatever...it's not...we don't ring the police as a hate crime, we deal with it in school. We don't call the police to deal with that.”
(Teacher NJ)

Due to the difference in the way actions are dealt with inside and outside school, children may be left with a lack of clarity on the consequences of their actions, especially without direct discussions on the ACR taking place in schools as indicated below:

“It is such a huge jump from going from behaviour system in primary school, for example, where certain choices that they make end in consequences through our behaviour system and ultimately it is the next step up, isn't it? If you break the law, then you have consequences for that. If you break our school rules, there is a consequence for that.”
(Teacher SK)

“I mean we dealt with it...there's consequences for those in schools just as there are consequences outside school...but the consequences are different and maybe we are giving them mixed messages in that sense.”
(Teacher NJ)

Both these teachers express concerns over what consequences of bad behaviour are outside school versus inside it, as they perceive it to be “different” from each other. Teacher SK calls the consequences to bad behaviour outside school a “huge jump” from the sanctions given in schools. Differences in the consequences that children can receive within the school context and outside it presents a gap, and this is one that does not seem to be bridged by the information given to students in schools. Teacher NJ makes this clear by posing the question of whether children are receiving

“mixed messages” due to the difference in the responses and sanctions received inside and outside school. It is worth noting that Teacher NJ works at a school where the ACR is more explicitly discussed with students, so this question coming from them elucidates how wide the gap may be in other school contexts. Most teachers seem to hope that by educating children on right and wrong and getting them to practice good behaviour in school, children will learn to respect rules and act responsibly both inside and outside school. However, the fact that teachers claim that children between the age of 7-14 may not foresee or understand the consequences of their actions and behaviour, especially outside school, implies that they lack sufficient understanding of criminal responsibility. Children will need more than just surface-level knowledge and understanding of the ACR to avoid confusion and uncertainty around why the same behaviour inside and outside school can illicit different repercussions.

4.3.3 Suggestions for Incorporating the ACR

Ten out of the Twelve teachers who were interviewed did not teach ACR at their current and previous schools, therefore they did not have any experience of explicitly teaching the ACR. The other two teachers mentioned two schools from all their teaching experience that made attempts to inform students about the ACR. In these schools the ACR was usually brought up by police officers or someone from the fire service when they visited these schools to give talks on different types of crime such as cyberbullying, theft, arson, knife crime and substance abuse. Although teachers from other schools also mentioned having talks by police officers, they were doubtful about whether these talks explicitly mentioned the ACR, unlike these two schools where reference to it was clearly made in relation to the crimes discussed. Nonetheless, bringing in someone from outside school was perceived by all teachers to be an effective way to teach children about the ACR, as outlined in the quotes below:

"I think they'd probably be interested if you can get somebody in to come because they pay more attention to that than just somebody from school talking on and on. You know what I mean?"
(Teacher P)

"It is a memorable experience for them and so when something happens further along the lines, you can say 'remember when PC so and so came in and he talked to us about...' because they remember the events when people come it. It's harder for them to remember a specific lesson because there are so many of them. But a police officer coming into the room. So we can say 'remember when he came and he spoke to you about..' So it is important that they have a memorable experience that they can refer back to."
(Teacher NJ)

It was found that hearing from their own school teachers about criminal responsibility may not be an impactful way to inform them about the ACR. Instead, teachers recommended bringing in persons from outside school as a novel and memorable experience to add to their day-to-day learning. All teachers had a similar thought process, and this recommendation was confirmed by the two teachers who had experience with implementing this method in their schools to teach the ACR. The only other place in which these two schools referred to the ACR was in assemblies. This was usually brought up in relation to certain topics or core values discussed in assemblies. Both these examples, namely, talks by external members of the community and assemblies are "add-on" suggestions for incorporating the ACR into teaching in schools. By "add-on" I mean that it is a one-off session that is not integrated into the school curriculum, and it is heavily reliant on sources from outside the school. This suggests that it will only be brought up on these rare occasions. The issue with this is that although it may be a more memorable experience, it may not be reinforced through the general teaching that goes on in schools unless teachers make the effort to do so. Consequently, this could have an impact on the overall effectiveness of such an education.

"...I think it's a lot of repetition. Whatever you do you've got to repeat it and you've got to explain it and it's never straightforward if they hear or listen. And even if they hear they're not listening. Yeah, it's repeating constantly whatever we're doing and just to make it fun and getting them involved. Yeah, just try to get them interested in what you're doing."

(Teacher CF)

This quote shows how repetition is a key part of making sure that students in this age group understand what they are taught. Based on this, relying solely on assemblies (only those where the topic is relevant to the ACR) and talks that are not a regular occurrence to teach children about their criminal responsibility may not allow for sufficient repetition of this content. Teachers shared that they need to repeat information to make sure the children understand what the ACR means and to ensure that the message does not get affected by what they hear outside schools from family and peers. Teacher CF also highlights that doing something that is fun and interactive with the students is important so that they are interested in what is being taught, thus making them more likely to engage.

As most teachers did not teach the ACR, I asked all of them what their suggestions would be for teaching children aged 7-14 about criminal responsibility. The following list was made from all the interview data gathered to succinctly summarise their suggestions:

- Social media or internet-based tasks
- Drama/role play
- Workshops where children can engage with match-up tasks, case studies, scenarios to discuss and get them thinking
- A talk about the ACR in assembly at the start of the school year for Year 5 and 6 students (ages 9-11).
- Bringing individuals from organisations to talk to the children like the police, fire services, or possibly even an ex-child offender. The example of external organisations like theatre groups who came to schools to talk about drugs and conversations was also mentioned as an example.
- School trips to the police station, fire station, courts, or visiting a model prison cell
- Circle time to raise awareness and have discussions

- Discussions with students on news or recent events to bring up the ACR.
- If there are any programmes run by services like the police to inform children on the ACR then schools could run them.

Some of these suggestions were mentioned as stand-alone activities whereas others were brought up under the umbrella of a few main subjects such as PSHE, RSHE and BV. PSHE was the most common subject under which activities like workshops, role play, circle time, and discussions on certain topic/scenarios were mentioned.

“I would say, like sort of stuff we do. Like, sort of, lessons in PHSE using stuff like case studies but I think the most effective way would be through workshops, possibly even getting children in who have possibly been, you know... what’s the word I am looking for?... prosecuted or been through that criminal process? I think nothing is more hard-hitting than someone saying ‘I’ve been there, done that’ when they see it live and in the flesh. I do think that would be a good way of doing that across the country, especially in challenging areas. You know, if a teacher says, ‘oh you shouldn’t do this’, they may not take it in as much.”
(Teacher JS)

“It would have to be done through, PSHE or Life studies as we call it. That would be a lot simpler. I think it should be incorporated into there. But it should be...I mean as they reach that age maybe it should be incorporated into the assemblies and ummm....I can’t think of any other way really to get it through. It would have to be through Life Studies, really.”
(Teacher RT)

The quote above provides another example of why PSHE is one of the main parts of the curriculum that teachers refer to when they think about teaching children about the ACR. This seems to be because it covers a wide range of content including topics like right and wrong, safety, responsibility, and making good choices. All these topics could easily relate to criminal responsibility, and here both Teacher JS and RT are suggesting to make the link between the two through the suggested activities as a way to incorporate the ACR into the school curriculum. It was also claimed that a similar link could be made between the ACR and RSHE (referred to as RHE in the quote below).

“I think it could definitely fit into the strand of RHE education side of things just because that’s something that we cover already but it could be a strand within that. We should make that manageable for schools so that it is not something completely new that we would have to teach that side.”

(Teacher SK)

This quote emphasises the strength in making links between the ACR and existing parts of the school curriculum like RSHE to ensure that criminal responsibility is covered as a topic in schools. The intention behind this “fit” is to make the addition of a “new” topic like the ACR more “manageable” for schools without it being considered an additional topic on the side. This example shows how fitting the ACR into existing parts of the curriculum (subjects such as PSHE, RSHE and BV) through the suggested activities can weave the topic of criminal responsibility into various sub-topics within a few subjects. Such weaving could allow for more repetition and therefore ensure better coverage rather than relying on one-off events like talks, presentations or assemblies.

From the descriptions given by teachers of these various suggested activities, it seems like they are all things that they have used before to teach other topics due to their familiarity with it. Although, teachers will need consider how they use it to teach children about criminal responsibility, it seems like they are all suggestions that can be easily implemented. Some of these ideas shared by teachers can be seen below:

“Yeah, a workshop more so that they are working through. They can see the cause and consequence to the actual action or behaviour. Even if it’s like a match-up task, I’m sure you can make it a bit more fancy than a regular match-up task. How long would you get for this? Can you rank this? What would be the most severe?”

(Teacher EB)

“So, you know, probably going across and looking at case studies or even looking at sort of at ‘here’s a scenario or character and they have seen these things’; almost putting their life into context. Could be some young boy who has got older siblings who go out and commit crimes. A father who is an alcoholic, a mother who is taking drugs and then kind of saying, ‘what would you say to that person?’ and it kind of de-personalises it for them a little bit so that they can think about it logically

and then, I think they can think about it and then toward the end they might put it into context for them. 'Well actually my life is like that a little bit. Maybe I am making those choices? Am I saying those things?'
(Teacher JS)

Notably, these suggestions were produced on the spot without much thought given to it prior to the interview. This suggests that these activities could be easily carried out as it follows a similar mould to the other topics of a similar nature. The complexity, however, lies in the nature of the topic as one teacher summarises in the quote below:

"I think the use of role play and acting out different scenarios and talking about what might happen next. About the consequences and things like that. I also think maybe like a school trip to a local court of police station or something just... I think having that experience of what that's like, what's expected of them, what might happen if that happens. I think something like that I think is quite hard to teach in terms of... obviously it encompasses such a wide range of things, I think just teaching them that kind of sense of morality; talking about what's right and what's wrong. I think that would hopefully stand them in good stead and they'd be able to have that kind of train of thought before they act; thinking about what is right and what's wrong. I think it's quite a hard thing to teach."
(Teacher MR)

The repeated use of the phrase "I think" implies that there is still a lot of uncertainty around the subject matter of criminal responsibility and how to broach the topic with students in an effective and sensitive manner within the confines of the basic school curriculum. Despite, making some feasible suggestions on how to teach the ACR, Teacher MR mentioned the word "hard" twice in their response to the question on how they would recommend teaching the ACR. This illustrates how they perceive the ACR to be a complex concept that needs to be grasped on many levels such as understanding right or wrong, what is expected of them as a result of that, the consequences of one's actions, and going through this thought process prior to acting. This indicates that although valid suggestions have been made, there are details around teaching the ACR that still remain quite vague. This is not just in relation to the content but the technicalities of teaching like, for example, none of the teachers mentioned how they plan

to check children's understanding of the ACR and its development over time, as seen with the attainment targets set in all the curriculum subjects. They also gave no indication as to whether they would be prioritising teaching children about the ACR even though it is relevant and applicable to all children from the age of ten. One teacher specifically mentioned which age group they would specifically teach the ACR to as illustrated below:

"I think maybe initially at the start of the year when they're turning from 9 to 10, to be fair, would be ideal for us because it's like the start of year 5, having like a workshop or something around the fact that they are now going to be that age and that's now something they are responsible for. What sanctions would you get in the real world if you went and shoplifted in Morrisons."
(Teacher EB)

This was the most explicit suggestion provided in all the interview data as indicated by the type of activity, the direct coverage of the topic (not brought up in relation to another topic) and the specified target audience for this workshop. However, linking this back to an earlier quote by Teacher CF, it is questionable whether one such workshop would be sufficient. The following quotes take a wider approach from the abovementioned suggestion.

"Obviously, you wouldn't give the hard-core content, but I think it needs to start from as soon as you get them into school what right and wrong is maybe? and then you can build up to like 'look this is what you can be responsible...' or what responsibility is. So, you can have a thread of it all the way from the bottom up and I think that would be the best way of doing it and I think that is for most things."
(Teacher JS)

"Yeah, I think as a school you need to have a vision that everyone has agreed upon. I think by the end of year 6 when the children are leaving your school, what will they know? what will their values be or some of their values be? And I think like a whole school agreed upon approach would probably help towards that [teaching the ACR]."
(Teacher MR)

Here, we see that Teacher JS is suggesting that the ACR should be woven into the school curriculum starting from the early years of primary school all the way up to the older year groups. As they suggest, taking an incremental

approach that starts off with topics related to the ACR can be a way to develop children’s understanding of criminal responsibility slowly so that once they reach the ACR at the age of ten, they have greater awareness of what the responsibility entails. Although it can be interpreted that this suggestion comes close to dealing with the issue of checking children’s understanding of the ACR as it develops by breaking down the doctrine of criminal responsibility, it does not address it directly. It does, however, provide scope to do so if the ACR is prioritised as a topic within schools. One way to prioritise the ACR is mentioned by Teacher MR, who recommends taking a wider, whole school approach. They highlight the important role the vision of a school plays in laying the foundations for incorporating the ACR into the education they provide to their students. This was supported by the two real-life examples, mentioned by Teacher AN and NJ, of schools that include educating children about criminal responsibility as a significant part of their school vision to ensure that children are made aware of this pertinent legal responsibility.

Looking at the variety of suggestions mentioned by the teachers, two categories of activities can be found, one that the involve teachers’ informing children about the ACR, and the other where external organisations or individuals take on the role of teaching the ACR. This is summarised in the table below.

Table 4.4. Teacher-led Activity vs External-led Activity

Teachers running the activity	External individuals or organisations running the activity
Drama/role play	Presentations/Talks by police or fire service
Social media or internet-based tasks	Theatre Groups
Workshops -including case studies, match-up tasks, scenarios to discuss.	Programmes run by organisations on legal issues
Assemblies	School trips to court, prison, police station, fire brigade etc.
Discussions – Circle time, recent events etc.	

Here we see that there is a fairly even split between teacher-led activities within school and those run by someone external to the school. This

indicates that teachers' suggestions for informing children about the ACR heavily relies on external individuals. As mentioned previously, this could largely be due to the greater impact that someone from outside school would have on their students as a result of the novelty and memorability. This was a common perception amongst the interviewed teachers. The reliance on external individuals could also be attributed to their uncertainty around what they would and should teach in relation to this topic as they themselves may not have much knowledge on criminal responsibility. Moreover, none of them mentioned having learnt anything about it during their teacher training either, so the onus lies on the teachers to find out more about this responsibility and how to teach it without any guidance from curriculum documents. This would lead to more work and pressure in relation to teaching children about the ACR and hence, could explain why they would opt for others to teach their students about it.

Notably, the suggestions involving external individuals are activities that are already used by schools to inform students about other topics that may be related to learning about crime such as cyberbullying, drug use, domestic violence, and online safety, to mention a few. The ACR could easily be included within these activities due to the similar nature of these topics. It would also be easier to implement this suggestion as the information would be coming from individuals who have more knowledge of the law on the ACR because of the nature of their jobs, which would usually involve law enforcement or specialist knowledge of the law relating to the ACR. Therefore, the large number of references made to talks/presentations by the police or fire services suggests that teachers feel more comfortable with the information on criminal responsibility coming from those external sources whilst, they lead activities to get students thinking about the concepts related to criminal responsibility, such as right and wrong, responsibility, and decision-making. Notably, these are topics that are already being addressed within the current curriculum so that the ACR can be woven into the existing curriculum framework through the teacher-led activities suggested.

Overall, most teachers expressed that children should be educated or made aware of the ACR as ignorance of the law is no protection. As there is currently no provision for this in the curriculum or other external programmes available as per their knowledge, the onus lies on schools or individual teachers to teach the ACR through their own initiative. Although suggestions were provided, teachers' responses made little comment on the effectiveness of any of these methods in terms of educating children 7-14 about criminal responsibility in a sensitive and timely manner. Instead, the main priority seemed to be suggesting activities that would get students to interact with the material in the hope that it would lead to better awareness of the ACR. As a result, many of the suggestions deferred teaching children about the ACR to external sources, especially the police.

4.3.4 The Role of the Police

During the interviews, teachers made many references to the police in relation to the ACR. The findings discussed so far have already mentioned them a few times in different contexts but in this section the unique position of the police in relation to educating children about the ACR is analysed. One context that has already been mentioned briefly in the previous subsection is the role that the police play in informing children about the ACR. The most cited way in which they can do this is through talks or presentations that they are invited to give at schools about the police service, their role to protect and keep society safe and to discuss specific topics such as online safety, bullying, and domestic violence, to mention a few. Many teachers mentioned this as an example of how students learn about topics related to criminal responsibility, like discussions on specific types of crime and law enforcement. This way the police can make links between some key topics in their presentation and the ACR to inform children about a law that is specifically relevant to them.

“During careers week, the school had a police officer come in to talk about their job and things related to their job like what it is like in a prison. Many students in this school were of the notion that prison is not as bad as it is made to seem, as their family members gave them a different

impression. This was to give these children a reality check. They also go over sentences and discuss whether the punishment fits the crime to raise awareness.”

(Teacher AN)

In this context, Teacher AN also explained that the police officer conducting these talks made links to the ACR upon the school's request. Making the link between the ACR and these topics is a crucial element, as otherwise, these talks would have a similar effect to other topics related to the ACR that are covered within the curriculum, where the link between the two is not mentioned. An example of this is shown below:

“Yeah I think especially... my previous school in that area that was... every year our local PCSO would come in and talk to each class and they sort of recognised him because he'd be in that area quite a lot but then he was more an informal discussion rather than a workshop or anything. But he would take questions from them and a lot them were based around social media but yeah when he did come in a few of the class already knew him by name because obviously they'd already had interaction with him at home or on the streets or wherever.”

(Teacher MR)

The quote here shows that these talks can be quite informal and is used for the purpose of familiarising the students with the police and their role in the community. Without explicit connections made to the ACR in police talks, the purpose and intention behind them may mean that criminal responsibility is not discussed in this context, even though there is sufficient scope. Teachers also mentioned how the police can teach children about the ACR through their presence in situations where bad behaviour or wrongdoing has taken place. For example, the police are usually called parents or schools if an incident requires their presence. In such situations, the police would come in to have an informal chat to warn children about the consequences of their actions and consequently, mention the ACR.

“You know there have been times where have had to call the police and say, ‘look, they’ve done some damage to the school’. That is also for them to realise as well that that is not right and obviously for the parents to get involved. So, we have had it there, but we have also had instances, obviously I can’t say too much, but outside of school where children have committed crimes and the police have been called. I think it always ends

with a kind of warning, a talking around, more of a rehabilitating thing, you know, but it has never been something serious that it would go to court and that but they do certainly get involved and stuff like that.”
(Teacher JS)

Here, Teacher JS shows that involving the police when wrongful actions have occurred helps children realise that what they have done is not right and demonstrates that such actions have serious consequences. It brings in the legal side of such actions in a more direct and relevant manner. In light of this, teachers also explained how they brought up the police in conversations with children to inform them about the consequences of their actions without actually involving the police.

“I don't think... There's times that people will do things and you'll say like, you know if this had happened outside of school and they've rang the police, you could get arrested for that. This is pretty serious stuff and they don't understand that, I don't see that. I don't think they've got an understanding of it.”
(Teacher EB)

Teacher EB makes it clear in the example that their students do not understand the legal consequences of their actions. They make a distinction here between the consequences of children's' actions inside and outside school by explaining the legal implications that take effect, especially if it had taken place outside school. In order to teach their students about their criminal responsibility in such cases, police are mentioned to explain the seriousness of their actions. This is mainly due to the influence and role that police officers play in society. This shows how police officers are seen as both educational figures through their talks/presentations and symbolic representatives of the law.

Teachers also mentioned a correlation they noticed between areas with greater police presence and children's awareness of the ACR. They felt that in areas where there were often more police, children were more likely to be exposed to criminal law concepts including the ACR.

“I think the other side of it they get is through their family because where I work is very, sort of, underprivileged and they'll know about the police,

like it will be like a regular occurrence. You'll see like a child from a privileged school in Gosforth somewhere, they probably would never have dealt with a policeman unless they visit. Whereas, the kids I work with will see police on their doorstep, they would have seen police coming through their door, interviewing their parents, they would have seen crime a lot. So, I think they get it from that, actually this is a bad thing but it might work the other way, a little bit where they think it is a normal way of life. So, they get that exposure [to relevant law, like the ACR] that way, I think."

(Teacher JS)

"Sometimes I think the background of the children can kind of aid or hinder that [knowledge of the ACR]. Because I know in my previous school it was in a very deprived area and obviously that meant, unfortunately, that a lot of the children in there had already had dealings with the police, with different kinds of services. So, when we were talking about different scenarios in that respect and consequences and just the rule of law, they I think had a lot more experience to draw on..."

(Teacher MR)

These quotes explain how police presence in the lives of children either through the area they live in, their parents, or both, can have an impact on the exposure they have to criminal law and law enforcement. As Teacher MR recognises, this could either "aid or hinder" their understanding and impression of the law as they explain further in the following quote:

"I think that relationship between the people that live there and the police... obviously most of the time it's quite positive or it can be quite positive but I also think it can be quite negative as well and if that attitude is rubbing off on the children then obviously that can affect the way they view the law and the way they view police and their role in society really. But yeah, I think it will differ massively from school to school and class to class."

(Teacher MR)

According to teachers, the relationship between the police and the community that students belong to affects children's attitude towards the law. This is because the police are seen to represent the law and therefore, children's impression of the police from their dealings with them, will influence their understanding of the law.

"The police up here, it's seen as the authority figure, and we see them so rarely up here that it's like "ooh I saw a policeman today". Whereas in

the city school, they were always there. There were often incidents where they would be called out and that was a telling thing in the city schools. It would be, if the child had done something and you were maybe reprimanding them or something... [child to policeman] "oh you can't touch me", "you can't do anything about that". Whereas up here, it'd be totally different, they'd [children] take it on board straight away and stop. Up here it would be something very slight, whereas in the city school you could expect violence."

(Teacher MM)

This shows Teacher MM's impression of how children from different areas view the police and how they respond to law enforcement. The interview data shows that this was a common perception expressed by teachers. In relation to this, children from more deprived areas with greater police presence were described as "savvy", "street smart" and "aware" of the law. On the other hand, teachers claimed that students from catchment areas with less criminal activity (usually village schools or privileged areas) were often found to be unaware of criminal law and how it is enforced. As a result, they were described as "sheltered" and concepts of criminal law were "far removed from their radar", "alien to them", or "theoretical" knowledge to them.

This illustrates the unique position that the police hold alongside schools in educating children about the ACR, as representatives of the law in society. Teachers recognised this position and expressed their wish to use the police to support them in teaching children about the ACR.

"Maybe it might be helpful if there was a bit of a closer connection between us and the police or whatever and they can talk to the children about, well you know, if this happens this is the process we would go through. I think it needs to be real for them to really take note."

(Teacher JH)

Here, Teacher JH explicitly mentions that a "closer connection" between schools and the police would be "helpful" in developing children's understanding of criminal responsibility and what it means. A prominent part of this connection that teachers referred to is the impression that the police make on children during their interactions with them. Teachers within the

interview sample had differing opinions on what is the most effective way for police to come across. Some felt that the police should come across as approachable so that children understand that they are there to protect them as explained in the quote below.

“...at this school, the only time that they really see the police is if the police come into school to do a talk. So, we have had that before where they will come in to make themselves known because I think that our parents will use the threat of calling the police and that is the complete wrong tact to go down because then the children see the police as people who are going to come for them, not people who are going to protect them. So then that is why the police come in to speak to the children to say that we are here to keep you safe and that they are there to protect the community.”

(Teacher SK)

Many teachers in data set 1 had similar opinions on this issue. This is mainly because the students at their current schools do not have much interaction with the police and so they did not want the impression the police make to be threatening or unfriendly. In contrast, teachers from data set 2 wanted the police to give their students an impression of how serious the law can be if they behave badly and engage in wrongful actions.

“Sometimes they do but they take their coat off and they are overly friendly with the kids so I think it needs to be more authoritarian and they come in and actually do it properly rather than it just be like "I'm Dave...". I think they need to know that police can be approachable if they've got a problem, but they also need to know that they're there for a reason. It's not just being a pal.”

(Teacher EB)

The main point that stands out here is Teacher EB's concern that police officers are not impressing upon children the seriousness of the consequences if they act wrongfully. During the interview this teacher also explained how their students did not take sanctions imposed upon them seriously as the school did not enforce them very strictly. This could explain why they felt the police had to take on a more “authoritarian” role to regulate children's behaviour and avoid them coming into conflict with the law.

Overall, these findings show that teachers place a strong emphasis on the police and the role they can play in teaching children about the ACR. These accounts illustrate that all teachers perceived the police to be a common link between the law (ACR) and schools, therefore, it strongly indicates that they are looking to share the responsibility of educating children about the ACR with the police officers. The reasons for this were not mentioned however, it was evident from the descriptions that teachers viewed the police to be better placed to inform children about the ACR in many of the instances discussed above. This gives the impression that if the ACR is to be taught in schools, teachers will look to collaborate with the police and involve them in an educational role. However, it is important to note that the current role of the police is limited to one-off talks/presentations or the rare occasion when there has been a serious incident.

4.4 Conclusion

This chapter has presented the findings from my analysis of the relevant curriculum documents and the interview data. The most prominent finding from the document analysis was that the ACR was not covered as a topic or even explicitly mentioned within topics in any of the curriculum documents. This included both the compulsory aspects of Key Stage 2 and 3 education such as RSHE, BV, Citizenship in Key Stage 3 and RE, and the optional ones, like some topics within PSHE, Citizenship in Key Stage 2 and CRE. Alternatively, other concepts taught within these subjects that could contribute to children's understanding of criminal responsibility were identified from the document analysis. These concepts are responsibility, right and wrong and the role of law and the legal system. However, notwithstanding the similarities and obvious links between these concepts and criminal responsibility, no connection is made between the two.

Correspondingly, most of the interviewed teachers explicitly stated that they do not inform their students about the ACR. Instead, they explained that they teach other subjects that could encourage responsible behaviour and encourage good citizenship. These included concepts along similar lines of

right and wrong, responsibility, and rule of law. Instilling such knowledge could contribute to children's understanding of criminal responsibility however, without making a direct link to the ACR, it remains in the mind of the teacher and is not conveyed to the children. It was found that the likelihood of this link being made depends on how relevant teachers think the ACR is to their students. The only other context in which most teachers said they may mention the ACR is when a student has engaged in bad or wrongful behaviour. Based on the data analysed the ACR was only explicitly brought up on very rare occasions where something serious had already taken place, therefore the descriptions by teachers suggested that this was mainly used for the purpose of warning or reprimanding students rather than to help prevent such behaviour through educating them about it beforehand. The final part of the chapter presents teachers strongly implied that the police naturally play a role in educating children about the ACR, thus potentially shifting some of the responsibility for informing children about this law onto them.

Chapter Five: Discussion

5.1 Introduction

Having addressed whether the current provision of compulsory education informs children between the age of seven and fourteen about the ACR (RQ1) and the extent to which it contributes to their understanding of criminal responsibility (RQ2) in the previous findings chapter, here the primary focus will be on my third research question. This question relates to whether it is still valid to argue that the current ACR, set at the age of ten, is rational by virtue of compulsory education (RQ3). Hence, this chapter will look more deeply into the role of education in informing children about criminal responsibility by linking the findings of this study to some of the main grounds for raising the ACR discussed in my literature review (chapter two). In the first part of this chapter, I will use my findings to evaluate the appropriateness of the current ACR from an educational perspective by using three previously discussed grounds for raising the ACR. In turn, the emphasis placed on the role of compulsory education in preparing children for this legal responsibility will also be evaluated using these exploratory findings. The next section will outline some of the barriers to children accessing knowledge about the ACR in compulsory education that were deduced from the data gathered and analysed in this study. Following that, the chapter concludes with a discussion on recommendations that can better ensure that children are informed of the ACR before and after reaching the age of ten, so that a more child-centric and holistic approach can be taken to this legal responsibility.

5.2 Evaluating the ACR based on my findings

In Chapter two, the literature review critically discussed a few main grounds in support of increasing the ACR in order to highlight why the current age of ten is problematic. The first ground that was considered was entitled “age, development and decision-making” and it was focused on the capacity of the child to be held criminally responsible as an agent in

society.⁶⁷² Other grounds include inter-jurisdictional consistency, compliance with international human rights obligations, intra-jurisdictional integrity and social factors.⁶⁷³ In order to evaluate the appropriateness of the current ACR in England and Wales based on the findings from my study, I will be focusing on three of these grounds, namely, “age, development and decision-making”, “intra-jurisdictional integrity” and “social factors”. For the purpose of this chapter inter-jurisdictional consistency and international human rights obligations compliance will be left out as the remit of my case study located in North-East England, could not relate to these grounds, that focus on international standards, in a substantial manner. The findings from my study will be used to corroborate and further explain these grounds for raising the ACR from an educational perspective.

5.2.1 Age, Development, and Decision-making

Age is used as a statutory indicator of sufficient competence or capacity to hold children responsible for any acts that are criminal in nature despite, prominent research conducted by the Royal Society confirming that at the age of ten they are still undergoing “...changes in important neural circuits underpinning behaviour”.⁶⁷⁴ This biological aspect of capacity has not been recognised by the law on criminal responsibility,⁶⁷⁵ as children are not provided with any defences that reflect their level of physical and mental development, while general defences like automatism, intoxication and insanity can be used by adults to establish a diminished capacity to be held responsible for their actions.⁶⁷⁶ I would argue that the current ACR narrows

⁶⁷² Scottish Law Commission, *Report on Age of Criminal Responsibility* (Scot Law Com No 185 Stationery Office 2002).

⁶⁷³ Barry Goldson, 'Unsafe, Unjust and Harmful to Wider Society': Grounds for Raising The Minimum Age of Criminal Responsibility In England And Wales' (2013) 13 Youth Justice.

⁶⁷⁴ Royal Society, *Brain Waves Module 4: Neuroscience and the law*, December 2011, page 13.

⁶⁷⁵ Age of Criminal Responsibility Bill [2015-16]. HL Deb 29 January 2016, Vol 768, col 1554

⁶⁷⁶ Claire McDiarmid, 'After the Age of Criminal Responsibility: A Defence for Children Who Offend' (2016) 67 Northern Ireland Legal Quarterly; Dennis Baker., *Glanville Williams Textbook of Criminal Law* (4th edn, Sweet & Maxwell (UK) 2015).

the threshold even further because unlike these general defences available to adults in criminal law, being a child with evolving capacities is not an illness or a condition but a natural part of their development with age.⁶⁷⁷ By not taking such factors into account the current law on criminal responsibility makes the threshold lower and stricter, as it seems that merely basic knowledge of right and wrong in relation to an act is sufficient to attribute criminal responsibility.⁶⁷⁸ This raises the question of whether in practice children aged ten and above are able to meet this requirement. Although this was not one of the aims of the study, speaking to the teachers and analysing curriculum documents shed some light on what children are being taught in school in relation to this.

Notably, the teachers equated right and wrong and criminal responsibility with each other, in line with the government's reasoning for the current ACR, even though they were unaware of this being the legal threshold. When teachers were asked about whether they think children between the age of seven and fourteen have the capacity to be held criminally responsible, almost all teachers brought up how their students in this age range have some understanding of right and wrong. However, it was found that the majority of teachers were unsure of whether children have the capacity to be held criminally responsible as young as ten. They claimed that some students were quite mature and perhaps could be capable of understanding their criminal responsibility, but their main concern was many students, despite being able to distinguish between right and wrong, were unlikely to foresee or consider the consequences of their actions.

As a result, teachers were often unable to give a clear-cut answer to whether children in that age group have sufficient capacity to be held criminally responsible, because they found that children may not understand what it actually means and their ability to take responsibility

⁶⁷⁷ Raymond Arthur, Exploring childhood, criminal responsibility and the evolving capacities of the child: the age of criminal responsibility in England and Wales, Northern Ireland Quarterly, 67 (3); Royal Society, Brain Waves Module 4: Neuroscience and the law, December 2011, pg 13.

⁶⁷⁸ *C (A Minor) v DPP* [1994] 3 All ER 190

varies depending on the individual student, their level of maturity and the class they are in. These differences in development and maturity made it difficult for them to say that all children have a uniform level of understanding as the law on the ACR seems to imply. Moreover, the level of understanding that children possess seems to be affected by factors such as learning difficulties, Special Educational Needs (SEN) and the impact of family background on behaviour. Therefore, there was a divide in the data set between teachers who felt that children around the age of ten were legally conscious and mentally developed enough to understand their criminal responsibility and those that felt like children may look like they are, due to their physical attributes but internally are not. Teachers with the former opinion associated it with children's exposure to things they see online and outside school whereas the latter, believe that children try to act older than they really are.⁶⁷⁹

Thus, this raised doubts in their mind about the current ACR and children's ability to make rational decisions based on an evaluation of their actions and the consequences that may follow from it. This observation by teachers is in line with evidence from neuroscientific studies which state that children between the age of seven and fourteen are still undergoing major developments in their pre-frontal cortex, which is in charge of controlling behaviour, their ability to perceive risks, understand consequences, control over their impulses and emotions.⁶⁸⁰ In fact, when compared to standards of evidence in medicine in relation to consent, the inability to understand alternatives and foresee likely short-term and long-term consequences to actions would not meet the threshold required, whereas the threshold for holding children responsible is much lower in a criminal context.⁶⁸¹ Therefore, this illustrates that although children are taught about right and

⁶⁷⁹ Please see Section 4.3.1.4.4 entitled "Children's level of development and maturity" in the previous chapter for supporting quotes from the interview data.

⁶⁸⁰ Kathryn Lynn Modecki, 'Addressing Gaps in the Maturity of Judgment Literature: Age Differences and Delinquency.' (2008) 32 *Law and Human Behavior*; Jane Rutherford, 'Juvenile Justice Caught Between the Exorcist and A Clockwork Orange' (2002) 51 *DePaul Law Review* 715-742, 727.

⁶⁸¹ Enys Delmage, 'The Minimum Age of Criminal Responsibility: A Medico-Legal Perspective' (2013) 13 *Youth Justice*.

wrong within the school curriculum, they may not understand the consequences that could arise from certain types of actions or behaviours, making it easier for them to be drawn into the youth justice system even though they may clearly lack the capacity to understand the nature and significance of their actions.

After learning about some teachers' lived experience of children and the level of understanding they have of concepts like right and wrong and responsibility in that age group, it is clear that they are still in a phase of their lives where they are undergoing major physical and mental developments. So, as the current ACR remains set at the age of ten, with little regard for their developing capacities and decision-making skills, children need to be made aware of the ACR and what it means, to help them understand their role as rational and legal agents in society. Based on the interviews conducted and the document analysis it was found that the ACR is not explicitly mentioned even in contexts where the topic can be easily related to criminal responsibility. Considering that the teachers and the curriculum documents state that they are hoping to make their students good citizens who respect and abide by the laws of the country,⁶⁸² the exclusion of criminal responsibility from the curriculum seems counter-intuitive and leaves children with little or no knowledge of a significant law that is applicable to them from the age of ten. Furthermore, it can have a detrimental impact on their ability to participate in society with sufficient awareness of how the law applies to them. Therefore, my case study shows that the schools discussed in this sample do not sufficiently prepare children for the ACR in an explicit (direct mention of the ACR) and age-sensitive manner (before the children reach the age of ten), despite the teachers' who were interviewed confirming that children between seven and fourteen may know right and wrong, but not to the extent where they can consider the consequences that follow and how it affects others.

⁶⁸² Department for Education, 'Promoting Fundamental British Values as Part of SMSC in Schools' (Department for Education 2014); PSHE Association, 'Programme of Study for PSHE Education: Key Stage 1-5.' (PSHE Association 2020); Department for Education, 'Statutory Guidance: National Curriculum in England: Citizenship Programmes of Study for Key Stages 3 And 4' (Department for Education 2013)

Instead, some teachers expressed that it was perhaps best to keep young children away from such serious topics regarding responsibility. This was voiced by a few teachers as they felt that children should not be made to grow up too quickly with the imposition of excessive responsibility on them. On this point, teachers unknowingly referenced an argument made prominently by Goldson (among others), where he calls this the “adultification” or “responsibilization” of children.⁶⁸³ This was exemplified by a few teachers who mentioned that this topic could be “scary” for some children as a result of this “adultifying” legal responsibility that is applicable to them from the age of ten and above. This reasoning tends to avoid the topic and will only keep them in ignorance rather than equipping them with the knowledge that can prepare them for this responsibility. Moreover, teachers stated that they only managed to make the link between what they currently teach in their schools and the ACR when they took part in this study, thus how can children be expected to make such connections from what they learn without engaging in discussions about criminal responsibility? This stresses the fact that many children between the age of 7-14 are not sufficiently informed about the ACR as the compulsory education justification seems to suggest. Consequently, this means that from an educational perspective they need help in making the link between what they are generally taught in school and criminal responsibility, as the ACR does not take into account their developing capacities and decision-making abilities.

5.2.2 Intra-jurisdictional Integrity

Having considered the development and capacity of children based on their age, and how it relates to the ACR, this section will focus on the way in which the law mediates the transition from childhood to adulthood as

⁶⁸³ Barry Goldson, “Unsafe, Unjust and Harmful To Wider Society’: Grounds For Raising The Minimum Age Of Criminal Responsibility In England And Wales’ (2013) 13 Youth Justice.

children gradually accumulate rights and responsibilities with age.⁶⁸⁴ When comparing the different ages at which children are assigned different rights and responsibilities, the ACR in England and Wales stands out by being uncharacteristically low at the age of ten, with other arbitrary age limits such as the age of consent set at sixteen, and the age at which one can purchase alcohol or cigarettes being eight years higher.⁶⁸⁵ Furthermore, as suggested in the Beijing Rules, the ACR in England and Wales is not closely related to the age at which young people obtain other social rights such as, the right to vote or marriage.⁶⁸⁶ This intra-jurisdictional difference between arbitrary age limits highlights the cautious and protective approach taken in relation to some rights and responsibilities. Yet, if one is found to be in conflict with the law in a criminal context, they are afforded little protection, thereby “adultifying” some children from the age of ten with the imposition of such a heavy responsibility. This is also reflected in the views of some teachers, that well-behaved children should not be taught about the ACR as it forces them to grow up too early, yet children with behavioural issues are assumed to know about the criminal responsibility. Furthermore, the approach to some of these age limits is reflected in the way they children are taught about them. For the purposes of this section a particular comparison will be drawn between the ACR and the age of consent to exemplify this.

The RSHE statutory guidance recommends that children must be taught the subject material with “the aim of providing pupils with the knowledge they need of the law”⁶⁸⁷ and so they are taught about harmful and abusive behaviour in relationships. Some examples of harmful behaviours that are

⁶⁸⁴ Barry Goldson, ‘Unsafe, Unjust and Harmful to Wider Society’: Grounds for Raising the Minimum Age of Criminal Responsibility In England And Wales’ (2013) 13 Youth Justice.

⁶⁸⁵ Tim Bateman, ‘Criminalising Children for No Good Purpose: The Age of Criminal Responsibility in England and Wales’ (National Association for Youth Justice 2012); Sexual Offences (Amendment) Act 2000 Explanatory Notes.

⁶⁸⁶ United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (the Beijing Rules) Rule 17.

⁶⁸⁷ Department for Education, “Foreword by the Secretary of State” (*GOV.UK*, September 22, 2021) <<https://www.gov.uk/government/publications/relationships-education-relationships-and-sex-education-rse-and-health-education/foreword-by-the-secretary-of-state>> accessed October 20, 2021

discussed in PSHE and RSHE (documents and lessons) include violence, hate crime, sexual abuse, and the misuse of drugs.⁶⁸⁸ It is recommended that children are also taught about the legal provisions relevant to these types of behaviours.⁶⁸⁹ Although, most of these harmful behaviours mentioned have criminal law implications, the PSHE and RSHE documents do not explicitly mention criminal responsibility. Instead, as per the statutory requirement they focus specifically on teaching children in Key Stage 3 and 4 (children aged eleven to sixteen) the law related to sexual activity, such as the age of consent, what consent is, law related to pregnancy and the definitions of rape, sexual assault and harassment.⁶⁹⁰ The teachers clarified that they did not teach children about the age of consent or sexual offences in primary school, and in lower secondary (Key Stage 3) they took a more indirect approach to teaching children about this. Nonetheless, the extent to which children are informed about consent is still considerably more than the ACR as there are clear provisions in the curriculum to support the teaching of this topic. Therefore, the emphasis on teaching children about the age of consent and offences related to it prior to them reaching that age limit, makes it clear that it is actively prioritised by the DfE and schools, unlike the ACR.

Evidently, in relation to criminal responsibility a child's right to education about the ACR while they develop their capabilities in their formative years, is not recognised in the current law⁶⁹¹ and in compulsory education. In fact, many teachers admitted that they were reminded of the ACR due to their participation in my study. It was only by engaging in conversation about the ACR through the interviews conducted as part of this study, that teachers

⁶⁸⁸ Department for Education, 'Relationships Education, Relationships and Sex Education (RSE) And Health Education' (Department for Education 2019); PSHE Association, 'Programme of Study for PSHE Education: Key Stage 1-5.' (PSHE Association 2020)

⁶⁸⁹ Department for Education, 'Relationships Education, Relationships and Sex Education (RSE) And Health Education' (Department for Education 2019)

⁶⁹⁰ Ibid.

⁶⁹¹ Rosalin Dixon and Martha Nussbaum, 'Children's Rights and a Capabilities Approach: The Question of Special Priority' (2012) 97 Cornell Law Review 549; Raymond Arthur, Exploring childhood, criminal responsibility and the evolving capacities of the child: the age of criminal responsibility in England and Wales, Northern Ireland Quarterly, 67 (3) pg 274.

realised the seriousness of this legal responsibility at such a young age. Most teachers were of the notion that steps could be taken within schools to make them aware of it because as one teacher expressed “ignorance is not going to protect children”. In addition, they recognised how without such steps children may not understand the legal implications of some forms of bad behaviour that would be considered criminal offences outside school, like damage to property being vandalism. These points were interpreted as statements of acknowledgement, as unfortunately, they do not reflect their current teaching practice. Although some teachers expressed intent to incorporate teaching the ACR into their school curriculum, others were disincentivised for a few reasons, such as the lack of guidance in this area, the fact that they considered it less relevant to their students and the additional pressure of teaching another topic within their packed teaching programme.

Instead, other topics like consent and even the law on marriage (with respective age limits of 16 and 18) are found and discussed within the basic curriculum to apprise children about information of a legal nature that is relevant to them and the impact it can have on their lives. Since the ACR is not mentioned within the curriculum documents either individually or specifically in contexts where criminal offences are mentioned it can be deduced that intra-jurisdictional inconsistency has influenced and arguably been translated into teaching practices. This is demonstrated by the prioritisation of the topics like consent within the school curriculum, whilst the ACR is not mentioned despite the fact that it applies to children from a much younger age with long-lasting implications like a criminal record. This suggests that inconsistencies in the way the law treats children can trickle-down into the education system and as a result, further perpetuates the impact of the ACR on them. These findings from my study seem to further strengthen this ground for raising the ACR.

5.2.3. Social factors

When attributing criminal responsibility, the influence of risk factors namely deprivation and ACEs such as abuse (including those of a physical, emotional and sexual nature) and household dysfunction (such as physical and emotional neglect, domestic violence, parental separation, family incarceration, mental illness, drug and alcohol abuse),⁶⁹² on children is marginalised.⁶⁹³ Instead, the focus within this context remains on the wrongful act (*actus reus*) and the child having the requisite mental condition (*mens rea*) in a general sense, even if they don't understand it in a legal context.⁶⁹⁴ Such an approach taken in law could be seen to represent what Wacquant has described as the "penalisation of poverty"⁶⁹⁵ in an attempt to focus on disciplining the "dangerous, immoral, dysfunctional underclass".⁶⁹⁶ This is also reflected in the views of teachers, where some considered that teaching the ACR is more relevant in schools with children from low-income and high-crime areas. Yet, it is questionable whether children living in poverty understand and perceive their adverse experiences as risk factors to offending behaviour. Elliot presents the example of children growing up in an area with visible crime and how they may take this to be to the social norm.⁶⁹⁷ As such the current law on the ACR does little to address social need and further marginalises children from such backgrounds by placing criminal responsibility entirely on them for their inability to resist the aforementioned risk factors. Therefore, one all-encompassing way to

⁶⁹² Vincent J. Felitti and others, 'Relationship of Childhood Abuse and Household Dysfunction to Many of The Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study' (1998) 56 *American Journal of Preventive Medicine*.

⁶⁹³ Barry Goldson, 'Unsafe, Unjust and Harmful to Wider Society': Grounds for Raising the Minimum Age of Criminal Responsibility in England And Wales' (2013) 13 *Youth Justice*.

⁶⁹⁴ Don Cipriani, *Children's Rights and The Minimum Age of Criminal Responsibility* (Routledge 2016) pg 13; Dennis Baker, *Glanville Williams Textbook of Criminal Law* (4th edn, Sweet & Maxwell (UK) 2015).

⁶⁹⁵ Loïc Wacquant, 'The Penalisation of Poverty and The Rise of Neo-Liberalism' (2001) 9 *European Journal on Criminal Policy and Research*.

⁶⁹⁶ Raymond Arthur, 'Troubling Times for Young People and Families with Troubles – Responding to Truancy, Rioting and Families Struggling with Adversity' (2014) 24 *Social & Legal Studies*.

⁶⁹⁷ Catherine Elliott, 'Criminal Responsibility and Children: A New Defence Required to Acknowledge the Absence of Capacity And Choice' (2011) 75 *The Journal of Criminal Law* citing Huub Angenent and Anton de Man, *Background Factors Of Juvenile Delinquency* (Peter Lang 1996) pg 179.

recognise social need as a relevant factor in this context and support all children exposed to risk factors is to raise the ACR. If this is not done, then the bare minimum would be to ensure that schools are informing children between 7-14 about the ACR through compulsory education in order to make them aware of this legal responsibility and better prepare them for it.

In my study, when teachers were asked whether they think children should be taught about the ACR, many brought up the idea that some specific types of students may *need* to learn about criminal responsibility more than others. Here, “students’ needs” presented some dividing opinions amongst the teachers in my sample. Five out of the twelve teachers interviewed felt that the ACR is not wholly relevant to their students and therefore implied that it is not and would not be considered a priority in those schools. They reasoned this by stating that they felt it was not necessary to bring up the ACR as they did not have significant behavioural issues with the students at their school that warranted the mention of criminal responsibility. From this it could be inferred that the mentioning of criminal responsibility, especially in schools where teachers felt that student behaviour was not too problematic, was seen to be slightly excessive. Furthermore, a couple of teachers explained that criminal responsibility can be “serious”, “scary” and “frightening” for young children to learn about. These words were used by teachers who felt that the ACR is not wholly relevant to the students in their school who they described as being from “sheltered” backgrounds. Although this could partly be attributed to the young age of the children in question, these teachers and even those who felt the ACR to be a relevant topic for their students, all agreed that the background of the students in a school would affect whether the ACR is or should be mentioned to their students, unless it becomes a compulsory part of the basic curriculum.

Consequently, I analysed what teachers described to be the backgrounds of students who they thought the ACR was relevant to and found that they were mainly referring to students from lower socio-economic backgrounds, those that lived in deprived areas and whose parents were involved in criminal activity. Students from such backgrounds were described as

“savvy” and “street smart” because teachers believed they may already be familiar with the ACR due to closer or more frequent interactions with the police, thus potentially making it less “scary” and more relevant to those students. Other phrases that teachers used to describe “sheltered” students’ relationship to the ACR were “far removed from their radar” and “alien to them”. Once again, this points to how these teachers place such students in a different sphere to the other students to whom such knowledge is suggested to be more relevant. Such descriptions unwittingly create an image of some students existing on a privileged sphere in terms of behaviour and morals, in comparison to others at ground or “street” level who are described as “aware”. The fact that the relevance to students based on what the interviewed teachers felt were their “needs” was brought up as a consideration when asked about whether the ACR is taught to students, sheds light on the classist undertones within the education system, which are also reflected in the criminal justice system. Although, it must be noted that these views held by the teachers who were interviewed cannot be considered purely judgemental as there is a plethora of research that suggests children from disadvantaged backgrounds are more likely to be drawn into the YJS (as mentioned in the beginning of this section),⁶⁹⁸ it does fail to recognise the privilege that some students possess over others.

This unconsciously moves teachers away from viewing all children as equal, as they clearly have an image of what type of children are likely to behave badly, and consequently, will need knowledge of the ACR, thereby perpetuating stereotypes of what a badly-behaved or criminal child looks like. This view shared by some teachers bears similarities to premature interventionist approaches to youth justice which have negative effects

⁶⁹⁸ Barry Goldson, 'Unsafe, Unjust and Harmful To Wider Society': Grounds For Raising the Minimum Age of Criminal Responsibility In England And Wales' (2013) 13 Youth Justice; Ministry of Justice & Department for Education, 'Understanding The Educational Background Of Young Offenders: Amended Summary Report' (Department for Education 2019)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814368/understanding-educational-background-young-offenders-amended-summary.pdf> accessed 17 November 2021.

such as labelling, stigma, and negative social reaction,⁶⁹⁹ which are factors known to cause social harm and reduce the likelihood of engagement in education.⁷⁰⁰ Moreover, it does not consider the fact that anyone, regardless of their background could engage in criminal activity, especially with impulsive and risky behaviour being a common characteristic amongst children aged 7-14 thus, increasing their vulnerability to crime in adolescent years.⁷⁰¹ By making such distinctions, they seem to forget that no child is inherently “good” or “bad”, but rather they are a victim of their circumstance. As such, teachers did not seem to recognise that the “shelter” afforded to privileged students in the form of a home, familial support, basic needs (food, water, heat etc.), money, and educational opportunities (e.g. extracurricular activities),⁷⁰² is what keeps these children off the “street” and it is also what keeps them away from the “smartness” that needs to be developed in order to survive in a socio-economically disadvantaged setting.

Within the current curriculum, the topics which are related to criminal behaviour or “right and wrong” provide no information about legal implications, such as their responsibility and the consequences from it.⁷⁰³ Moreover, most teachers from the sample who felt that the ACR is a relevant topic to educate their students on, could not recount instances

⁶⁹⁹ This is explained in John I. Kitsuse, 'Societal Reaction to Deviant Behavior: Problems of Theory and Method' (1962) 9 *Social Problems*. 247-256.

⁷⁰⁰ *Ibid.*

⁷⁰¹ Raymond Arthur, 'Rethinking the Criminal Responsibility of Young People in England And Wales' (2012) 20 *European Journal of Crime, Criminal Law and Criminal Justice*; Kathryn Lynn Modecki, 'Addressing Gaps in the Maturity of Judgment Literature: Age Differences and Delinquency.' (2008) 32 *Law and Human Behavior*; Jane Rutherford, 'Juvenile Justice Caught Between the Exorcist and A Clockwork Orange' (2002) 51 *DePaul Law Review* 715-742, 727.

⁷⁰² Bernard Davies, 'Breaching the Social Contract with Young People' (*Youth & Policy*, 2019) <<https://www.youthandpolicy.org/articles/breaching-the-social-contract/>> accessed 27 November 2021.

⁷⁰³ Some documents that support this claim are the PSHE Programme of Study, Citizenship curriculum for key stage 3 and 4 and British values document. See the following: PSHE Association, 'Programme of Study for PSHE Education: Key Stage 1-5.' (PSHE Association 2020); Department for Education, 'Statutory Guidance: National Curriculum in England: Citizenship Programmes of Study for Key Stages 3 And 4' (Department for Education 2013) Department for Education, 'Promoting Fundamental British Values as Part of SMSC in Schools' (Department for Education 2014)

where they actively taught it. The data shows how there is a missing link between what is currently taught about “right and wrong” and the ACR, thereby indicating that children between the age of seven and fourteen may need more information in order to be better informed for this legal responsibility, regardless of their background. Therefore, teachers making distinctions between students based on their background and social factors was an unanticipated yet significant finding. This was especially because they recognised these social factors but did not go any further in their responses by considering how these children can be better educated, supported and protected from the implications of the current low ACR.

Furthermore, with there being well-known links between offending behaviour and children’s engagement in education, with prominent factors such as truancy, school exclusions and educational attainment affecting children’s vulnerability to crime,⁷⁰⁴ it was surprising that teachers did little to acknowledge the role of schools in relation to educating children about the ACR. This could be due to certain barriers that affect the inclusion of the ACR in schools (discussed in the next section – 5.3), but it could also be attributed to the fact that the ACR is not a topic that most of them had considered until taking part in this study. Therefore, within the school curriculum where other topics are prioritised, teachers are left with little time to think about the ACR and the ways in which its exclusion further marginalises the social needs experienced by some of their student population. With the notable criminalisation of social need and the social harm suffered by those who enter the criminal justice system, such implicit classist views held by some teachers can bring to doubt the effectiveness of their role in educating children and preparing them to be “good citizens”.

⁷⁰⁴ See Martin Stephenson, *Young People and Offending: Education, Youth Justice and Social Inclusion* (Willan Publishing 2006).

5.3 Barriers to the ACR in schools

According to Section 7 of the Education Act 1996 every child from the age of five to sixteen should receive “efficient full-time education suitable to his age.”⁷⁰⁵ Although what is considered age-appropriate education is not expanded upon in this provision, Section 78 of the Education Act 2002 states that the school curriculum should not only promote “the spiritual, moral, cultural, mental and physical development of pupils” but it should also prepare them “for opportunities, responsibilities and experiences of later life.”⁷⁰⁶ With this explicit recognition of children’s evolving and developing capacities, and the responsibilities and opportunities that are bestowed upon them as they grow, there seems to be ample scope within the outlined aims of education for the inclusion of the ACR. This is because it is not only a law that is applicable to children from the age of ten and above, but it is also information that makes them aware of a significant responsibility they have if they are found to be in conflict with the law. Consequently, not being conscious of this could affect later life experiences of these children even if they receive compulsory education. Despite the existence of such provisions, the findings of this study suggest that the ACR has not been included within the basic curriculum. In fact, analysis of the data collected as part of this study found that there are three main barriers to the ACR being taught in schools. The first and most discernible barrier is the absence of the ACR from the basic curriculum documents provided to schools. The second is the extent to which teachers found the ACR relevant to their students. The last barrier was the tendency to shift responsibility for teaching the ACR away from schools. Each of these will be explored in turn.

5.3.1 Absence of the ACR from the Curriculum

As mentioned previously, this study found that the ACR is not taught or explicitly mentioned in most schools the interviewed teachers have taught at in their teaching career so far. Within the sample, only two teachers

⁷⁰⁵ Education Act 1996

⁷⁰⁶ Education Act 2002

mentioned teaching children about the ACR, and they both admitted that this was purely a school initiative that they undertook to support their student demographic who are largely from deprived catchment areas. The rest claimed that it was not taught in their school because there is no provision in the curriculum informing children about the ACR. This was confirmed through the document analysis conducted of the key curriculum documents such as the NC and the programmes of study of subjects where it was thought the ACR could be mentioned. Therefore, it was concluded that the ACR is absent from the basic curriculum used in compulsory education. The citing of this as a reason for its lack of coverage makes this a barrier to the ACR being taught consistently and widely across all schools in England. There were two main reasons found for why this barrier exists: one, it is not considered an important topic to cover, and the second is that the curriculum hierarchy places less emphasis on such content within the basic curriculum.

The first reason, as mentioned earlier, is that the ACR is not included in the curriculum making it evident that it is not considered as important as other, similar topics or arbitrary age limits, such as the age of consent. Since this has been discussed previously, the details will not be repeated. However, it is important to note that similar to the age of consent, the ACR also arguably provides information about a complex area that can be confusing and difficult to fully understand unless children are taught about it.⁷⁰⁷ This is especially true for young children aged ten and above, who are still undergoing significant mental and physical developments, thus making them naturally prone to risk around that age.⁷⁰⁸ The importance of discerning risk is recognised by the DfE, as seen from their expectations of the PSHE programme to “equip pupils with a sound understanding of risk and with the knowledge and skills necessary to make safe and informed

⁷⁰⁷ The point regarding the “complex world” was derived from 'Relationships And Sex Education (RSE) And Health Education' (GOV.UK, 2019) <<https://www.gov.uk/government/publications/relationships-education-relationships-and-sex-education-rse-and-health-education>> accessed 20 October 2021. (as cited in 2.12.2 in the Literature Review Chapter)

⁷⁰⁸ Royal Society, Brain Waves Module 4: Neuroscience and the law, December 2011, page 13.

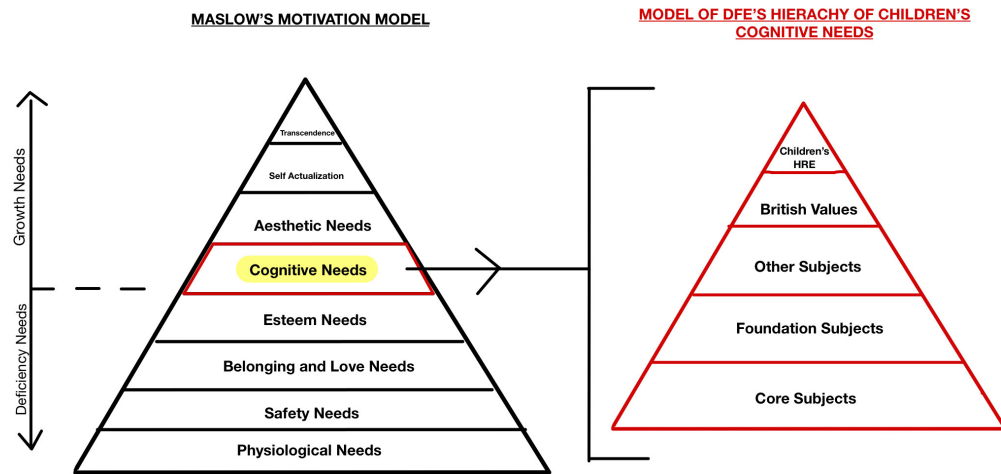
decisions,⁷⁰⁹ yet surprisingly no link is made between risky actions/decisions that could be considered criminal in nature, and the legal consequences arising from them. Therefore, the absence of the ACR suggests that the ACR is not considered by the DfE and schools to be “knowledge they need to know”. This brings to question the extent to which compulsory education in England and Wales is holistic and child-centered, especially in light of Article 28 of the CRC, where there is a clear emphasis is placed on education including life skills, such as the ability to make well-balanced decisions, resolving conflicts in non-violent manner and develop responsibilities. Although, my literature review and document analysis show that these are touched upon within the basic curriculum, the link to the ACR continues to remain missing in these contexts, thus leaving a gap in children’s knowledge of a legal responsibility that applies to them. This is one explanation for the existence of this barrier.

In addition to the lack of importance placed on the content of the ACR, its place in the curriculum also contributes to whether it is likely to be present in the curriculum. Within compulsory education, criminal responsibility would most likely be taught under subjects that fall outside the core subjects, which are Mathematics, English and Science and all the foundation subjects except Citizenship. It could mainly be taught under what the DfE have called “other” subjects where not all subjects or topics are mandatory to teach in the school curriculum.⁷¹⁰ So apart from the nature of the topic, the subject(s) under which it would be taught also affects the extent to which topics within it would be emphasised. The model I created in the literature review on the *DfE’s hierarchy of children’s cognitive needs* could be applied here to understand this barrier further. Figure 2.1 is shown again below:

⁷⁰⁹ Department for Education, “Personal, Social, Health and Economic (PSHE) Education” (GOV.UK, September 10, 2021) <<https://www.gov.uk/government/publications/personal-social-health-and-economic-education-pshe/personal-social-health-and-economic-pshe-education>> accessed October 20, 2021.

⁷¹⁰ ‘Collection: The National Curriculum’ (GOV.UK, 2021) <<https://www.gov.uk/government/collections/national-curriculum>> accessed 15 November 2021.

Figure 2.1 – Model of the DfE’s Hierarchy of Children’s cognitive needs.⁷¹¹



According to Bleazby the traditional curriculum hierarchy places the more valuable subjects at the bottom of the hierarchy and increasingly marginalises subjects based on whether it is compulsory, or the amount of teaching time allocated to the subject.⁷¹² The reduction in area allocated to each subject group as we move towards the top of the pyramid also indicates that fewer resources are provided to support their teaching as a result of this existing hierarchy. RE is one such example, where successive Ofsted reports indicate that it is not given the attention and support it needs to be effectively delivered in schools.⁷¹³ A similar trend has been found with the teaching of Citizenship as a stand-alone subject.⁷¹⁴ With these subjects being compulsory, core elements of the basic curriculum with legal requirements to teach them, such issues raise serious concerns about the

⁷¹¹ The figure is derived from Maslow’s Motivational Model Abraham H Maslow and Robert Frager, *Motivation and Personality* (Pearson Education 1987).

⁷¹² Jennifer Bleazby, 'Why Some School Subjects Have a Higher Status Than Others: The Epistemology of The Traditional Curriculum Hierarchy' (2015) 41 *Oxford Review of Education*

⁷¹³ Commission on Religious Education, 'Religion and World Views: The Way Forward. A National Plan For RE' (2018) <<https://www.commissiononre.org.uk/wp-content/uploads/2018/09/Final-Report-of-the-Commission-on-RE.pdf>> accessed 22 December 2021 pg 4, 22, and 45.

⁷¹⁴ Select Committee on Citizenship and Civic Engagement, *The Ties that Bind: Citizenship and Civic Engagement in the 21st Century*, Report of Session 2017-19, HL 118, para. 103-108.

marginalisation of important topics discussed in 'other' subjects. Therefore, this illustrates that it is less likely for topics like the ACR to be prioritised within these subjects, if the subjects themselves are found to be marginalised within the basic curriculum.

Furthermore, the traditional curriculum hierarchy considers subjects which have a higher level of subjectivity based on culture-specific knowledge to be lower in status to more objective ones which promote "universal knowledge".⁷¹⁵ Subjects like PSHE, RSHE, Citizenship, BV and RE do not necessarily promote what would be considered "universal knowledge" in a traditional sense (and are not assessed as such), where the priority is certainty through cognition over practical activities which are more experiential and subject to constant change.⁷¹⁶ As a result, content of these subjects have a lower status within the curriculum hierarchy. This presents another reason why these subjects are marginalised in comparison to the core and foundation subjects. Taking this line of thinking and applying it further to the ACR as a topic within a subject, it would show that criminal responsibility is less likely to be considered knowledge which is "universal" when compared to other topics like consent, which are deemed to be applicable to *all* children rather than just the "badly-behaved" ones.⁷¹⁷ Therefore, based on this over-arching curriculum hierarchy, topics that are not considered important to *all* children will receive less time, resources and teacher training which would in turn create more individual work for teachers who wish to include and integrate the ACR into their school

⁷¹⁵ Filio Constantinou, 'Strong and Weak 'Brands' in The School Curriculum: Towards a Framework for Levelling the Curriculum Hierarchy' (2018) 34 *Research Papers in Education*.

⁷¹⁶ Filio Constantinou, 'Strong and Weak 'Brands' in The School Curriculum: Towards a Framework for Levelling the Curriculum Hierarchy' (2018) 34 *Research Papers in Education*.

⁷¹⁷ Here, a further comparison can be made to the current state of HRE in schools and its absence within the curriculum framework in England. This indicates that even a topic which is focused on promoting a universal culture of human rights, with the aim of empowering learners to defend it, can be marginalised within the traditional curriculum hierarchy. See Alison E. C Struthers, *Teaching Human Rights in Primary Schools* (Routledge 2021); Ann Quennerstedt, 'Children's and Young People's Human Rights Education in School: Cardinal Complications and A Middle Ground' (2022) *Journal of Human Rights*.

curriculum. This adds an extra layer to this barrier to teaching children about criminal responsibility in schools.

In light of this, some of the interviewed teachers brought up the fact that there is already a large amount of content that is required to be covered in the curriculum, and so the ACR would be an additional topic to teach thus building on to the existing teaching pressures they face in their profession. Three teachers brought up Ofsted inspections when speaking about what they teach within their school curriculum indicating that they were also under pressure to perform based on the standards required by Ofsted which recently changed to become wider in its measure of quality. Previously, there was a heavier reliance on exam results when measuring school quality, however this has shifted to look towards and include the school's broader curriculum offering as well.⁷¹⁸ The teachers explained this to mean that they had to not only focus on the core subjects and national assessment results, but they also had to ensure the foundation subjects were covered well in preparation for "deep dives" conducted by Ofsted.⁷¹⁹ In addition, they have to show that the school curriculum reflects the local context and needs of the students.⁷²⁰ Although, the new, wider scope of the Ofsted inspections will encourage schools to focus on the quality of teaching and learning in a broader range of subjects, the pressure to perform well in assessments on core subjects will continue to affect teaching priorities.⁷²¹ Consequently, adding another topic such as the ACR was met with some resistance from a few of the interviewed teachers because it would be an added teaching responsibility which does not fall

⁷¹⁸ 'School Inspection Handbook' (GOV.UK, 2019)
<<https://www.gov.uk/government/publications/school-inspection-handbook-eif/school-inspection-handbook#contents>> accessed 18 February 2022.

⁷¹⁹ Heather Fearn and Jonathan Keay, 'What to Expect on a Primary Deep Dive – Some Guidance for Subject Leaders'
<<https://educationinspection.blog.gov.uk/2022/02/02/what-to-expect-on-a-primary-deep-dive-some-guidance-for-subject-leaders/>> accessed 27 February 2022.

⁷²⁰ 'School Inspection Handbook' (GOV.UK, 2022)

⁷²¹ Ofsted, 'Education Inspection Framework 2019: A Report On The Responses To The Consultation' (Department for Education 2019)
<<https://www.gov.uk/government/consultations/education-inspection-framework-2019-inspecting-the-substance-of-education/outcome/education-inspection-framework-2019-a-report-on-the-responses-to-the-consultation>> accessed 17 December 2021.

within an assessment-focused subject, indicating that it was not considered a topic that students need. This shows that the ACR would most likely be marginalised within subjects and also, if it were to be taught amongst other topics in the same subject, thus strengthening the barrier to its inclusion in the school curriculum across English schools.

5.3.2 Teacher's Views on the Relevance of the ACR to Students

As mentioned and explained in the social factors section above, teachers were found to make a distinction between students they felt needed to learn about the ACR and others for whom this knowledge was not considered as relevant. This was done based on children's backgrounds, where those who were considered "sheltered" were characterised as better-behaved students, unlike those from deprived backgrounds. Using this as a measure to decide whether to include the ACR is problematic as it continues to marginalise this topic within the curriculum because it is only seen to be relevant to some children. However, Article 29 of the CRC explains that education should aim to provide knowledge that can contribute to the preparation of *all* children "for a responsible life in a free society with tolerance for others" and thus, marginalising a topic like the ACR within the English and Welsh context could arguably be detracting from this overarching aim of education.⁷²⁵ The absence of the ACR within the basic curriculum gives teachers the room to question the relevance of a law that is applicable to any child who comes into conflict with the law from the age of ten. This could be attributed to the normative position that criminal responsibility does not need to be taught as it does not align with middle-class culture. The traditional curriculum hierarchy has been known to place subjects, and by extension topics, that concern students from lower socio-economic or working-class backgrounds in "low status" or vocational parts

⁷²⁵ Article 29 UN Convention on the Rights of The Child

of the curriculum, which as mentioned in the previous section are often marginalised unless it is made a compulsory part of the curriculum.⁷²⁶

If the views expressed by the teachers in my study reflect the views of teachers generally, then this suggests that the default position of the school curriculum is to provide knowledge that is considered relevant to the needs of mainly the middle-class, privileged students as it seems like if it does not seem relevant to them then it is not included in the curriculum. By doing this, teachers are inadvertently shifting responsibility for poor behaviour onto the impoverished students themselves, and consequently requiring them to take responsibility for their circumstances. There is also an implicit expectation that children have to do the work of making links between the content taught in schools and the ACR on their own. This follows a similar rhetoric to the government who continue to reinforce responsibility onto children, regardless of their young age, capacity or personal circumstances, by solely taking responsibility for keeping them “off the streets” and leaving the rest to schools and the children themselves.⁷²⁷

Although, compulsory education provided by schools was cited as one of the key reasons for the abolition of the *doli incapax* presumption, LJ Laws made it clear in *C v DPP* that “better formal education and earlier sophistication do not guarantee that the child will more readily distinguish right from wrong”.⁷²⁸ Therefore, teaching general topics like right and wrong, and social and moral responsibility does not necessarily mean children can and will connect this information to the ACR without more help provided in schools to empower them to do so. A similar issue was outlined in the Select Committee Report on Citizenship education where it was stated that children often have trouble making connections between private and public

⁷²⁶ Jennifer Bleazby, 'Why Some School Subjects Have a Higher Status Than Others: The Epistemology of The Traditional Curriculum Hierarchy' (2015) 41 *Oxford Review of Education*; Filio Constantinou, 'Strong and Weak 'Brands' in The School Curriculum: Towards A Framework for Levelling the Curriculum Hierarchy' (2018) 34 *Research Papers in Education*.

⁷²⁷ Home Office, *No More Excuses – A New Approach to Tackling Youth Crime in England and Wales* (White Paper, Cm 3809, 1997).

⁷²⁸ *C (A Minor) v DPP* [1995] 1 AC 1, 53.

aspects of learning.⁷²⁹ Based on this, it seems unreasonable to expect children (regardless of background) aged ten and above to make connections between the topics that teachers felt were relevant to developing their understanding of the ACR without explicitly mentioning criminal responsibility.

Understandably, social factors are beyond the scope of schools, yet there is little consideration shown in the curriculum for wider and possibly adverse circumstances in a child's life that could increase their risk of becoming an offender.⁷³⁰ This is illustrated by the ACR not being included in the curriculum. As some teachers mentioned in the interviews, many children who engage in bad behaviour often do not think that there could be the legal consequences to their actions, thus, highlighting the lack of awareness amongst students of their criminal responsibility. Hence, the curriculum in these subjects and teaching practices shared by teachers show that children who may be vulnerable to criminal behaviour are not made aware of the legal implications that could arise from committing a criminal offence at their age unless they have already acted in such a way. This is concerning because schools are considered the primary providers of education and are known to play a crucial role in improving the "life chances" of children, especially those who are at risk of offending.⁷³¹ Leaving out the ACR, by not considering it to be as relevant to the middle-class demographic of students, could have a significant impact on the lives of vulnerable children and their future. Whilst the emphasis on safeguarding in schools plays an integral role in promoting and upholding the welfare of

⁷²⁹ Select Committee on Citizenship and Civic Engagement, *The Ties that Bind: Citizenship and Civic Engagement in the 21st Century*, Report of Session 2017-19, HL 118, para. 103-108.

⁷³⁰ See PSHE Association, 'Programme of Study for PSHE Education: Key Stage 1-5.' (PSHE Association 2020); Department for Education, 'Promoting Fundamental British Values as Part of SMSC in Schools' (Department for Education 2014)

⁷³¹ Catherine Elliott, 'Criminal responsibility and children: a new defence required to acknowledge the absence of capacity and choice.' (2003) 75 *The Journal of Criminal Law*, pg. 289- 308; Home Office Development and Practice Report, 'The Role of Education In Enhancing Life Chances And Preventing Offending' (Digital Education Resource Archive (DERA) 2004) <<https://dera.ioe.ac.uk/8465/1/dpr19.pdf>> accessed 11 February 2022.

children from harmful situations in their lives, not mentioning the ACR or linking the legal provisions that are mentioned within the curriculum to criminal responsibility, prevents children from knowing the full picture of the law, especially how it may apply to them. This could suggest that children are under-prepared for the ACR without such explicit links being made. Consequently, it is worth questioning whether there is scope for establishing the importance and the relevance of the ACR amongst educators⁷³² within the safeguarding and child welfare-focused contexts of compulsory education.

With increasing risk factors like the rising number of children being looked after by local authorities in England⁷³³ and those living in poverty⁷³⁴, the number of children at risk of criminalisation may also be increasing. It can be inferred that solely teaching topics that cater to the privileged fails to provide those that may be drawn into the youth justice system with protection in the form of knowledge and awareness to help prevent or navigate themselves through it. Although, the teachers I spoke to seemed well-intentioned in their efforts to tailor what they teach their students based on their needs as per the new Ofsted guidelines⁷³⁵, they were also clearly passing a judgment on which children would need knowledge of the ACR. This fails to take into account where those needs come from by framing it as less relevant to their students who don't have "serious behavioural issues". Therefore, on account of teachers appraising the behaviour of "sheltered" students in a favourable light it could be interpreted that they

⁷³² The word "educators" is used here to refer to teachers, school boards, the DfE and other significant members within the education system that inform and implement education policy.

⁷³³ 'Children Looked After in England Including Adoptions, Reporting Year 2021' (*Explore-education-statistics.service.gov.uk*, 2021) <<https://explore-education-statistics.service.gov.uk/find-statistics/children-looked-after-in-england-including-adoptions/2021>> accessed 18 February 2022.

⁷³⁴ Joseph Rowntree Foundation, 'UK Poverty 2022: The Essential Guide to Understanding Poverty in the UK' (Joseph Rowntree Foundation 2022) <<https://www.jrf.org.uk/report/uk-poverty-2022>> accessed 25 January 2022.

⁷³⁵ 'School Inspection Handbook' (*GOV.UK*, 2019) <<https://www.gov.uk/government/publications/school-inspection-handbook-eif/school-inspection-handbook#contents>> accessed 18 February 2022.

are masking the privileges these students have been accorded through a seemingly unconscious classist lens which will perpetuate social inequality in the curriculum through this barrier to teaching the ACR in schools.

5.3.3 Tendency to Shift Responsibility for the ACR

The courts have stated that children can be held criminally responsible at the age of ten because they know right from wrong, and this has been largely attributed to the provision of compulsory education for all children in England from the age of five.⁷³⁶ The findings of this study into the role of education in informing and educating children about the ACR shows that when it comes to the ACR there seems to be little consensus on who is responsible for it. This is mainly because the document analysis and interviews conducted do not seem to reflect this responsibility to a significant extent. For example, the current curriculum does teach children about right and wrong and responsibility in a general and moral sense, but since no links are made to the legal context of these concepts and no mention of the ACR was found, it can be questioned whether schools are aware that it is considered their responsibility. The curriculum documents do not show any indication of this responsibility as the ACR is not explicitly mentioned in any of them. Furthermore, when teachers were approached for interviews as part of this study most of them expressed that they found the topic of my study interesting and intriguing but did not know much about their role in informing children about the ACR. More specifically they were not aware that the government's view is that children understand the difference between right and wrong because of universal or compulsory education. Based on my study, it was found that some schools and teachers may not have realised their responsibility in preparing children for the ACR. This begs the question of whether this is the case more generally across schools in England.

⁷³⁶ *C (A Minor) v DPP* [1994] 3 All ER 190

Instead, the teachers attempted to explain what they do teach in relation to the ACR in order to explain how they may contribute to children's understanding of the ACR. They also provided some suggestions for how they would go about teaching their students about criminal responsibility. Of these suggestions (outlined in Table 4.4), almost half of them involved external organisations or members of the community. These were either trips to visit certain establishments like the courts or talks by police officers or the fire service. More prominently, the police were mentioned by many teachers as the most suitable option for teaching children about the ACR for two reasons. Firstly, this was noted to be the case because, according to their observations, children from areas with greater police presence were more likely to be aware of the ACR or criminal law without contributions from school, thereby establishing the role of the police in informing children about such topics in the minds of the teachers. Secondly, they claimed that events with people from outside school have proven to be a memorable experience for their students and it also makes information about the ACR stand out more than if it was a teacher-led session. Plus, they also felt it was easier to remind students of this information when making references to it later. From my analysis of these descriptions, there was a tendency amongst teachers to shift some responsibility for teaching children about criminal responsibility onto the police. This is because teachers recognised that they hold a unique position as representatives of the law who educate people about the legal implications of their actions as part of their job. As a result, their suggestions for teaching children about the ACR often involved the police or mentioning the police to children as a warning that things are serious.

Moreover, since the police are likely to get involved if a criminal act has taken place, teachers mentioned that establishing a relationship between the police and their students is a useful way to inform students of the protection they can provide and emphasise the seriousness of the legal implications if they are in conflict with the law. It was also deduced from teacher's responses to their teaching practices about the ACR, that they feel like they do not have as much knowledge of the ACR and criminal law

in general. They attributed the uncertainty in their responses to the fact that they do not have any guidance or curriculum document to support their teaching of the ACR. As a result, it is understandable that teachers are likely to rely on the police for such information, unless they receive some guidance or training on this topic. From the descriptions provided, the police currently come into schools to talk about other, more prominent topics within the curriculum such as online safety and bullying, and so the teachers hoped for the ACR to be included as a part of this. If teachers choose to take the direction of relying on such one-off events conducted by the police, then the concern is that knowledge of criminal responsibility may not be reinforced in the general teaching that goes on in other activities and lessons unless schools implement other provisions for doing so.

They also mentioned the crucial role that parents play in reinforcing the knowledge taught in schools. More specifically, my study found that this role was affected by two factors: firstly, whether the parents themselves know what the ACR is in England and Wales and secondly, their attitude towards criminal responsibility. Without the parents having knowledge of the ACR, it is unlikely that their children will be informed about it. For example, one of the teachers expressed how they knew about the ACR as a child because their parents were police officers, however, they were doubtful as to whether the parents of their students were aware of, or spoke to their children about, the ACR. During the preliminary stages of developing my research methodology, I spoke to a few friends and acquaintances who have children between 7-14 and they were also unaware that the ACR is ten. They were surprised to find out that it is so low and that a law like this is applicable to their child(ren). In addition to parents having knowledge of the ACR, their attitude towards such a law and the enforcement of it was also said to have made a difference. As discussed in sections 4.3.1.4.5 and 4.3.4, a child's attitude towards the law is often shaped by the way that parents view the police and regard the law. Some teachers gave the example of how parents who are involved in criminal activity often have a derogatory attitude towards police which is often reflected in their children. Moreover, if like some of the interviewed teachers, parents also feel that

the ACR is more relevant to certain groups of students then it is unlikely that knowledge of the ACR will be reinforced by them.

As a result, teachers suggested that involving parents in activities where the ACR is taught would be helpful to ensure that they are also aware that children can be held criminally responsible from the age of ten, and so that they can also reinforce this information with their children in a similar manner to the schools. Despite making such a suggestion, the teachers also described how parents are usually very involved in the teaching of RSHE however, from their experience it much harder to get them involved with other topics, such as online safety. By comparing the nature of these other topics, it is likely that the ACR will be considered similar to online safety, and therefore by extension it can be inferred that parental involvement will also be a challenge for a topic like it. This points to the fact that although teachers from this study would like to share responsibility for informing children about the ACR with parents, the involvement of other parties is still largely dependent on their initiatives and efforts, in their foundational role as knowledge providers.

To summarise this section, the overall trend indicated by these barriers found from my study suggests that schools may not consider teaching children about the ACR to be necessary, or they may not feel prepared to inform their students about it on their own. Involving other parties is a reasonable suggestion to tackle this however, shifting the responsibility and involving more groups of people, such as the police and parents, means that more elaborate frameworks need to be in place for teaching the ACR. Unless schools are willing to make an effort in such a direction, the tendency to take a hands-off approach will continue. Therefore, without schools being willing to make such an effort and orchestrate the teaching of it, such reliance on the police can act as a barrier to children being informed about the ACR, because it shifts the responsibility for teaching it onto another set of individuals who may not be aware be aware of their role as an educator in this regard. Consequently, it may result in schools continuing to take a hands-off and indirect approach to teaching criminal

responsibility, thus continuing the cycle of the ACR not being consistently and effectively taught to children between the age of 7-14 in compulsory education.

5.4 Recommendations

So far, from an analysis of the curriculum documentation it has been found that some knowledge taught in compulsory education contributes to children's understanding of their role and responsibility in society, however, it does not specifically cover the legal context which has a much narrower scope. Considering the level of responsibility imposed upon children as young as ten by the current ACR, I would argue that the current curriculum and teaching practices do not sufficiently prepare children for it. As a result, in this section I will discuss some recommendations to diminish the negative effects of the ACR on children and better support their understanding of it before they reach the age where they are held criminally responsible. Three main recommendations will be put forward, with the first calling for reform from a legal perspective, and the other two looking to better incorporate the ACR into the basic school curriculum in England for children between the age of seven and fourteen.

5.4.1 Raise the ACR

The government's position on the ACR has been the same post-1998 and as a result they have been described as "unmovable" in their position.⁷³⁷ They continue to maintain the policy status quo that ensures that children are treated by the criminal justice system when they come into conflict with the law.⁷³⁸ There have been numerous arguments made in favour of raising the ACR from various academics from different disciplines, the UN Committee on the Rights of the Child, non-governmental organisations

⁷³⁷ Aaron Brown and Anthony Charles, 'The Minimum Age of Criminal Responsibility: The Need for a Holistic Approach' (2019) 21 Youth Justice.

⁷³⁸ Aaron Brown and Anthony Charles, 'The Minimum Age of Criminal Responsibility: The Need for a Holistic Approach' (2019) 21 Youth Justice.

(NGOs) and politicians but all to no avail.⁷³⁹ My exploratory study into the role of education in informing children about the ACR presents another argument in support of raising the ACR by taking a novel, educational perspective.

Compulsory education has been cited as one of the main reasons why children are able to differentiate between bad behaviour and serious wrongdoing and be held criminally responsible at the age of ten, therefore it must be questioned whether they are sufficiently prepared for such a significant responsibility. In this thesis so far, it has been established that the current basic curriculum used in schools does not teach children between the age of seven and fourteen about the ACR. The documents and the experiences of the teachers' interviewed show that there are some concepts pertinent to developing children's knowledge of criminal responsibility that are taught instead, namely, responsibility, right and wrong and the role of the law and legal system. However, this is covered predominantly from a social and moral perspective with no mention of the legal aspect of these concepts. So, although this knowledge was found to contribute to their understanding of criminal responsibility it is arguably insufficient due to the level of responsibility placed on children by this law. This is because criminal responsibility unlike moral responsibility has a narrower threshold determined by the legal system, with the cognitive threshold being knowledge of right and wrong to establish criminal guilt.⁷⁴⁰ Consequently, the ACR does not consider circumstances relevant to the act, such as the capacity of the child or other factors that may limit the child's choices, when determining criminal responsibility.⁷⁴¹ Even with the recent emphasis on prevention and diversion, this threshold of the current ACR continues to leave the door wide open for young children to be drawn

⁷³⁹ Barry Goldson, 'Unsafe, Unjust and Harmful to Wider Society': Grounds for Raising the Minimum Age Of Criminal Responsibility In England And Wales' (2013) 13 Youth Justice; Age of Criminal Responsibility Bill [2013-14]; Age of Criminal Responsibility Bill [2015-16]. Age of Criminal Responsibility Bill [2019-21].

⁷⁴⁰ Don Cipriani, *Children's Rights and The Minimum Age of Criminal Responsibility* (Routledge 2016) pg 13.

⁷⁴¹ Enys Delmage, 'The Minimum Age of Criminal Responsibility: A Medico-Legal Perspective' (2013) 13 Youth Justice.

into the youth justice system without them being sufficiently prepared for it through compulsory education as found in this preliminary study.

Therefore, I would argue that compulsory education as a reason for claiming children understand right from wrong to support holding them criminally responsible wrong at the age of ten is a flawed one that has not been supported by evidence. Even if relevant topics that contribute to children's understanding of criminal responsibility are covered in schools, the current provisions within the curriculum fail to prepare them for the narrow threshold of the ACR. This is crucially important in light of childrens' developing capacities and their minimal awareness of the law both prior to the age of ten and perhaps even after as evidenced by the fact that many of the teachers were not entirely aware of it. Therefore, until compulsory education adequately informs children about criminal responsibility, on a foundational level, the recommendation to increase the ACR must remain at the forefront of this debate.

It is important to note that the ACR is a significant legal tool which is focused on contact with the justice system, however on its own it does not ensure that children are supported, especially when they are vulnerable and exposed to adverse circumstances. So, although the current provision of compulsory education may not be doing enough to prepare children for the ACR, the link made between education and the ACR is one that has the potential to take a more child-centric and rights-respecting approach to holding children criminally responsible. For there to be effective change in this area, not only does the ACR need to be raised in line with other countries and the recommendations presented by the UN Committee, but a more holistic form of reform is also needed through education as will be discussed in the next two recommendations.

5.4.2 Guidance Document

By engaging with me in interviews teachers started thinking about the ACR which they admitted was not something they had done prior to that

conversation. I noticed that this was an eye-opening experience for them and myself, as both parties learnt more about how the ACR is currently taught in schools through this process. It was obvious that the responses required further thought as there was not much they could easily draw from that was directly about the ACR. This forms the premise of this recommendation. As established earlier, the current curriculum does not make links between related concepts in the curriculum and the ACR, so the onus lies wholly on individual teachers or schools to take the initiative to do so. For this to take place, teachers need to be made aware that they have a significant role in making sure that children are educated about the ACR as there is no other avenue through which children can be informed of this unless their parents teach them. Unfortunately, many parents themselves may not be aware of this and as a result, will not be able to impart such knowledge to their children. Consequently, initiatives need to be taken to provide teachers with guidance on the ACR and suggest ways in which they can educate children about this.

One way in which this could be done is through the production and publication of a guidance document endorsed by the DfE on teaching the ACR which would include details of the law, what this responsibility means, how it applies to them and links that teachers can make between the existing curriculum content and criminal responsibility. The example of the RSHE statutory guidance can be used as precedent for introducing legal provisions to children within the basic curriculum as it makes explicit references to criminal behaviour and teachers are advised to inform children about the corresponding legal definitions and provisions. Having such a document will offer teachers a legitimate guide to how the ACR can be taught within the existing curriculum without it needing to be another additional topic to cover. In turn, it is imperative that this includes details of how this can be done in an age-sensitive and child-friendly manner as it is the earliest exposure students will have to legal provisions of a criminal nature.⁷⁴² Ideally, this should be an initiative undertaken as a collaboration

⁷⁴² This would be in line with the ACR being the lower arbitrary age limit set in England.

between the police, legal practitioners, academics, teachers and the DfE to provide schools with a mandatory framework they can apply to the existing basic curriculum.⁷⁴³ By taking this approach teachers can be pointed towards relevant topics within subjects like PSHE, RSHE, RE, BV, Citizenship and Children's HRE. This should include links to the safeguarding provisions present in schools to ensure that children are taught about criminal responsibility, in the hope of giving them some protection through knowledge of criminal responsibility from either their own or their peer's actions.

The teachers who were keen on teaching their students about the ACR expressed that they would like a programme or guide of some kind to aid their teaching of this topic. In fact, some explicitly stated that it is unlikely that the ACR would be taught consistently in schools across England unless it becomes a compulsory part of the curriculum. Therefore, implementing a mandatory guidance document like this would save teachers the time and effort they would otherwise spend on figuring out how to incorporate the ACR into their teaching. Furthermore, if the ACR is not going to be taught as a separate, individual topic but is woven into the content they already cover, then this document could address the concern that some teachers had regarding the pressure an additional topic would add to their existing teaching content. Implementing such a document would allow for the ACR to be linked to concepts such as responsibility, right and wrong and the role of the law and legal system, resulting in it being repeated in different contexts and subjects for emphasis and wider coverage in schools across England.

⁷⁴³ A similar argument was made by Quennerstedt in order to facilitate the establishment of a HRE curriculum within schools, by involving experts from different fields such as educational CRE, HRE and practice (teachers). See Ann Quennerstedt, 'Children's and Young People's Human Rights Education in School: Cardinal Complications and A Middle Ground' (2022) *Journal of Human Rights*.

5.4.3 ACR through Children's HRE Framework

Out of the 12 teachers who were interviewed as part of this study only two teachers mentioned educating their students about children's rights. One of them worked at a school that was on route to obtaining a gold award outcome as part of the RRSA. Although, the ACR was not taught at this school the responses provided by this teacher indicated a more holistic approach to educating children about criminal responsibility. For example, they felt that schools are failing children by waiting for something wrong to take place before telling children about what is right. As a result, they strongly recommended teaching children about aspects of the ACR from the age of seven by developing their understanding of "what is responsibility", how it relates to them, and providing them with more details about the ACR by building upon their knowledge of it as they grow older. Furthermore, this particular teacher also explained how at their school a holistic approach to bad behaviour is taken. Here, they did not just focus on what went wrong but also tried to consider the social factors that could be influencing their behaviour so that the action taken by the school addresses the overt problem and underlying issues that could be causing it. In addition to reviewing and analysing documents on CRE and HRE, learning more about the approach taken in a school participating in the RRSA presented CRE as an educational framework that aligned with the subject matter of criminal responsibility. The descriptions from the interview and the analysis of the CRE and HRE documents illustrated how such a framework could better address risk factors that affect children from poor socio-economic backgrounds. Due to this, the second recommendation made in this study encourages the uptake of CRE in more primary and secondary schools through programmes like the RRSA. This was found to be a promising avenue to better incorporate education on ACR by taking a more holistic approach to informing children about their criminal responsibility within a rights-respecting educational setting to support the learning of this topic.

This recommendation takes a wider approach by not only incorporating the ACR content-wise, but it can help tackle some of the systemic issues within

the education system that limit the provision of topics like rights and responsibilities. One example symptomatic of such an issue was the way in which a few teachers addressed the ACR as relevant to children from deprived areas, but not their students from privileged or “sheltered” backgrounds for whom such information was claimed to be “scary” or irrelevant, as it was claimed that they do not have serious behavioural issues. Although factually this observation is not wrong⁷⁴⁴, such comments displayed ignorance towards the adverse social factors that cause some children to be more exposed to illegal behaviour and failed to recognise how not knowing about the ACR can be a privilege that only some can afford. This does not address the adverse circumstances that affect certain children and in turn, seems to take a hands-off approach to teaching only what is deemed relevant to the majority, thereby perpetuating the traditional curriculum hierarchy and marginalising students who may need this information even further. For this reason, CRE has been recommended as a general framework to be implemented in all schools within which the ACR can be taught, so that the voices and concerns of all children are heard equally⁷⁴⁵ and recognised by all the adults who support the functioning of the school, especially teachers.⁷⁴⁶

Sebba and Robinson, in their report evaluating UK’s RRSAs, inferred that the RRSAs can help mediate the influence of poor socio-economic circumstances on educational outcomes such as attainment, attendance and exclusions.⁷⁴⁷ The findings from this report show that CRE is a framework that could support children who are at risk of offending to feel

⁷⁴⁴ There are studies showing a strong correlation between children in need and offending behaviour. This includes children living in poverty, in care and from deprived areas. See Tim Bateman, 'The State of Youth Justice 2020: An Overview of Trends and Developments' (National Association for Youth Justice 2020) <<https://thenajj.org.uk/cmsAdmin/uploads/state-of-youth-justice-2020-final-sep20.pdf>> accessed 17 June 2021.

⁷⁴⁵ Article 12 UN Convention on the Rights of the Child

⁷⁴⁶ This point was adopted from Carol Robinson, Louise Phillips and Ann Quennerstedt, 'Human Rights Education: Developing A Theoretical Understanding of Teachers' Responsibilities' (2018) 72 Educational Review.

⁷⁴⁷ Carol Robinson, Louise Phillips and Ann Quennerstedt, 'Human Rights Education: Developing A Theoretical Understanding of Teachers' Responsibilities' (2018) 72 Educational Review.

empowered through CRE, thus helping to mitigate poor outcomes that may otherwise put them more at risk of offending behaviour, especially with the low ACR in England. This recommendation is focused on informing children about the ACR whilst also taking a wider approach by empowering children with knowledge of the rights they possess and consequently the responsibilities that come with this, such as the ACR. The strong link between rights and responsibilities also makes it a suitable framework within which the ACR can easily fit. Within such a framework where the focus is on laws that affect children, the teaching practices used in CRE to educate children about legal provisions from the CRC can be adopted as a template for teaching children about the ACR in a child-friendly manner. Therefore, a shift towards Children's HRE can provide a suitable context for teaching children about the ACR whilst also providing a rights-respecting framework that has been proven to help improve their learning outcomes and citizenship behaviour.⁷⁴⁸

5.5 Conclusion

In this chapter, the findings from my study were used to evaluate the appropriateness of the current ACR. This was done using three main grounds for raising the age, namely, "age, development and decision-making", "intra-jurisdictional integrity" and "social factors".⁷⁴⁹ The discussion in this chapter showed that the findings from the interview data and document analysis strengthened each of these grounds from an educational perspective, thus raising further questions on the validity of the current ACR. In fact, it presented a novel approach to critiquing the ACR, by exploring the extent to which compulsory education informs children about criminal responsibility. In turn, this helped examine the validity of the reasoning behind the low age it is currently set at. The findings suggest that the current provision of compulsory education plays a limited role in

⁷⁴⁸ Katherine Covell, Brian R. Howe and Justin K. McNeil, 'If There's a Dead Rat, Don't Leave It'. *Young Children's Understanding of Their Citizenship Rights and Responsibilities* (2008) 38 *Cambridge Journal of Education*.

⁷⁴⁹ Barry Goldson, 'Unsafe, Unjust and Harmful to Wider Society': Grounds for Raising the Minimum Age of Criminal Responsibility In England And Wales' (2013) 13 *Youth Justice*.

educating children about the ACR and this was attributed to three main barriers that were discussed, including the absence of the ACR from the basic curriculum, the question of which students the ACR is relevant to, and the tendency to shift responsibility for educating children on the ACR. In light of these findings, the chapter concludes with three recommendations to ensure that children are better informed of the ACR in a child-friendly and timely manner.

Chapter Six: Conclusion

6.1 Introduction

The final chapter draws conclusions on the research conducted as part of this thesis. This was done by revisiting the research problem and answering the research questions that were set at the start of my research journey to show the extent to which I have fulfilled the aims of this study. The evidence gathered from my exploratory study into the role of school education in informing children about the ACR (Chapter Four) and will be related back to the literature in this area of study (Chapter Two). Following this, I will highlight my contribution to knowledge made through this research. I will also cover some limitations of my case study before concluding with areas for future research.

6.2 Revisiting the Research Problem

The ACR has been a contentious topic in England and Wales for many years, mainly due to the age of ten being one of the lowest in the world.⁷⁵⁰ There have been numerous arguments from different disciplines in support of raising the ACR and these have been reiterated in many places within the literature.⁷⁵¹ The fact that children are provided with free, compulsory education is one of the arguments that contribute to the ACR being set at ten with no defence. In the case of *C. v DPP* and the *No More Excuses* report, this was used as a key justification for the abolition of the *doli incapax* doctrine, by suggesting that children can distinguish between right

⁷⁵⁰ Thomas Crofts, 'Catching Up with Europe: Taking the Age of Criminal Responsibility Seriously In England' (2009) 17 *European Journal of Crime, Criminal Law and Criminal Justice*; Neal Hazel, 'Cross-National Comparison Of Youth Justice' (Youth Justice Board 2008).

⁷⁵¹ Raymond Arthur, Exploring childhood, criminal responsibility and the evolving capacities of the child: the age of criminal responsibility in England and Wales, *Northern Ireland Quarterly*, 67 (3); Barry Goldson, 'Unsafe, Unjust and Harmful To Wider Society': Grounds For Raising The Minimum Age of Criminal Responsibility In England And Wales' (2013) 13 *Youth Justice*; Claire Bryan-Hancock and Sharon Casey, 'Young People and The Justice System: Consideration of Maturity In Criminal Responsibility' (2011) 18 *Psychiatry, Psychology and Law*.

and wrong due to the provision of compulsory education.⁷⁵² This effectively lowered the ACR by removing the partial safeguard that existed for children between the ages of 10-14, leaving children in England and Wales without any defence against criminal responsibility from the age of ten onward.⁷⁵³ Despite repeated claims by the government stating that children know the difference between serious wrongdoing and bad behaviour,⁷⁵⁴ there has been no research conducted into how they could possibly know this. Instead, the questions have been more focused on whether they are capable of understanding the ACR. As a result, no study was found to have investigated the role of compulsory education on children's understanding of right and wrong, specifically in the context of criminal law. This was the gap that was identified from my review of the existing literature on the ACR.

In order to fill this gap, I chose to conduct a case study that focused on exploring what is being taught in schools about criminal responsibility to children aged 7-14. The main aims of my study were to:

1. Investigate what compulsory education teaches children about the ACR.
2. Evaluate the extent to which it prepares them for being held criminally responsible at the age of ten.

To fulfil these aims, I outlined three research questions that guided my research process. Each of these research questions have been addressed in section 6.3. These questions have guided my research process during my review of the literature on the ACR and in my data collection process. More specifically, this formed the foundations of my document analysis and

⁷⁵² *C (A Minor) v DPP* [1994] 3 All ER 190; Home Office, *No More Excuses – A New Approach to Tackling Youth Crime in England and Wales* (White Paper, Cm 3809, 1997).

⁷⁵³ A.T.H. Smith, 'Doli Incapax Under Threat' (1994) 53 *The Cambridge Law Journal*.

⁷⁵⁴ *C (A Minor) v DPP* [1994] 3 All ER 190; Home Office, *No More Excuses – A New Approach to Tackling Youth Crime in England and Wales* (White Paper, Cm 3809, 1997); Ministry of Justice, Youth Custody Service, Department for Education, Department of Health and Social Care, and NHS England and NHS Improvement, *The Youth Justice Population and entering the system* (October 2019) accessed from <
<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/children-and-young-people-in-custody/written/106180.html>>

the semi-structured interviews I conducted with a sample of teachers in North-East England. The data obtained using these methods were then analysed based on these questions to determine the key findings of this case study. Asking these questions moves the debate on raising the ACR away from the legal, criminological, psychological, and neuroscientific arguments that have been presented, and into the realm of education.

6.3 Answering my Research Questions

In order to present how I met my research aims, this section will respond to each of my research questions. It will present the findings I came across in my exploratory study and use it to further inform the existing knowledge in the literature about the ACR. Furthermore, the focus will be on the role of education in preparing children for this legal responsibility. It is important to note that as there is little in the literature about this, I will be heavily relying on my preliminary findings in this area to respond to these questions.

6.3.1 Does the current provision of compulsory education inform children aged 7-14 about the ACR?

To explore and check the validity of the assumption made by the government and the courts that compulsory education helps children understand right and wrong, and therefore can be held criminally responsible at the age of ten⁷⁵⁵, I carried out document analysis and interviews as part of my study. The findings from both sets of data show that the ACR is not explicitly taught to children aged 7-14 in most schools.⁷⁵⁶ As mentioned in the previous section, none of the curriculum documents analysed, including the NC for Key Stage 2 and 3 and the programmes of study for all other relevant subjects (PSHE, RSHE, RE, Citizenship, BV,

⁷⁵⁵ *No More Excuses – A New Approach to Tackling Youth Crime in England and Wales* (White Paper, Cm 3809, 1997); *C (A Minor) v DPP* [1994] 3 All ER 190; Age of Criminal Responsibility Bill [2016-2017] HL Hansard, 29 January 2016, Column 1574, Lord Faulks.

⁷⁵⁶ Here, “explicitly” means that the ACR and/or the concept of criminal responsibility is not mentioned for the purposes of educating children on this legal responsibility. It is important to note that this term excludes topics related to the ACR for the purposes of this question as this is covered in RQ2.

and Children's HRE), made any reference to criminal responsibility, even within topics that could easily be related to it.⁷⁵⁷ This finding was corroborated by all the teachers interviewed as part of this study. The data suggests that the ACR is not included as a topic within the basic curriculum framework, thereby suggesting that if there is a chance that it is taught, it is done as a separate school initiative. From the analysis of the curriculum documents it has been deduced that teaching children about the ACR is not the norm.

The interview data also shows this to be the case with most teachers admitting that they do not explicitly inform their students about the ACR in their teaching practice. Moreover, they had not heard of any of their colleagues teaching their students about the ACR either.⁷⁵⁸ Each teacher in my sample of twelve relied on their experience of at least one but often two schools when responding to questions on whether they have taught their students about the ACR. The only exceptions to this finding within my sample, were two schools mentioned by two different teachers who shared that they informed their students about the ACR in some instances through police talks and assemblies (when they felt it was relevant and necessary). The main difference here was that both these schools had a vision and ethos that they felt helped facilitate the inclusion of ACR within their teaching practice, with its strong emphasis on exemplifying model behaviour and developing their students' understanding of their rights and responsibilities as citizens. They also claimed that this school vision and ethos was made to suit the needs of the students attending their school.

⁷⁵⁷ See the following subject documents for details. The links have been removed in this footnote but can be found in the bibliography. PSHE Association, 'Programme of Study for PSHE Education: Key Stage 1-5.' (PSHE Association 2020); Department for Education, 'Relationships Education, Relationships and Sex Education (RSE) And Health Education' (Department for Education 2019); 'A Review of Religious Education in England - The Religious Education Council of England and Wales' (*The Religious Education Council of England and Wales*, 2013); Department for Education, 'Promoting Fundamental British Values as Part of SMSC in Schools' (Department for Education 2014); Department for Education, 'Statutory Guidance: National Curriculum in England: Citizenship Programmes of Study for Key Stages 3 And 4' (Department for Education 2013).

⁷⁵⁸ This point must be distinguished from teachers mentioning the ACR when a student has behaved badly.

Out of the numerous schools these teachers have taught in, these two schools are a promising indication that there may be schools in England that make efforts to inform their students about the ACR through their own initiatives. However, this finding also makes it clear that simply providing compulsory education does not ensure that all children are informed about the ACR in a consistent manner across all schools, especially with it not being a part of the basic curriculum.

Overall, the data collected in this study shows that the current provision of compulsory education does not inform children between the age of seven and fourteen about the ACR. This suggests that children may not know that they have such a legal responsibility until they come into conflict with the law, at which point they may already be in contact with the criminal justice system.

6.3.2 To what extent do other topics within the basic curriculum contribute to children's understanding of criminal responsibility?

Since the ACR is not mentioned explicitly in the curriculum documents analysed and in most schools, as confirmed by the interviewed teachers, I examined whether children develop their understanding of criminal responsibility through other topics or concepts covered in the curriculum. During interviews, teachers noticeably shifted the conversation to subjects or topics within the curriculum that they felt were connected to teaching children about the ACR, to compensate for the absence of criminal responsibility in their teaching practice. This could be expected considering teachers have no curriculum document or guidance to provide further details on what criminal responsibility entails and how it will apply to children. Moreover, there is very little emphasis within the curriculum on developing children's legal consciousness by teaching them about laws that apply to them, therefore leaving few spaces within the existing curriculum where such a conversation can take place.

There are a few concepts taught within subjects, outside the National Curriculum (except Citizenship), that could contribute to children's understanding of criminal responsibility such as responsibility, right and wrong, and the role of law and the legal system. The subject matter on these concepts, across all the subjects that teach them, were analysed to find that these were areas within the basic curriculum where the ACR could be mentioned due to the similarity and relationship between the content. However, notwithstanding the obvious links between these concepts and the criminal responsibility that children possess, no connection is made between the two. As such, it was found that teachers were often quite hesitant and unsure when mentioning these topics, in relation to the ACR, as they were unable to provide much detail when making such connections. This was evident from the comparison made between their responses to teaching the ACR and their discussion of other topics such as online safety, bullying, and RSHE.

This was attributed to the fact that most teachers admitted that they do not explicitly teach their students about the ACR. Instead, they claimed that they teach these other concepts in the hope that it will bolster responsible behaviour and encourage good citizenship. Undoubtedly, instilling such knowledge can help develop a child's sense of responsibility and right and wrong. However, without making a direct link to the ACR, criminal responsibility is kept separate from the content being taught. Consequently, the link to the ACR only remains in the mind of the teacher and whether this link is made depends on how relevant they think the ACR is to their students. A prominent finding in relation to this was that five out of twelve teachers in my sample suggested that teaching children about criminal responsibility was not as relevant to their current school and put forward that it would be more applicable to other schools in more deprived catchment areas. They explained this view by sharing that they did not experience many behavioural issues with their students; therefore, problematically, implying that bad behaviour is a prerequisite for learning about the ACR. Although, it could be argued that they may have been trying to cater to the needs of the students in their school, this disregards the fact

that the ACR is applicable to all children regardless of their background, and on that basis should be important information for all children to learn about.

Outside the curriculum, the only other context in which most teachers claimed they may mention the ACR is when a student has engaged in bad or wrongful behaviour. Based on the data analysed, the ACR was only explicitly brought up on very rare occasions where something serious had already taken place. Hence, the descriptions by teachers suggested that this was mainly used for the purpose of warning or reprimanding students rather than to help prevent such behaviour through educating them about it beforehand. The other key point brought up was the fact that the sanctions that students receive in schools differ from the legal consequences that could arise from the same behaviour outside school, with the latter being a lot more serious. Upon reflection, some teachers felt that students may be receiving mixed and unclear messages on how they will be held responsible outside school due to schools being less forthcoming about what their actions or behaviour could mean within a legal context. Consequently, teachers shared how they think the ACR could be taught to students; it was found that almost half the suggestions involved external organisations or members of society taking on the role of teaching children about the ACR. Teachers also brought up the police in different contexts, therefore emphasising the role the police play in relation to teaching children about the ACR. The analysis of the data showed that teachers strongly implied that the police naturally play a role, as enforcers of the law, and therefore would be better placed to educate children about it within the school context.

In summary, the three concepts outlined above namely, responsibility, right and wrong and, the role of law and the legal system, all can be theoretically linked to the ACR. Yet, it was found that the links were made either through the document analysis conducted or by the teachers during the interviews, but were not reflected in the curriculum content or teaching practices shared. Even in these topics where the ACR could be easily related to the

subject material, there was a hesitation to discuss criminal responsibility that was noted. This could be attributed to a possible discomfort in viewing children as potential perpetrators rather than the norm, where they are often viewed as the victims.⁷⁵⁹ Although, child offenders may not be common,⁷⁶⁰ the law on the ACR is applicable to all children aged ten and over and for that reason should be something that all children are informed about in an age-sensitive manner. This would help ensure that children are not left to make the links between the concepts and the ACR on their own, as has been seen in the curriculum documents and interview data from my sample in the North-East of England.

6.3.3 Having examined the extent to which schools educate young people about their potential for criminal responsibility, is it still valid to argue that the age of ten is rational by virtue of compulsory education?

The purpose of this study was to explore the validity of compulsory education as an adequate reason in support of children possessing sufficient knowledge of right and wrong, to be held criminally responsible. The data collected in relation to this can be understood on two levels; explicit and implicit. On an explicit level, it has been established that the current provision of compulsory education as per the sample in my study does not teach children aged seven to fourteen about the ACR. This was concluded from an analysis conducted of the curriculum documents which included the NC document and the programmes of study of the 'other' subjects such as PSHE, RSHE, RE, Citizenship, British Values, and Children's HRE. It was also found that most of the interviewed teachers did

⁷⁵⁹ Department for Education, 'Relationships Education, Relationships and Sex Education (RSE) And Health Education' (Department for Education 2019); Department for Education, 'Keeping Children Safe In Education 2021: Statutory Guidance For Schools And Colleges' (Department for Education 2021).

In the RSHE document children are viewed mainly as victims whereas the safeguarding document does mention "peer-on-peer abuse".

⁷⁶⁰ Tim Bateman, 'The State of Youth Justice 2020: An Overview of Trends and Developments' (National Association for Youth Justice 2020)
<<https://thenayj.org.uk/cmsAdmin/uploads/state-of-youth-justice-2020-final-sep20.pdf>>
accessed 17 June 2021.

not inform their students about criminal responsibility through their teaching of these subjects. Only two teachers mentioned discussing criminal responsibility with their students, and they explained that this took place during talks conducted by the police or fire service, or when there were instances of bad behaviour. Therefore, the results of this study indicate that the ACR is not part of the basic curriculum, and consequently is not taught or discussed with children aged seven to fourteen in most of the schools that were included as part of this case study. On this basis, its role in informing children about criminal responsibility is negligible on an explicit level.

On an implicit level, it was found that there were topics within the curriculum that could be seen to contribute to children's understanding of criminal responsibility. The coverage of these concepts within "other" subjects were found to aid children's understanding of the ACR, by providing them with a general understanding of social and moral responsibility and right and wrong, alongside knowledge of the role of law and the legal system. The issue found was that although this takes meaningful steps towards preparing children for understanding criminal responsibility, it does not make explicit links to the ACR. The reasoning presented by the government seems to suggest that merely knowledge of right from wrong is sufficient to hold a child criminally responsible, yet from reviewing the theory behind criminal responsibility I would argue that this is not enough considering the evolving capacities of the age group in question. Legal-philosophical scholars explain that for an individual to be held either morally or criminally responsible they must have acted autonomously according to their free will, however, in this regard the legal system is known to have a narrower threshold for attributing responsibility.⁷⁶¹ The cognitive threshold in law is simply knowledge of right from wrong in order to establish criminal guilt whereas, a moral inquiry considers circumstances relevant to the act.⁷⁶² This means that discussions in schools on moral responsibility will be

⁷⁶¹ Don Cipriani, *Children's Rights and The Minimum Age of Criminal Responsibility* (Routledge 2016) pg 13.

⁷⁶² Ibid.

circumferential, in comparison to criminal responsibility which focuses heavily on right and wrong acts solely in a legal context. The issue with equating knowledge of right and wrong in a general sense with right and wrong in the legal context is that criminal law is more specific in what it considers 'wrong' and so the extent to which children understand the difference between the two without being informed of it plays a significant role in whether compulsory education prepares children for this legal responsibility.

It was found that although teachers made the link between the ACR and concepts like right and wrong taught within the school curriculum, they seemed unsure of whether their discussions on these aspects of the subject material did enough to cover criminal responsibility. This could suggest that the ACR may be challenging for teachers, as they themselves may not be aware of what this entails. For example, what such a responsibility means, how and when it applies to children, and what are the implications. From descriptions of social and moral responsibility in their teaching practice and the curriculum documents analysed, the discussion of this concept is quite generic, whereas legal responsibility in a criminal law context would require more specialist knowledge which teachers may not feel they have. The same applies for 'right and wrong' in a moral versus a legal context, with the former being much wider in its approach and consideration of circumstances. Moreover, it may not be something that they learnt in much detail perhaps having grown up in a similar education system. This highlights why teachers may find it difficult to draw links between relevant concepts like responsibility and the ACR without curriculum documents to guide them, like the age of consent has with the RSHE statutory guidance⁷⁶³. Teachers confirmed this in the interview data by saying that they would benefit from a programme of study or something similar that they can use to help teach children about the ACR.

⁷⁶³ Department for Education, 'Relationships Education, Relationships and Sex Education (RSE) And Health Education' (Department for Education 2019) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1019542/Relationships_Education__Relationships_and_Sex_Education__RSE_and_Health_Education.pdf> accessed 30 October 2021.

As a result, the data showed that the connections between relevant concepts and the ACR were either made by teachers during the interviews conducted or through my analysis of the documents. This means that children may be taught about these topics, but for the most part they are left to make the link to the ACR on their own. Logically for this to take place children must first be aware of the ACR however, from my data it is was found that teachers could not say for certain that they inform children about it explicitly unless their students had done something wrong and were being told about it as part of a reprimand. From this it can be deduced that the number of students with such knowledge, especially amongst young children between the age of seven and fourteen would be limited. Consequently, why would children think of criminal responsibility in connection with their actions/behaviour if they are not explicitly taught about it consistently across the school curriculum? This brings to question the effectiveness of compulsory education in relation to preparing children for the ACR on a large scale across all schools in England.

Notably, most teachers claimed that children between the age of seven and fourteen may be able to distinguish right from wrong, however, they were found to be more certain in their assertion that the majority would not foresee or sufficiently consider the consequences of their actions or behaviour, especially closer to the age of ten. This is corroborated by research on brain development which indicates that children below of the age of fourteen have an underdeveloped capacity for abstract reasoning⁷⁶⁴ which can have a significant effect on their ability to make decisions and control their impulses. Their evolving capacities seem to be taken into account in other aspects of the law such as in situations where children are witnesses⁷⁶⁵ or in relation to social rights and responsibilities however, in circumstances where they are seen as a 'threat' or an offender the question

⁷⁶⁴ Tim Bateman, 'Keeping Up (Tough) Appearances: The Age of Criminal Responsibility' (2015) 102 Criminal Justice Matters.

⁷⁶⁵ Youth Justice and Criminal Evidence Act 1999

of capacity is barely recognised as an important factor.⁷⁶⁶ This highlights a major inconsistency in the treatment of children within different areas of law. Although this is the case, children are still left with no defences in criminal law since the abolition of *doli incapax*, leaving them largely unprotected from the rigours of the criminal justice system.

Considering all these points, the appropriateness of the law on criminal responsibility can be questioned in a general sense, however, the findings suggest that holding children criminally responsible at the age of ten by virtue of the compulsory education is not rational either. This is indicated by the fact that concepts relevant to the ACR are taught in a generic manner with no reference made to criminal responsibility even in places where it could easily be included. As such, it is important to note that developing children's understanding of the law and the legal context of the topics taught is of particular concern, as teachers mentioned that many of them may be under the impression that the law does not apply to them. Therefore, the hesitation and uncertainty noted in teachers' responses on how they educate or prepare children for the ACR illustrates that this is not a topic they were particularly conscious of prior to engaging in the interview process. The teachers admitted to this and based on their teaching experience seemed to be unsure of their role in informing children about the ACR. As a result, how can students as children be expected to make the link between their actions and criminal responsibility without being informed about it by the adults around them? This is especially true in light of their developing capacities which should arguably warrant more specific efforts to make sure children understand such a significant law like the ACR that is applicable to them from the age of ten. Moreover, the UNCRC calls for the acknowledgment of children's "special status" and "need for protection"⁷⁶⁷ which in the case of the ACR in England and Wales is evidently not recognised, as efforts to do so are not demonstrated by either

⁷⁶⁶ Barry Goldson, 'Unsafe, Unjust and Harmful to Wider Society': Grounds for Raising the Minimum Age of Criminal Responsibility in England and Wales' (2013) 13 *Youth Justice*.

⁷⁶⁷ United Nations Declaration of the Rights of the Child (1959) as cited in Penelope Brown, 'Reviewing the age of criminal responsibility' (*Criminal Law Review*, 2018).

the government or the current provision of compulsory education (their reason for holding children criminally responsible on the basis of understanding right from wrong).

Compulsory education may provide a basic understanding of right and wrong however, I would argue that such a low threshold should not be sufficient to hold children criminally responsible as many children may be unaware of the ACR prior to coming in conflict with the law. This was inferred from the absence of the ACR in the curriculum documents analysed, and from hearing about teacher's experiences with children where they found children to be unaware of the ACR. As there is no legal defence available, the education provided in schools could be a promising avenue to make children aware of the current ACR in order to help mitigate the harmful effects of this law. However, in its current form, compulsory education does not do enough to educate children about criminal responsibility that is applicable to them from the age of ten. Instead, there appears to be potential barriers to teaching children about the ACR found within the sample, namely the lack of its presence within curriculum documents, the classist view that learning about the ACR is more relevant to some children from disadvantaged backgrounds than others, and the tendency to shift responsibility for informing children about the ACR to the police or parents. Therefore, my exploratory study into the role of education in informing children about the ACR presents that in its current form compulsory education does little to develop children's understanding of criminal responsibility and as a result, does not provide sufficient justification for criminalising of children at such a young age.

6.4 Contribution to Knowledge

The original contribution to knowledge was achieved in this thesis in three distinct yet connected ways.

Firstly, it was found that although compulsory education has been widely cited as a reason for children being able to understand serious wrongdoing from actions that are merely naughty, this justification has not been backed

up with evidence showing *how* it does this.⁷⁶⁸ From my review of the literature there have been no studies into how compulsory education prepares children for the ACR. Therefore, my investigation into compulsory education by exploring what schools teach children about the ACR and how this helps children understand criminal responsibility is the first of its kind. This has been a largely unexplored and neglected area within the literature and as a result, the research conducted as part of this thesis has taken the first practical step towards examining this undefined area. In light of this this, it offers a critique of the compulsory education justification relied upon by the government for many years. This was done in this thesis by looking at the extent to which the current provision of compulsory education prepares and develops children's understanding of the ACR. Based on the empirical findings from my case study conducted in North-East England, I was able to examine the validity of this justification in some schools in the region.

Secondly, following a critique of the reasoning, my thesis also puts forward a novel argument in favour of raising the ACR from an educational perspective based on the sufficiency of what is taught and teacher's experiences of children. The law makes it clear that criminal responsibility is not imposed upon children below the age of ten (*doli incapax*) or on those who are deemed to be suffering from quite a severe mental illness or abnormality (including diminished responsibility)⁷⁶⁹, as they are found to have not chosen to engage voluntarily in criminal conduct. Expanding on this line of thought, this thesis argues that children should not be held criminally responsible at such a young age, unless they can act voluntarily *with* knowledge of how the law would affect them. The ability to make such informed decisions would act as a necessary precaution considering their evolving and developing capacities between the age of 10-14. Therefore,

⁷⁶⁸ *C (A Minor) v DPP* [1994] 3 All ER 190; Home Office, *No More Excuses – A New Approach to Tackling Youth Crime in England and Wales* (White Paper, Cm 3809, 1997).

⁷⁶⁹ Claire McDiarmid, 'After the Age of Criminal Responsibility: A Defence for Children Who Offend' (2016) 67 Northern Ireland Legal Quarterly; Dennis Baker., *Glanville Williams Textbook of Criminal Law* (4th edn, Sweet & Maxwell (UK) 2015).

my theoretical contribution presents that unless children are consistently and adequately informed about the ACR in schools, compulsory education does not provide a valid justification for holding children criminally responsible at the age of ten without a defence. This particular line of argument for raising the ACR is novel to this thesis, as there has been no literature so far that has started exploring the extent to which ACR is included within the educational provisions in schools.⁷⁷⁰

Thirdly, this thesis provides a preliminary survey into the role that school education could play in informing children about the ACR, as an alternative solution to mitigating the harmful effects of this law which can have serious implications on children from the age of ten. This was explored through my analysis of what is currently taught within the curriculum, with a specific emphasis on how children are taught about consent in comparison to the ACR. Although, a comparison between the age of consent and ACR have been made from an intra-jurisdictional perspective, little has been written about the differences between how children are informed about both these age limits.

6.5 Limitations of the Study

This study, as with any research, had its own limitations which will be discussed in this section.

As I was conducting research in a largely undefined area, I chose to conduct an exploratory study. With the aim of exploratory research being to gain familiarity with an area, I felt this would best suit my study, however, this approach had its limitations. One of the main limitations of the exploratory study I carried out was that it did not provide an in-depth study into the area. Instead, through the data gathered and analysed, I found that

⁷⁷⁰ Prominent and widely cited journal articles like, Barry Goldson's 'Unsafe, Unjust and Harmful to Wider Society': Grounds For Raising The Minimum Age Of Criminal Responsibility In England And Wales' that have extensively discussed the reasons for raising the ACR, have not considered or referred to the role of compulsory education in informing children about the ACR.

I was able to find some general, over-arching themes that provided an overview of the issue. Although, the data collected addresses my research aims and questions as outlined above, it also raised further questions such as what teaching the ACR involves, what the teachers understand their role to be in relation to teaching the ACR, and how the type and area of the school influences the likelihood of the ACR being mentioned. This experience allowed me to understand why Stebbins made it clear that exploratory research is a process that is carried out of several studies.⁷⁷¹ Hence, even though I have achieved the aims of my research to a large extent without it being an in-depth investigation, I am aware that this is the first of many studies in this area and I hope to explore this area in more depth in my future research. Some of the questions raised from this study will be discussed in the following section on areas for future research.

This case study consisted of document analysis and interviews conducted with twelve teachers from schools in North-East England. One of the main issues that arose during my research process was the Covid-19 pandemic. This coincided with my designated data collection period and as a result limited the sample size to twelve despite the use of telephone interviews as a method that could be used. Accessing teachers had already proven to be challenging pre-pandemic, however, the resulting circumstances made this even harder to navigate through. Studies conducted prior to the pandemic have illustrated that major societal disruptions can have a detrimental impact on teachers' well-being.⁷⁷² Although, twelve interviews is not a large sample, the nature of the interviews and the data gathered provided me with valuable information that proved to be sufficient for the scope of this study. In fact, my sample group consisted mainly of teachers and headteachers who work with children aged seven to fourteen. 17% of the sample were male and the remaining 83% were female. This is roughly representative of the ratio of males to females in the school teacher

⁷⁷¹ Robert A Stebbins, *Exploratory Research in The Social Sciences* (SAGE 2001).

⁷⁷² Sanna Malinen, Tracy Hatton, Katharina Naswall, and Joana Kuntz, 'Strategies to Enhance Employee Well-Being and Organisational Performance In A Postcrisis Environment: A Case Study' (2018) 27 *Journal of Contingencies and Crisis Management*.

workforce where it was found that 75.8% of teachers were women.⁷⁷³ All the participants, except one, were ethnically white, which is also representative of the 91% white majority of all teachers in state-funded schools.⁷⁷⁴ In this regard, my sample was a largely homogenous group, representative of the school teacher workforce as per the statistics in 2020-2021 when this research was carried out. Despite the small sample size, there was sufficient variation found in the information shared however, the fact that the group was mainly homogenous with some variation in the location and type of their current schools meant that no further ideas or themes were uncovered from the data after conducting twelve interviews. Subsequently, the document analysis was conducted to look specifically for any information that would provide evidence against my interview findings to broaden my research. In addition, any information found in the process that supported what emerged from the interview data was also noted to strengthen the validity of the preliminary generalisations made in this study.

As this is the first exploratory study conducted in this area, I was able to make preliminary generalisations based on the findings. The level of validity of these generalisations are a limitation to this study as they are said to be comparably less than that of a confirmation study that would come from more studies in the same area. Stebbins summarises this by stating that ‘the most authoritative statement about validity and reliability can only be made down the road in the wake of several open-ended investigations.’⁷⁷⁵ This means that studies following mine that would look to build upon and confirm the preliminary generalisations made in this thesis, which could eventually form a theory. Although this could be expressed as a limitation, it was necessary for someone to start the process of exploring this gap in the research and it was a decision that I made before starting my research journey. Therefore, I recognise that tentative generalisations, as produced in this study, are a step in the direction of theory generation, however I do

⁷⁷³ 'School Teacher Workforce' (*Ethnicity-facts-figures.service.gov.uk*, 2021) <<https://www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/school-teacher-workforce/latest>> accessed 17 August 2021.

⁷⁷⁴ Ibid.

⁷⁷⁵ Robert A Stebbins, *Exploratory Research in The Social Sciences* (SAGE 2001).

not claim to have gathered the type of data required to form concrete theories or generalisations. It is important to note, that concrete generalisations or theories were not the aim of this study but rather the purpose of this study was to start mapping out a largely undefined area. So even with the limitations of carrying out an exploratory study, the overarching purpose of this research was achieved as it takes an important step towards exploring this area and provides an overview of the approaches taken in schools when teaching about criminal responsibility.

6.6 Areas for Further Research

This thesis started out by identifying a research gap in my literature review that has been largely unexplored and as a result, conducting a preliminary study into this area has brought up many areas for further research. I discuss three of these below with the intention to explore these areas in the future. As established in the limitations section, this is the first study into this area and so I intend to build on the findings from this study and expand on it by carrying out further studies.

Since I have already carried out an exploratory study, I would like to build upon my preliminary findings by conducting in-depth investigation into how the geographical location of the schools within a region and the socio-economic background of the student majority affects the approaches taken to teaching the ACR. This was something I wanted to explore further in my research study by conducting a second round of interviews however, the Covid-19 pandemic made accessibility to teachers difficult to pursue this line of inquiry. I would specifically conduct narrative interviews where they would take me through how they would conduct a lesson or workshop on the ACR or an ACR-related topic like responsibility, right and wrong or the role of law and the legal system. This would allow teachers to go into detail about how they would plan and deliver such a session, how the children usually respond to them and what they (the teachers) experience children to take from such a session. This would be teacher-led narration with less questions and interjections from me even though I would be in the role of

an interviewer. If possible, I would also like to observe a session like this to build a fuller picture of how such topics are taught and to understand how children respond to them.

I would also be interested in replicating my study by carrying out more semi-structured interviews with a wider sample to see if the preliminary generalisations made from this study apply to primary schools in all regions of the country. To do this I would interview teachers from different parts of the country. Similar to this study, I will speak to teachers from different geographical locations around a major city as differences in the type of school and the geographical location of the schools the teachers worked in, were found to provide some diversity to the sample which presented a variety of views and approaches to teaching the ACR which would be interesting to compare on a national level.

Another important aspect of this area that I would like to explore would be hearing from children about what they understand about the law on criminal responsibility. This would add an additional layer to my preliminary findings as I would be able to further examine some of the points mentioned by teachers such as: how some children know about the ACR due to their exposure to the police in the areas they live in or their families involvement in crime; the fact that some children may understand right and wrong but may not foresee the consequences of their actions; and on foundational level, whether they are aware that the ACR is set at ten and applies to them from that age onward. This would provide a multi-layered examination of the role of education and the influence of external factors on children's understanding of the ACR.

6.7 Concluding Comments

This thesis has explored the role of education in informing children about the ACR and found that although, school education is well-placed to develop children's understanding of the legal responsibilities applicable to them, the current provision of compulsory education does not seem to sufficiently prepare them for being held criminally responsible as per the

findings of my study. My case study highlights how the curriculum makes no mention of the ACR and indicates how links between related topics and the ACR are rarely made according to the document analysis and interviews conducted. The originality of this research has been stressed throughout this work as it is exemplified by both the area investigated in my exploratory study and the findings presented in this thesis. As a result, the research conducted in this thesis examines the appropriateness of the ACR from an educational perspective and presents another reason why the ACR should be raised.

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Appendices

Appendix 1 – General Aims and Research Project

Title: *The role of education in young people's understanding of their responsibility as legal and moral agents as required by the Minimum Age of Criminal Responsibility (ACR) in England and Wales.*

This research critiques the requirements of young people by the ACR in England and Wales through the lens of education. There are two main systems of education – the law and the education system itself, for example schools. The educative function of the law is to make the citizens of the state aware of their moral and legal responsibilities, which for criminal responsibility starts at the age of 10. It acts as an 'educator whose effects are deliberate and intentional.'⁷⁷⁶ The other system of education is compulsory schooling which has been mentioned as one of the reasons for justifying one of the lowest ACRs in the world. This research aims to investigate the role that primary schools play in young people's understanding of their criminal responsibility and whether this justifies having the age of criminal responsibility as low as 10.

Hypothesis: The discrepancy between the educative functions of the two systems highlights the failure to effectively educate young people on their moral and legal responsibility in criminal law as citizens of England and Wales.

General Aims:

- To evaluate whether the ACR is an appropriate age to attribute a legal responsibility of this nature onto young people aged 10 (or in primary school).
- To investigate the theoretical purpose behind criminal responsibility and specifically how it relates to the young people and the justice system.
- To explore the link between the ACR and education in primary schools (for students around the age of 10) and how this affects their understanding of criminal responsibility as citizens of England and Wales.
- To scrutinise the discrepancy in the educative role of the law and the schools, in developing an understanding of criminal responsibility in young people at the age of 10.

Research Objectives:

- 1) A literature review on the effectiveness and justifications for the current ACR and how it relates to theories of criminal responsibility in law.

⁷⁷⁶ Burge-Hendrix, B. The Educative Function of Law in Law & Philosophy, Current Legal Issues, Volume 10. Edited by M. Freeman and R. Harrison.

2) A *theoretical* and *practical* investigation into the role of compulsory education and how it affects young people's understanding of their criminal responsibility as legal and moral agents.

a) *Theoretical* – This would be looking at secondary sources such as academic articles and books to synthesise literature on this issue.

b) *Practical* – This would be carried out by the collection of empirical data from primary school teachers and headteachers who work closely with young people.

3) Research to developing an appropriate methodology to investigate the research aims with schools (headteachers and teachers).

4) Exploring how young people's understanding of the ACR (as understood by teachers who deal with them) can be conceptualized to critique the current law on the age of criminal responsibility in England and Wales.

Description of Study Design

Children aged 10 have a legal responsibility under criminal law with the ACR. There has been much research that has shown that this age is very low and that young people at this age do not have capacity to understand this responsibility and the consequences of their actions. My research is investigating the educative function of the law and how the education system supports this function as they do with other legal responsibilities such as sex education. Since the abolition of the doli incapax doctrine there are no available defences for young people, hence investigating whether young people are adequately taught and communicated their moral and legal responsibilities as citizens of England and Wales is crucial to the enforcement of such a law.

The following research questions summarise this:

- To what extent does compulsory education play a role on young people's understanding of their responsibility as legal and moral agents?
- Is their moral and legal responsibility (ACR) taught to them in primary school as part of the curriculum?
- Are they able to understand this responsibility as a citizen of England and Wales?
- Is compulsory education a justifiable ground for imposing such a low ACR and not providing any suitable defences?

This research is exploratory in nature and therefore qualitative methods will be used.

1) Semi-structured interviews with teachers and headteachers will be arranged to investigate the above research questions. This will allow for flexible, open-ended questioning to hear from their own personal experience of teaching the curriculum and their experience with young people aged 10.

2) During the interview details of what is taught will be asked and educational materials may be referred to. Copies of these curriculum documents will be analysed to understand what is being taught and how this relates to developing young people's understanding of their legal and moral responsibilities.

3) Diamond Ranking will be used as a visual method to understand the priority that teachers and headteachers place on the some skills and knowledge students aged around 10 need to be taught. This will be related to their focus on educating these young people on their moral and legal responsibility as school is not just an institution to keep young people out of trouble.

Sampling Strategy

The sampling strategy used in this research design will be purposive sampling. I will focus on developing a sample from primary schools as they deal with young people at the age of 10 which is the ACR. As a researcher from Northumbria University I will be in touch with schools in the Newcastle upon Tyne area. As Newcastle is a moderately sized city with a diverse population I will be conducting my research here and for reasons of accessibility. I have found a list of schools on the Newcastle City Council website and Department for Education website and I will narrow it down based on whether the majority of students from that school are from an advantageous or less advantageous background. This will be categorised into 4 quartiles from most advantageous to least advantageous. I will be trying to focus on investigating 2-3 schools in each quartile to see how this affects the school's approach in educating their students on their moral and legal responsibilities.

Methods of Data Collection

Semi-structured interviews:

These will be conducted with primary school teachers and headteachers. This method has been adopted to ask the teachers their own personal experiences of teaching and their interactions with young people aged around 10, to understand the role of primary school education in teaching their students their legal and moral responsibility as citizens of England and Wales. The interview will be semi-structured in order to allow for there to be flexibility and sensitivity so that I, the researcher, will be able to mould the questions based on the responses given by the teacher. This will allow for further depth, explanation and insight. It will also allow me to go deeper into some unexpected responses that I may come across.

A general outline of questions will be made before the interviews are conducted so that there is a level of consistency between all the interviews. Some of the areas that will be asked about include:

- What is their background in teaching primary school children?
- How would they describe their 10-year old students?
- What aspects of their curriculum relate to the ACR and how they go about teaching it?
- Are moral and legal responsibilities something that students aged 10 understand (from their personal experience of interacting with them)? And if so to what extent do they understand this?
- Do schools play a role in educating students of these responsibilities, and if so what does this entail?
- Should this be something that schools should focus on in their educational role?

Document Analysis:

During interviews the teachers will be asked about their curriculum and what aspects relate to informing/teaching their students about their criminal responsibility. Any documentation that relates to this issue will be

requested and with their permission analysed. This is will be in interpreted by me as the researcher, to highlight the ways in which young people are informed about their legal responsibilities and shed further light on how this may influence their students understanding of these responsibilities. This will further corroborate some of the information provided by the teachers in the interviews, reducing any potential bias as it is information documented and applied generally across all classes.

Analysis

The data collected through the semi-structured interviews and documents will be analysed using thematic content analysis. There will also be some phenomenological influences to the thematic content analysis as the lived experience of the participants with young people aged around 10 will be a significant to exploring to what extent the education system teaches these young people their moral and criminal responsibility.

Firstly, the interviews will be read and reread to familiarise myself with the data, after which I will code the text by labelling. I will then search for themes within the text which fits broader patterns of meaning. These themes will be reviewed to make sure that they represent the data accurately. Finally, these themes will be narrowed down and defined. This will then allow for these themes to illuminate a deeper understanding of some of the theoretical context being explored.

I will do the same for with the document analysis however, the themes found in the interviews will be mapped onto the documents. This will be in addition to the coding done in my readings of the documents. The relationship between the two will be investigated within the context of the broader research questions.

Sensitive Topics

This research is being carried out with participants who are adults and will be giving their informed consent before taking part, thus they are not considered to be 'vulnerable' persons. The nature of the questions as mentioned above is not sensitive. It does not put the participants at risk or in a discrediting position. If any sensitive topic does come up then the participant will be ensured that all the information they share will be anonymised and confidential. They will be given the guarantee that what they share will not be traced back to them.

Appendix 3 – People & Personal Data

Sample Groups

The sample group will be chosen from the primary schools located in the Newcastle upon Tyne area for reasons of general demographics and accessibility. The schools that are affiliated with Northumbria University will be contacted due to the existing relationship with the University. However, this is not a criteria for selecting schools. This is for the purposes of establishing connections with the school. Otherwise, I have a list of schools from the the Newcastle City Council website and they will be used to create the sample.

The main criteria will be as follows:

- 1) Primary schools must be in the Newcastle City area as per the list found. This is because the city will provide young people from diverse backgrounds.
- 2) The quartile that the schools are in will determine the range of the sample. This will indicate the general background of the students and the school through the number of students from less advantageous backgrounds that attend that school.
- 3) Teachers and headteachers from at least 2 schools from each quartile will be consulted for the interview data collection.
- 4) At least one teacher teaching students aged 10, and/or headteacher from each school will be interviewed.

Nature of data pertaining to living individuals

This study will collect the personal details of teacher and headteachers such as name, experience in teaching etc., for the purposes of differentiating the various participants. This will be only be obtained after seeking their permission using consent forms and other additional documents. Please find this attached with this application. This data will not be collected to reveal anything personal about the participants.

Legal Basis for Processing

In this research study personal details will not be stored and used. Only the responses in the interview pertaining to the research questions will be used and presented. It is important to collect this data to investigate my research title as the teachers' and headteachers' experiences of teaching young people aged around 10 is essential to develop an understanding of how primary schools educate their young on their moral and legal responsibility. Finding this out will allow for further evaluation of the ACR and whether it is helpful to have such a legal provision. This is in the interest of young people and the society as a whole.

The GDPR guidelines will be adhered to. The participants will be provided with an information sheet with details of the study. They will also be given a consent form which will outline their rights, including the right to opt out of the study at any point. It will be ensured that consent is freely given,

informed, unambiguous, specific and affirmative. They will also be guaranteed that what they say will be anonymised and confidential.

Recruitment

I will start off by my making a list of the schools in the Newcastle area in each quartile (document attached). I will start by contacting the Headteacher of each of these schools via email. In this email I will introduce myself as the researcher of this study from Northumbria University, give them a brief outline of my research, attach the information sheet, and ask them if it would be possible to conduct an interview with them and a few of their teachers who work with 10 year olds. I will also inform them that participation in this study is completely voluntary as outlined in the information brief.

If I do not receive responses from many schools, then I will try and call them to check on whether they have seen my email and if not give them a brief overview on the phone to ask if they would be interested to take part.

If they do respond positively, then I will ask for the details of some of their teachers who can take part so that I can send them the information sheet and consent form. I will then ask if they would prefer to have a phone interview or an interview in person. I will make arrangements of timings accordingly. They will be informed of what materials will be used to collect this data, approximately how much time it will take, how this data will be stored and used, and how the data will be anonymised and kept confidential. I will be the only researcher handling the data.

Type of consent details

Copies of information sheets and consent forms will be included in this application. Please see attached.

Information Sheet: This will outline what the study is about, the purpose of the study, how the study will be conducted, what is expected of the research participants, how the data collected will be handled.

Consent forms: This will outline that they have been informed about the study, they understand what it entails, are voluntarily taking part in it and know that they are free to withdraw from it at any point.

Researcher and Participant Safety Issues

There are no safety issues involved in carrying out this research. The data collected is not of a sensitive nature hence, the interview should not cause the participants any distress or discomfort. Any questions or points of concern will be dealt with by the researcher. If they do feel uncomfortable during the study they are free to withdraw from the study.

Data Gathering materials

What will the participants be asked to do?

They will be asked questions as outlined in previous sections relating to their experience of teaching 10 year olds, what they teach and to what extent to they focus on legal and moral responsibilities these young people have as citizens of England and Wales. If there are any teaching materials or curriculum documents that they use then their permission will be asked to analyse those documents.

Process of data collection

The aim is to conduct 16 interviews with teachers and headteachers in 8 schools across Newcastle. This will include 2 schools from each quartile.

Each interview will take approximately 15-20 minutes. These interviews will be conducted during between October 2019 to January 2020 at any time that is convenient for the participants. An outline of the types of questions that will be asked is outlined in Document 2.

Each of these interviews will be recorded via audio recording on my phone (with the permission of the participants) for transcription purposes and data analysis. After the interviews have been conducted they will be transcribed for coding and thematic analysis.

Any documents shared will be analysed and coded using themes that were found in the interviews.

Potential Ethical Issues

- *Confidentiality* of participants must be maintained. Participants must be guaranteed of this. Thus, names and other specific, personal details of the participants will be not disclosed in the research project.
- The *data obtained (physically) will be stored in a lockable storage space* provided by Northumbria in my office. The key to this storage space will be kept with me at all times to ensure that I am the only person with access to this space. Any soft data such as the audio recording and documents are going to be saved on my personal computer which is password-protected. This information can and will only be accessed by me as the researcher.
- Participants must be respected and their *well-being should be of paramount importance*. The most important quality of a researcher is being sensitive and perceptive to the participants through good listening and communication skills. This will make the participant feel like their participation is respected and appreciated.
- *Consent* must be obtained before the study can take place. Consent forms stating all the information about the study will be sent to the teachers and headteacher so that they are fully aware of what they are consenting to. Any other gatekeepers will be informed as well if required.
- *DBS check* has been obtained and is included as part of the application to the Ethics committee for approval before any research is conducted.

- *Integrity* is an essential value in research. This means that the researcher should make certain that the information obtained from the study is presented as it is without any editing or additions. All information must be taken into account when sorting out and analysing the data. The researcher must remain unbiased and avoid involvement which may affect the results obtained.

Secondary Data

No secondary data will be used. All personal data obtained will be from the participants themselves.

Research Data Management Plan

Anonymising Data:

This will be done by ensuring that after data collection and analysis, the names of the participants and any other people they mention will be anonymised. Furthermore, the names of the schools will be anonymised too. The only identification will be that the school is in the Newcastle area and that it belongs to a particular quartile (which will be numbered) to show how deprived the area is. However, as there are many schools that fit this criteria the schools will not be identified. In addition, to replace the names of the participants and schools, they will be renamed as, School A, Teacher 1 etc. This will be covered in the consent forms.

Storage Details:

The data collected will be stored by me as the sole researcher on this study. For the interview recordings, they will be recorded and stored on my phone during the data collection process. They will then be uploaded onto my personal university, password-protected computer and will also be uploaded onto my OneDrive as a back up.

Any documents that are provided by the schools for analysis will also be stored on my personal university computer. If they are hard-copies they will be scanned and saved onto my computer for safety. Soft copies will also be stored in the same way. This will allow for the document analysis to be done online and make sure that everything is backed up on OneDrive to prevent and loss of data.



Participation Information Sheet

You are invited to take part in a research study. Before you decide whether you want to take part, I would like you to understand why the research is being done and what it involves for you. Please read this information sheet carefully. You can also contact the researcher conducting this study, Miss Malvika Unnithan, if you have any questions (contact details are at the end of this sheet).

Title of Project: *The role of education in young people's understanding of their responsibility as legal and moral agents as required by the Minimum Age of Criminal Responsibility (ACR) in England and Wales.*

What is the purpose of the research?

Children aged 10 have a legal responsibility under criminal law with the ACR. There has been much research that has shown that this age is very low and that young people at this age do not have capacity to understand this responsibility and the consequences of their actions. My research is investigating the educative function of the law and how the education system supports this function as they do with other legal responsibilities such as sex education. Since the abolition of the doli incapax doctrine (defined as: deemed incapable of forming the intent to commit a crime or tort, especially by reason of age - under ten years old) there are no available defences for young people, hence investigating whether young people are adequately taught and communicated their moral and legal responsibilities as citizens of England and Wales is crucial to the enforcement of such a law.

This study hopes to explore any discrepancies between the educative functions of the two systems – law and schools - in effectively educating young people on their moral and legal responsibility in criminal law as citizens of England and Wales.

Why have I been invited to take part?

Your school is one of the primary schools in the Newcastle area.

Do I have to take part?

You do not have to participate in the project. It is entirely up to you whether you would like to take part or not. This information sheet is to give you more information about the research, to help you decide whether you would like to take part. You withdraw of your participation at any time.

What will be involved if I decide to take part in the research?

Semi-structured interviews will be conducted with primary school teachers and headteachers. This method has been adopted to ask the teachers their own personal experiences of teaching and their interactions with young people aged around 10, to understand the role of primary school education in teaching their students their legal and moral responsibility as citizens of England and Wales. A set of questions have been developed; however, a flexible approach will be adopted to allow discussions to develop.

During interviews the teachers will be asked about their curriculum and what aspects relate to informing/teaching their students about their criminal responsibility. Any documentation that relates to this issue will be requested and with their permission analysed after the interview process.

We anticipate the interview to last between 15-20 minutes. Conversations will be recorded using the phone audio recording application and notes will be taken during sessions.

What are the benefits and risks of taking part?

There are no risks perceived in taking part in this study as the interviews will be conducted in a sensitive manner though the content discussed will not be of a sensitive nature. There are also no apparent benefits to the participants for taking part, however, their input will be valuable in understanding the extent to which young people around the age of 10 are taught of their criminal responsibility.

If anything does cause the participant distress, they have the option to either continue the interview or withdraw from the study.

How will confidentiality be assured?

The data collected will be anonymised using codes and prior to data analysis, all data will be held securely on a password protected computer/laptop and will not be shared anyone. No personal data will be shared and you will not be identified in any resultant outputs such as study reports or publications. Please see the Privacy Notice for further details.

Who has reviewed and approved this study?

This study was reviewed by Northumbria University Ethics Committee, and was given approval to conduct.

If you have questions related to the project, please contact the lead researcher:

Malvika Unnithan

Graduate Tutor

Address: Northumbria University,
Newcastle Law School City Campus East
Newcastle upon Tyne
NE1 8ST

Email Address: malvika.unnithan@northumbria.ac.uk

Telephone: 0191 227 5154

If you are happy with the answers to your questions, please complete, sign and hand over the enclosed Informed Consent Form.

Appendix 5- Consent Form



Consent Form

Project title: *The role of education in young people's understanding of their responsibility as legal and moral agents as required by the Minimum Age of Criminal Responsibility (ACR) in England and Wales.*

This form is to confirm that you understand the purpose of the project, what is involved and that you are happy to take part.

Please initial each box to indicate your agreement:

I confirm that I have read and understand the Information Sheet dated () for the above project.	
I have had sufficient time to consider the information and ask any questions I might have, and I am satisfied with the answers I have been given.	
I understand who will have access to personal data provided, how the data will be stored and what will happen to the data at the end of the project.	
I agree to take part in the above project.	
I understand that my participation is entirely voluntary and that I am free to withdraw at any time up to submission of the report for publication, without giving a reason.	


Participant's Signature _____ Date _____ (NAME IN BLOCK LETTERS) _____ _____

Appendix 6 - Research Project Timescale

September 2019	<ul style="list-style-type: none"> - Ethics application submission - Shortlisting schools - Draft emails to headteachers
October 2019	<ul style="list-style-type: none"> - Recruiting schools - Arranging conversations for further details with headteachers - Organising meetings with headteachers
November 2019	<ul style="list-style-type: none"> - Organising meetings with headteachers - Recruiting teachers - Data Collection – conduct interviews and gather documents for analysis
December 2019	<ul style="list-style-type: none"> - Organising meetings with headteachers and teachers - Data Collection – conduct interviews and gather documents for analysis
January 2020	<ul style="list-style-type: none"> - Organising meetings with headteachers and teachers - Data Collection – conduct interviews and gather documents for analysis
February 2020	<ul style="list-style-type: none"> - Start Data Analysis - Data Collection conduct interviews and gather documents for analysis
March 2020 – June 2020	<ul style="list-style-type: none"> - Data Analysis continued

Appendix 7 – Ethics Approval Email

Research Ethics: Your submission has been approved

 EthicsOnline@Northumbria
Mon 23/09/2019 15:07

To: Malvika Unnithan
Cc: Raymond Arthur

Dear Malvika Unnithan,
Submission Ref: 18022

Following independent peer review of the above proposal*, I am pleased to inform you that **APPROVAL** has been granted on the basis of this proposal and subject to continued compliance with the University policies on ethics, informed consent, and any other policies applicable to your individual research. You should also have current Disclosure & Barring Service (DBS) clearance if your research involves working with children and/or vulnerable adults.

* note: Staff Low Risk applications are auto-approved without independent peer review.

The University's Policies and Procedures are [here](#)

All researchers must also notify this office of the following:

- Any significant changes to the study design, by submitting an 'Ethics Amendment Form'
- Any incidents which have an adverse effect on participants, researchers or study outcomes, by submitting an 'Ethical incident Form'
- Any suspension or abandonment of the study.

Please check your approved proposal for any Approval Conditions upon which approval has been made.

Use this link to view the submission: [View Submission](#)

Research Ethics Home: [Research Ethics Home](#)

Please do not reply to this email. This is an unmonitored mailbox. If you are a student, queries should be discussed with your Module Tutor/Supervisor. If you are a member of staff please consult your Department Ethics Lead.

[Reply](#) | [Reply all](#) | [Forward](#)

Appendix 8 – Articles Published During PhD⁷⁷⁷

⁷⁷⁷ See Below



Article

Integrating Sustainable Development and Children's Rights: A Case Study on Wales

Rhian Croke ^{1,*}, Helen Dale ², Ally Dunhill ³, Arwyn Roberts ², Malvika Unnithan ⁴ and Jane Williams ⁵

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⁵ Observatory on the Human Rights of Children, Swansea University, Swansea SA2 8PP, UK; jane.m.williams@swansea.ac.uk

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Abstract: The global disconnect between the Sustainable Development Goals (SDGs) and the Convention on the Rights of the Child (CRC), has been described as 'a missed opportunity'. Since devolution, the Welsh Government has actively pursued a 'sustainable development' and a 'children's rights' agenda. However, until recently, these separate agendas also did not contribute to each other, although they culminated in two radical and innovative pieces of legislation; the Rights of Children and Young Persons (Wales) Measure (2013) and the Well-being and Future Generations (Wales) Act (2015). This article offers a case study that draws upon the SDGs and the CRC and considers how recent guidance to Welsh public bodies for implementation attempts to contribute to a more integrated approach. It suggests that successful integration requires recognition of the importance of including children in deliberative processes, using both formal mechanisms, such as local authority youth forums, pupil councils and a national youth parliament, and informal mechanisms, such as child-led research, that enable children to initiate and influence sustainable change.

Keywords: children's rights; sustainable development; children's participation in decision making; Wales; devolution



Citation: Croke, Rhian, Helen Dale, Ally Dunhill, Arwyn Roberts, Malvika Unnithan, and Jane Williams. 2021. Integrating Sustainable Development and Children's Rights: A Case Study on Wales. *Social Sciences* 10: 100. <https://doi.org/10.3390/socsci10030100>

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1. Introduction

The international agenda for children's rights and the agenda on sustainable development have rapidly evolved over the last 30 years, although in parallel and not symbiotically. Intuitively, they should complement each other but in practice there has been a dissonance or separation in their development (Kilkelly 2020). Children's rights are anchored in international law by the most globally ratified human rights treaty, the 1989 Convention on the Rights of the Child (Committee on the Rights of the Child 2020b). In the same decade, the provenance of sustainable development can be found in the 1987 Brundtland Report which defined sustainable development as '[d]evelopment that meets the needs of the present without compromising the ability of future generations to meet their own needs' (World Commission on Environment and Development 1987, Ch.2 para 1).

Since the end of the 1980s, discourse on development led to the Millennium Development Goals and, in 2015, the Sustainable Development Goals (SDGs) (UNDP n.d.a). The UN Committee on the Rights of the Child has developed an extensive body of jurisprudence through the publication of interpretative documents including some 25 General Comments (Committee on the Rights of the Child 2020a). The origins of the two agendas, children's rights in internationally enshrined legal rights and sustainable development in international development discourse, has contributed to this divergence (Kilkelly 2020).

Additionally, the chasm between the UN's development efforts and its work on human rights has served to accentuate the disconnect between the two agendas (Kilkelly 2020).

Kilkelly has described the failure to articulate the SDGs in terms of legal rights as a 'missed opportunity' (Kilkelly 2020, p. 378). Nolan warns of the 'clear and present danger' of the SDGs to human rights (Nolan 2019), noting that the implementation mechanisms for the SDGs are not child-rights sensitive or compliant (Nolan 2020). Similarly, Vandenhole has described how a children's rights approach to sustainable development is still very much under construction (Vandenhole 2019).

This article presents a potential pathway towards better alignment of policy and practice in sustainable development and children's rights. Using Wales as a case study (Denzin and Lincoln 2011), it focuses on the first two decades of the devolved government (1999–2020), and offers insights from analysis of law reform, policy and practice on children's rights and sustainable development. Case studies can be particularly useful for informing policy because processes, problems and programmes can be examined to bring about understanding that can affect and even improve practice (Yin 1989). Applying the in-depth learning from a case study can be applied to broader issues and the macro-sociological context (Johnson 2010). This case study seeks to offer reflections that provide transferable learning to other contexts. In Wales, one of the three devolved regions of the United Kingdom, sustainable development and children's rights have generated specific and radical legislative measures: the *Rights of Children and Young Persons (Wales)* and the *The Well-Being and Future Generations Act (Wales)*. The children's rights and sustainable development agendas in Wales, as at the international level, have emerged in parallel rather than symbiotically.

The first objective of this article is to review how these agendas have emerged and their impact on the exercise of governmental functions in practice. The extent to which these developments have opened pathways to fulfilling the requirement of legal enforceability of environmental, economic, social and cultural rights, which is implicit in the SDGs and explicit in the CRC, is also considered. The review embraced a detailed secondary based analysis of policy and legislation in Wales pertaining to sustainable development and children's rights between 1999 and 2020 and a consideration of international development discourse on both agendas during this time period.

The second objective of the article is to examine the importance attached to children's participation in decision-making relating to both agendas and some of the practices developed in Wales to support this. In this analysis, the authors applied a children's rights lens, aligned to Lundy's position that children's rights are not about pity, charity or (just) protection, or (just) the general principles of the CRC, and is not the same as 'well-being' or indeed the SDGs. Rather, it acknowledges children as legitimate and autonomous rights holders and recognises their agency and capacity for self-determination (Lundy 2019). As part of the examination of participative practices in Wales, this article features a discussion on the establishment of a National Youth Parliament (1999–2019) and the child led 'Lleisiau Bach Little Voices' projects (2014–2020). Both projects have contributed to local and national decision making on children's rights and sustainable development.

The third objective is to consider how the agenda on children's rights and the agenda on sustainable development have begun to develop in a more integrated manner in Wales, mainly due to the guidance provided by the Children's Commissioner for Wales and the Future Generations Commissioner to public bodies. The article concludes by explaining how this case study on Wales provides an example of how to build on a children's rights approach to sustainable development, while embedding participative practices and strengthening legal enforceability.

The findings of the case study are analysed and discussed in Sections 2–4, and concluding reflections are made in Section 5.

2. The Emergence of Two Separate Agendas in Wales

2.1. Context

Welsh devolution is both part of a process of significant constitutional change within the United Kingdom, beginning in 1997 and continuing at the time of writing, and a part of Wales' own particular history and characteristics (Jowell and O'Connell 2019). It also exemplifies what has been recognised as a global trend towards devolution of authority and resources from nation-states to regions and localities (Rodríguez-Pose and Gill 2003), a trend which brings opportunities as well as challenges for implementation of international obligations (For example, see Resolutions 296. 2010. REV and 365 (2014 and Recommendation 280 (2010) REV of the Congress of the Council of Europe, on best practices of implementation of human rights at local and regional level in member States of the Council of Europe and other countries).

Wales is a country within the United Kingdom, whose law and governance was absorbed by England in the 16th century (Watkin 2012; Gower 2013). Separate laws for Wales, on a small number of issues, began from the late 19th century, and during the 20th century, separate administration was established in fields including housing and education. In 1965 the Welsh Office was established as a UK Government Department of State. Previously, a national referendum on devolution for Wales in 1979 returned a negative response. However, in 1997 referenda in Wales, Scotland and Northern Ireland paved the way for devolution legislation conferring governmental powers on new institutions for each region. The Government of Wales Act 1998 established a single elected body, the National Assembly for Wales, with executive functions derived mainly from those exercised by the Welsh Office immediately prior to devolution. However, under the 1998 legislation, unlike Scotland and Northern Ireland, Wales had no separate parliamentary body. Successive further Acts of the UK Parliament have incrementally increased devolved governmental powers in Wales. This new devolved administration enjoyed the opportunity and the challenge to shape policies designed to meet the needs of the Welsh people. The National Assembly established in 1999 enjoyed executive powers to develop policy in the field of children's health, social care, education, transport, housing, play and leisure. The UK Government retained responsibility for the police and legal system, tax and benefits and policy relating to asylum, immigration and youth justice (Powers were transferred initially under the Government of Wales Act. 1998. Subsequent changes were made in the structure of Welsh devolution and the law-making powers of the devolved government and parliament by: the Government of Wales Act 2006; the Wales Act 2014 and the Wales Act 2017. An explanation of this progression can be found in the UK Government's *Devolution Guidance Note on Parliamentary and Assembly Legislation Affecting Wales*, available at the UK Government's official web pages: www.gov.uk, accessed 29 December 2020). The current position is that there is a Welsh Government and separate parliament, called initially the National Assembly for Wales and now, the Senedd. Wales remains, however, formally part of a single legal jurisdiction known as 'England and Wales' (Rawlings 2003).

Wales has a population of approximately 3 million people, with nearly 700,000 children under the age of 18 years (Office for National Statistics 2001). The geography of Wales is largely rural, with population concentrations in a small number of cities in the south, and with some areas of the country experiencing prolonged deprivation (Department for Work and Pensions 2013). Wales is a country of natural beauty and resources. It has three national parks, many Blue Flag beaches, and mountains which attract large numbers of tourists, bolstering the economy in the rural areas. Wales is officially a bilingual country (Welsh and English) and promotion of the Welsh language is both a policy priority of, and legal obligation on, the Welsh Government.

This case study begins at the turn of the century. In 1999, the first National Assembly for Wales was elected. At that time, both the Convention on the Rights of the Child and the Brundtland Report (World Commission on Environment and Development 1987) were just over 10 years old. In September 2000, world leaders came together at the United Nations Headquarters in New York to adopt the United Nations Millennium Declaration

(Office of the High Commissioner on Human Rights 2000). The Declaration committed nations to a new global partnership to reduce extreme poverty and set out a series of eight time-bound targets—with a deadline of 2015—known as the Millennium Development Goals (MDGs). This established a global partnership of countries where richer countries agreed to financially support poorer countries to achieve eight voluntary development goals and 21 targets for 2020 (UNDP n.d.b.). Human rights were reflected in the MDGs, although some commentators argued that they were not incorporated strongly enough (Williams 2013a). According to McInerney—Lankford, ‘the relationship between human rights and development is arguably defined more by its distinctions and disconnects than by its points of convergence, despite substantial evidence of the potential for mutual reinforcement’ (McInerney-Lankford 2009, p. 51). Alston referred to the two agendas as ‘ships passing in the night’ (Alston 2005, p. 755).

In Wales, meanwhile, sustainable development was stitched into the devolution settlement with a legal duty requiring the National Assembly for Wales to make a scheme setting out how it proposes, in the exercise of its functions, to promote sustainable development (Government of Wales Act 1998, sct.121). This set the foundation for experimentation and innovation on sustainable development (Davidson 2020). Children’s rights, by contrast, emerged as a policy priority which would be woven into the fabric of Welsh devolved government by the new polity itself (Williams 2013b).

2.2. Children’s Rights in Wales

Post-devolution, each of the devolved administrations was able to develop its own position in relation to the CRC, in addition to the national position taken by the UK government. In Wales, the political commitment of early devolved administrations (1999–2003; 2003–2007) to the CRC was striking (Clutton 2007; Williams 2007). The National Assembly for Wales enacted the first legislative reference to the CRC in the UK, when the Children’s Commissioner for Wales, established in 2001, was to ‘have regard to’ the CRC in exercising their functions (Children’s Commissioner for Wales Regulations 2001). In 2004 the National Assembly for Wales resolved that the CRC was its own overarching set of principles for all devolved policies on children and young people (National Assembly for Wales 2004). Key strategy documents, for example on partnerships for local child and youth services (National Assembly for Wales 2000), child poverty (Welsh Assembly Government 2005) and on young offenders (Welsh Assembly Government 2004b), made express reference to relevant articles of the CRC. Pressing for more powers was, in itself, a political imperative for the early Welsh devolved administrations (Morgan 2017). In the summer of 2009, the then First Minister, Rhodri Morgan, took advantage of the extension of legislative power permitted by the Government of Wales Act 2006 to announce his government’s intention to ‘explore further the possibility of introducing a Measure to embed the principles of the United Nations Convention on the Rights of the Child into law on behalf of Welsh children’ (Williams 2013b). This was a landmark step in several ways. First, it attracted recognition for Welsh devolved law-making on the international stage, since the recommendation to incorporate the CRC into legislation by the Committee on the Rights of the Child in 2008 to the UK Government was taken on board in Wales (albeit within the limits of the devolved settlement). This was in contrast to the other devolved nations and the UK Government (Committee on the Rights of the Child 2008). Second, it further demonstrated the scope of policy differentiation, especially from England, made possible by Welsh devolution. Third, it gave legislative underpinning to a policy position on children’s rights that had attracted a relatively high level of cross-party consensus in the National Assembly for Wales.

2.3. Sustainable Development in Wales

As noted above, Welsh devolution contained from the outset a requirement for a statutory scheme on sustainable development. The first such scheme, A Sustainable Wales: Learning to Live Differently, was drafted in a collaboration between environmental NGOs,

Welsh government agencies and the Sustainable Development Unit within the central Policy Unit of the National Assembly for Wales (Bishop and Flynn 2004). The overall strategic agenda set out by the Welsh Assembly Government in 2003 had a strong focus on the importance of sustainable development, stating that children and future generations should not be landed with a ‘legacy of problems bequeathed by us’ (Welsh Assembly Government 2003, p. 4). From this promising start, the major challenge became implementation and mainstreaming, stimulating a journey leading via scheme revision and development of indicators to the eventual enactment of the *The Well-Being and Future Generations Act (Wales)*; (Davidson 2020).

As well as extending devolved law-making powers, the Government of Wales Act 2006 had made an important division between legislature and executive, which had been absent from the original scheme of Welsh devolution under the Government of Wales Act 1998. Now, the duty to promote sustainable development was placed on the executive rather than the legislative body, so the third sustainable development scheme, *One Wales—One Planet*, was published by the Welsh Government. It set out a primary goal of making sustainable development the central organising principle of the Welsh Government (Welsh Government 2009). This differentiated it from the earlier schemes. It used the following definition:

In Wales, sustainable development means enhancing the economic, social and environmental wellbeing of people and communities, achieving a better quality of life for our own and future generations:

In ways which promote social justice—and equality of opportunity and

In ways which enhance the natural and cultural environment and respect its limits—using only our fair share of the earth’s resources and sustaining our cultural legacy.

Sustainable development is the process by which we reach the goal of sustainability.

This scheme was underpinned by two core principles: involvement of people and their communities; and integration (Welsh Government 2009, p. 26). These were to be universally applied in all decision-making (Senedd Research Note: *Sustainable Development Structures and Policy 2015*). The core principles were supported by six additional principles to be applied as relevant to the context: the precautionary principle; the polluter pays principle; the proximity principle; reducing our ecological footprint; taking account of full costs and benefits; and reflecting distinctiveness (Welsh Government 2009, p. 26).

These were further supported by 44 indicators, with a requirement to report against them annually using a traffic light system (Senedd Research Note: *Sustainable Development Structures and Policy 2015*). In 2011, Jane Davidson, a highly influential advocate for the environment and the then Minister for Environment, Sustainability and Housing, secured a further commitment in the Welsh Labour Party Manifesto to ‘embedding sustainable development as the central organising principle in all our actions across government and all bodies’, and to put this into legislation (Welsh Labour 2011, p. 92). Additionally, in 2011, following the closure of the UK Sustainable Development Commission, the Welsh Government appointed Wales’ first Sustainable Futures Commissioner. No such equivalent was set up in any of the other three nations.

2.4. *Children’s Participation in Decision Making*

A common, if not identical, thread in Welsh post-devolution policy on both children’s rights and sustainable development was support for children to contribute to decision-making. In the early years of devolution, Wales was quick to develop formal mechanisms including legal requirements for schools to have pupil councils (*School Council (Wales)*), and for local authorities to implement structures for youth participation in decision-making (*Children and Families (Wales)*). Welsh Government also funded the charity Keep Wales Tidy to support Eco-Schools, a global programme aimed at empowering children and young people to make positive environmental changes to their school and wider community.

One of the most radical initiatives was the development of a Children and Young People's Assembly for Wales, the result of two earlier initiatives which eventually came together through support given by the National Assembly for Wales to a charitable company called Funky Dragon. Funky Dragon supported a Grand Council of initially 66 and eventually 100 young people elected by their peers in local authorities or representing special interests or minorities from the 22 Welsh local authorities (Croke and Williams 2018). The principal aim of Funky Dragon was to give young people 0–25 years old the opportunity to exercise their right to be heard. Ministerial oversight for the body was delivered by the then Minister for Education and Lifelong Learning, Jane Davidson.

In the early years of Welsh devolution, the Welsh Government made notable efforts to engage young people in sustainable development in Wales (Welsh Assembly Government 2004a). This may have been primarily because the then Minister for Education and Lifelong Learning, Jane Davidson was, as earlier mentioned, also a powerful advocate for the environment. Ten young people attended the United Nations World Summit on Sustainable Development in Johannesburg in 2002, with Rhodri Morgan, the then First Minister, presiding over talks with 20 regional and sub-national governments. This resulted in an agreement being reached to set up a global network of countries to work together on sustainable development (Netherwood and Flynn 2012). The First Minister undertook to involve young people through both Funky Dragon and the Wales Youth Forum on Sustainable Development. This then led to young people from both these forums taking part in a Conference in Cardiff on Sustainable Development for regional governments from around the world in 2004 (Welsh Assembly Government 2004a). The Welsh Government was also committed to ensuring that the principles of sustainable development were included in schools and further and higher education institutions. By 2006 Welsh Government had published a strategy that advised how Education for Sustainable Development and Global Citizenship should be implemented across all sectors of education (Welsh Assembly Government 2006).

From 2006, Funky Dragon's young Grand Council began to carry out research and produce reports on their experience of achieving their rights and a steering group of young people took their recommendations to key decision makers, including Welsh Government Cabinet and the UN Committee on the Rights of the Child in 2008 (Croke and Williams 2018). The 'Our Rights: Our Story' 2008 research engaged widely with young people (11–18 years) in Wales, collecting some 10,035 survey responses, holding 140 interactive workshops and conducting 37 interviews with young people from specific interest groups (Funky Dragon 2008).

This process produced 66 recommendations covering broadly, themes of Education, Information, Health and Participation (Croke and Williams 2018). Interestingly, there was not a clear focus on 'sustainable development' in this youth-led initiative. However, themes selected by the young researchers spanned economic, cultural, societal and environmental considerations relevant to sustainable development, including a concern for children in the future as well as the present (Funky Dragon 2008). Funky Dragon was cited as an example of good practice by both the Committee on the Rights of the Child and in the international guidance to NGOs on how to involve children and young people in reporting to the Committee on the Rights of the Child (NGO Group for the CRC 2011).

The involvement of young people (11 years+) in this UN reporting process brought to attention the under-representation of younger children. The steering group were keen to address this and carried out smaller scale research activities with 2,525 children, presented in a final report, 'Why do people's ages go up not down?' Funky Dragon developed the 'children as researchers' methods later deployed in 'Lleisiau Bach Little Voices' projects as a means to allow younger children (typically 7–11 years old) to identify and prioritise their own areas of concern, but to also have autonomy over the way in which they were represented and presented (Dale and Roberts 2017).

This first 10 years of devolution demonstrated that Wales was strongly committed to embedding sustainable development and children's rights into both law and policy. These

were divergent as well as innovative developments in the context of the UK. However, the two agendas did not converge nationally in Wales. Wales also developed innovative approaches to support children's right to be heard, through national and local mechanisms contributing to children's rights and sustainable development. However, the two agendas—children's rights and sustainable development—were led and supported separately in devolved Welsh government, rather than being integrated together.

3. The Development of Two Pieces of Radical Legislation in Wales

3.1. Context

Globally by 2011, the children's rights-focused agenda had become increasingly supported by international NGOs, such as Save the Children International ([Save the Children Sweden 2005](#)) and the UN agency for children, UNICEF ([Vandenhoele 2014](#)). The importance of human rights had become more integral to all UN agencies ([Office of the High Commissioner on Human Rights 2012](#)). The UNDP recognised the importance of human rights to its development work, and a major outcome of the Rio +20 conference in 2012 was the commitment to establish a suite of Sustainable Development Goals (SDGs) ([Senedd Research Note: Sustainable Development Structures and Policy 2015](#)). 17 SDGs were published in 2015 by the UNDP; they included: poverty eradication, action on climate change, access to education, gender equality, action to halt biodiversity loss, economic growth and sustainable energy. These interconnected goals clearly impact on children and are part of a call to action for Agenda 2030 ([UN n.d.](#)).

Nolan comments that this Agenda 2030 addresses the human rights blindness of the Millennium goals and includes extensive reference to human rights grounded in the Universal Declaration of Human Rights. She also acknowledges their strong reference to issues that impact on children and as a vehicle for galvanising resources and institutional support to children. However, she critiques them for ultimately being policy goals and not legally binding obligations, with limited processes of monitoring and accountability. She comments that of great concern is that states will defer to the SDGs and will try to rid themselves of the burden of obligation and accountability, therefore undermining children's rights ([Nolan 2019](#)).

Kilkelly also expresses disappointment that the Goals are not articulated as legal rights and that they hardly mention the CRC. Even though UNICEF produced a document that links the Goals in a complex matrix to the CRC ([UNICEF 2020](#)), the Goals themselves are not expressed as human rights and thus can only be seen to be political claims or charitable requests, not legally enforceable entitlements ([Kilkelly 2020](#)). Nolan additionally forcefully comments that the SDGs are more consistent with top-down approaches to development and do not recognise children as agents of change and rights holders, which is instrumental to the CRC ([Nolan 2019](#)).

However, the CRC itself can also be critiqued. The CRC does make reference to the right to a healthy environment within Article 24, and General Comment No. 15 emphasises that climate change is the 'biggest threat to children's health and exacerbates health disparities' ([Committee on the Rights of the Child 2013a](#), para 50). However, apart from asking that States put child health at the centre of their climate change strategies, there is no further reference to climate change. As the Office of the High Commissioner on Human Rights acknowledges, climate change has a disproportionate impact on children ([Office of the High Commissioner 2016](#)). Arts comments on the striking lack of reference to climate change throughout the Concluding Observations and General Comments ([Arts 2019](#)). The intergenerational equity principle is also absent ([Atapattu 2019](#)). Arguably a General Comment focused on sustainable development, including climate change, environmental impacts and future generations should be developed with urgency, to aid interpretation of the relevant articles of the CRC.

Turning to the Welsh context, the second decade of devolution saw the introduction and passing of radical legislation to further embed children's rights and sustainable development into the Welsh legislative framework. However, the two agendas remained

disconnected. The next section discusses their strengths and weaknesses and further explains how Welsh Government support for a national youth platform was disrupted although various non-governmental initiatives continued to develop practices of empowerment for children.

3.2. Children's Rights

In 2011 in Wales, the [Rights of Children and Young Persons \(Wales\)](#) ('the Rights Measure') was a stand-out representation of Wales' capacity for innovative, child rights-focused, internationally informed law-making. Within the UK, it was the first general legislative provision about CRC implementation, an achievement in which the National Assembly for Wales could take pride, especially given that Wales still at that time had the weakest legislative competence amongst the devolved governments and parliaments within the UK.

The degree of innovation, at this time, should not be exaggerated. The central mechanism of the Rights Measure was borrowed from UK legislation on equalities enacted shortly before the Welsh Measure was published (Equality Act 2010 s. 149: the 'public sector equality duty'). It was a duty to have 'due regard' to the CRC placed upon Welsh Government Ministers, rather than a requirement to comply with the requirements of the CRC (Section 1 [Rights of Children and Young Persons \(Wales\)](#)). This stands in contrast to Sections 6 and 7 Human Rights Act 1998 ([Human Rights Act 1998](#)) which make unlawful acts by public authorities which are incompatible with the European Convention on Human Rights and confer an individual right of legal action on a victim of a violation. In the Rights Measure, enforcement is by political and administrative scrutiny, with judicial review as a backstop. There is no individual remedy for a rights violation ([Hoffman and Williams 2013](#)).

A key implementation tool under the Rights Measure is a child rights impact assessment (CRIA) ([Committee on the Rights of the Child 2013b](#)). This is not required explicitly, but the Rights Measure does require the Welsh Ministers to periodically review, and to report on, a scheme setting out how they are fulfilling their duty of 'due regard' ([Rights of Children and Young Persons \(Wales\)](#)). Within the statutory scheme, an approach to child rights impact assessment has evolved. There is a template and guidance for policy officials to follow. Some 260 CRIAs were carried out between 2012 and 2018 ([Hoffman 2020](#)). An evaluation published in 2015 concluded that it had embedded the core objectives of human rights impact assessment into government decision-making, but that implementation was often inconsistent and a departure from good practice because of a failure to consult with children, implementation late in the policy process, and limited knowledge of the CRC ([Hoffman 2020](#)). A study of legal integration of the CRC in Wales in 2018 largely reiterated these findings about CRIA ([Hoffman 2020](#)) and was further reinforced by the Welsh Parliament's (now called the Senedd) Children, Young People and Education Committee in 2019. After a national inquiry into children's rights in 2019, this Senedd Committee published a strong set of recommendations; including that CRIAs must be published and made available and that a decision not to do so should be challengeable, and also that the duty of due regard should be extended to all public bodies ([Senedd Children and Young People and Education Committee 2020](#)).

The inquiry revealed that the reality for many children, was that their rights were still not being realised and that a stronger framework of governmental accountability was required, with legal enforceability of children's rights being strengthened ([Senedd Children and Young People and Education Committee 2020](#)). The majority of recommendations were accepted by the Welsh Government. However, the strengthening of legal enforceability was not. Children's sector organisations, who gave evidence as part of the inquiry, pushed back further requesting that the Senedd consider tabling legislation that considers extending the duty of due regard and also adopting a compliance duty ([Children's Commissioner for Wales 2020](#); [Children in Wales 2020](#); [Connor et al. 2020](#)).

A duty of due regard on public bodies would mean that like the duty placed on Welsh Government to have due regard to the CRC, in the exercise of all their functions under the

Rights Measure, all public bodies would also have to adhere to this requirement. With the introduction of a compliance duty into legislation, this would mean that all public bodies in Wales would have to comply with the principles and provisions of the CRC and children would have the right to seek a remedy for a rights violation in a court of law. This would be similar to the duty to act compatibly with the ECHR (Section 3 (1) Human Rights Act 1998) in the UK Human Rights Act 1998). Children's sector organisations believe that public bodies will more likely act in compliance with their duties under the CRC if they know that children whose rights are breached by lack of compliance to the CRC can bring an action for a remedy. Kilkelly explains how 'relatively weak measures of implementation can help to build momentum in favour of stronger measures' as seen from the recent experiences of Scotland and Sweden who have moved towards a more direct incorporation of the CRC (Kilkelly 2019, p. 327). Hence in Wales, moving from a duty of due regard to a compliance model would create opportunities for greater accountability whilst continuing to promote awareness of children's rights amongst public bodies and decision-makers. The Scottish Government, one of the other devolved nations, have agreed to this step in the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill). The Welsh Government, however, did not move its position in a plenary debate that took place in early 2021 (Senedd 2021).

3.3. Sustainable Development

Returning to the policy agenda for sustainable development, between 2012 and 2014, the Sustainable Futures Commissioner led a national conversation with over 7000 people, entitled *The Wales We Want*, to challenge people to consider issues beyond the constraints of their daily lives (Commissioner for Sustainable Futures 2015). Wallace notes that the complexity of communication hindered putting sustainable development at the heart of policy making (Wallace 2019). This led to the re-framing of sustainable development in Wales within a broader concept of 'well-being', the thinking being that sustainable development was more narrowly understood by stakeholders as a concept related only to environmental concerns (Wallace 2019). After the Welsh Government consulted on its Sustainable Development Bill White Paper in 2012–2013, it laid the ground-breaking Well-being of Future Generations (Wales) Bill on 7 July 2014. This was to be a global first: legislation that was designed to safeguard the well-being of future generations (Davidson 2020).

In 2015, the Well-being of Future Generations (Wales) Act 2015 ('WFGA 2015') was passed. The Act places a duty on all public bodies to carry out sustainable development and improve and achieve economic, social, cultural and environmental well-being. All public bodies must ensure that when making decisions they take into account the impact they could have on people living in Wales in the future. The Act states that:

Each public body must carry out sustainable development. The action a public body takes in carrying out sustainable development must include: a. setting and publishing objectives ('well-being objectives') that are designed to maximise its contribution to achieving each of the well-being goals, and b. taking all reasonable steps (in exercising its functions) to meet those objectives.

The seven well-being goals are listed and described as follows (Table 1).

Table 1. Seven Well-Being Goals in WFGA 2015 ([The Well-Being and Future Generations Act \(Wales\)](#)) Part 2, Section 4).

Goal	Description of the Goal
A prosperous Wales	An innovative, productive and low carbon society which recognises the limits of the global environment and therefore uses resources efficiently and proportionately (including acting on climate change); and which develops a skilled and well-educated population in an economy which generates wealth and provides employment opportunities, allowing people to take advantage of the wealth generated through securing decent work.
A resilient Wales	A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (for example climate change).
A healthier Wales	A society in which people's physical and mental well-being is maximised and in which choices and behaviours that benefit future health are understood.
A more equal Wales	A society that enables people to fulfil their potential no matter what their background or circumstances (including their socio economic background and circumstances).
A Wales of cohesive communities	Attractive, viable, safe and well-connected communities.
A Wales of vibrant culture and thriving Welsh language	A society that promotes and protects culture, heritage and the Welsh language, and which encourages people to participate in the arts, and sports and recreation.
A globally responsible Wales	A nation which, when doing anything to improve the economic, social, environmental and cultural well-being of Wales, takes account of whether doing such a thing may make a positive contribution to global well-being.

The Act links the duty on sustainable development to public sector reform, prevention, collaboration, integration, involvement and long-term thinking, described as five ways of working (see Section 5 of the Act) ([The Well-Being and Future Generations Act \(Wales\)](#)) sct. 5). The duty is placed on 44 public bodies and they must demonstrate how they have applied the sustainable development principle in practice ([Auditor General for Wales 2017](#)). Public Service Boards (PSBs) were established for the integrated planning of service delivery and the development of well-being assessments ([Senedd Research Note: Sustainable Development Structures and Policy 2015](#)). A Future Generations Commissioner was created as part of the legislation to promote the principles of the Act and to support public bodies to implement the legislation ([The Well-Being and Future Generations Act \(Wales\)](#)), part 3). Working alongside the Auditor General for Wales, this statutory body is also responsible for monitoring the Act ([The Well-Being and Future Generations Act \(Wales\)](#)), sct. 15).

Wallace argues that the Act places an equal weight on all aspects of well-being, challenging the traditional dominance of economic over societal, environmental and cultural considerations ([Wallace 2019](#)). However, a lack of focus on the environmental pillar was initially subjected to criticism during the passage of the bill by the environmental advocates who argued that environmental concerns were not sufficiently addressed ([National Assembly for Wales Environmental and Sustainability Committee 2014](#)).

At the same time, human rights advocates argued that the focus on well-being had the effect of suppressing rights. The Wales UNCRC Monitoring Group claimed that the Act:

does not give sufficient focus to the enforcement of human rights which we believe is a precondition for sustainable development and a prosperous Wales. Without acknowledging and acting to realise the human rights of people, sustainable development is not possible. We believe that the delivery of public services in Wales must be done through a human rights lens and that the Future Generations Bill presents us with a key opportunity for a human rights framework to be enshrined into law. ([Wales UNCRC Monitoring Group 2014](#))

This is supported by research by Bangor University School of Law, in which some research participants felt that the focus on well-being in the legislation 'as the cornerstone to

good administration has led to the marginalisation of other foundations, e.g., human rights, equality, and specifically, principles of administrative justice' that had been developed for Wales ... ' (Bangor University School of Law 2020, p. 1). These criticisms resonate with the missed opportunity referred to by Kilkelly in relation to the development of the international SDGs (Kilkelly 2020). Legislation framed in terms of public services achieving well-being objectives instead of enforceable human rights, risks having the effect of weakening rights protection.

As Wallace comments, the Act stops short of requiring the objectives to be met (Wallace 2019). Lord Thomas goes as far to say that aspirational legislation, including WFGA, raises false hopes and undermines the rule of law (Lord Thomas of Cwmgiedd 2019). The WFGA does not give the right to an individual or a group of individuals to bring a claim for judicial review based on an allegation of a breach of the act, giving rise to criticism that it is 'toothless' (Martin 2019).

Additionally, the Commission on Justice in Wales noted that the 'far-sighted policies on sustainability, future generations and international standards on human rights are not integrated into the justice system' (Commission on Justice 2019, p. 456). There is also a lack of capacity at local authority level with officials struggling to implement often perceived, complex legislation without sufficient resources or support (Bangor University School of Law 2020) as well as a plethora of plans and competing strategies (Wallace 2019). This was recognised also at the international level by UN Rapporteur for Health Paul Hunt (2002–2008) who commented that practitioners need more practical guidance to translate complex legal provisions into practice (Hunt 2016).

3.4. Children's Participation in Decision Making

3.4.1. A Welsh Youth Parliament

Doel-Mackaway explains that participation of children is a critical component of democracy, good governance and promotion of the rule of law and is therefore essential for sustainable development (Doel-Mackaway 2019). After the earlier cited achievements of securing a national democratically elected platform for young people, it may come as a surprise that Funky Dragon came to an abrupt end when they ceased to be funded by the Welsh Government in 2014, just a year before the passing of the WFGA 2015. The circumstances leading to this cessation in funding are discussed elsewhere (Croke and Williams 2018). Suffice to say, that with hindsight it seems clear that tensions arose in part because, following the separation of powers under the Government of Wales Act 2006, funding became a function of the Welsh Government (the executive) and not the National Assembly for Wales (the parliament), and this was exacerbated by the onset of austerity measures following the global financial crisis of 2008 (Croke and Williams 2018). The demise of Funky Dragon left many of its former members, staff and supporters bewildered and angry, especially because the young people had not been consulted about the proposals (Croke and Williams 2018). The Welsh Government had not met the requirements of adhering to the child's right to be heard under Article 12 of the CRC, as laid out in the Rights Measure (Wales UNCRC Monitoring Group 2014).

Between 2014 and 2018, Wales was in the regressive position of not having a national democratic platform for children. However, a campaign was launched by the remaining voluntary trustees of Funky Dragon, encompassing commissioned comparative research, a public consultation and deployment of the dynamic of the CRC monitoring process to press the case (Croke and Williams 2018; Woll 2000). It was ultimately endorsed by the Presiding Officer of the National Assembly for Wales who then set in train a process leading to the establishment, in its proper constitutional place, of the Welsh Youth Parliament (National Assembly for Wales 2016). The frustration felt by young people who had become accustomed to the idea of a national youth parliament was encapsulated by one of Funky Dragon's young trustees:

We constantly hear in the press about disengaged and politically disaffected young people, but young people are not asked for their views on the EU ref-

erendum and the perception instead is that young people are more engaged with football than politics and to top it off one of the headline stories is about 'Voices' ... nobody has reported on our positive news story about a group of committed young people who are campaigning for a democratically elected voice for the young people of Wales and desperately want all young people to have the opportunity to engage and influence local, national and global politics. (Croke and Williams 2018, p. 17)

In 2016, even with the Rights Measure and the recently passed WFGA 2015, children across Wales were not consulted on what was to have a significant impact on them and future generations; the decision to leave the European Union. This further exposed the weaknesses in public bodies' understanding of the well-being of future generations and indeed the Welsh Government's obligation to have due regard to children's right to be heard in all matters that affect them.

It is equally striking, however, that the campaign for the Welsh Youth Parliament found support in all political parties represented in the National Assembly for Wales. On Saturday 23 February 2019, the Welsh Youth Parliament met for the first time. It is too early to evaluate the success of this initiative, but this national democratically elected body of young people is now firmly situated on the parliamentary side of governance and can thus openly criticise and better hold the executive to account. Funky Dragon was a charitable organisation which was funded and overseen by the executive from 2006, which made it vulnerable to short-term funding, particularly as the young people were directly criticising the executive in their reporting to the UN Committee on the Rights of the Child (Croke and Williams 2018). The new youth parliament is free to voice their opinions and promote the realisation of children's rights and the well-being of future generations.

3.4.2. Lleisiau Bach Little Voices (LBLV)

While Funky Dragon ceased operations in 2014, the Lleisiau Bach Little Voices (LBLV) 'children as researchers' had just begun a new project working with primary schools and communities in Wales, with funding from the National Lottery Community Fund. The Observatory on Human Rights of Children at Swansea and Bangor Universities took over management of the project. During this phase of the project, a milestone was the submission of a child-led, under-11 year olds' report to the UN Committee on the Rights of the Child in 2015. This innovative project empowered younger children to speak out and influence local and national decision making on issues that covered all the pillars of sustainable development: environmental, cultural, social and economic concerns. This section focuses on LBLV's children as researchers approach that empowered children to be researchers and activists, inspiring younger children to become change agents, locally and nationally.

The methodology deployed by LBLV is a form of participatory action research (PAR) as defined by Hart who described as its main features:

that the research be carried out by or with the people concerned; the researcher feels a commitment to the people and to their control of the analysis; research begins with a concrete problem identified by the participants themselves; and it proceeds to investigate the underlying causes of the problem so that the participants can themselves go about addressing these causes. (Hart 1992, p. 16)

However, the LBLV methodology has two features that distinguish it from most if not all other PAR practices. First, it is framed by the CRC—as to the scope of projects, conduct of research, ethics and approach to impact; and second, the children select and own the research project. The LBLV project worker provides support and coordination (Dale and Roberts 2017).

The approach echoes Larkin et al. who argue that for the children's rights research community to have a strong contribution to achieve influence through their actions, there is an imperative need to start from children's self-identified concerns and then identify the

relevant range of moral, legal, political or economic rights that may provide resources for their activism (Larkins et al. 2015). Quennerstedt comments that:

Instead of prioritising the universal and a top-down approach in research, where the urgent research questions spring from universal claims, the opposite position is taken, priority is given to context, particularity and a bottom-up approach (Quennerstedt 2013, p. 244)

Additionally, in academic research, both the substantive and procedural requirements of the CRC Convention have stimulated increased use of methods which involve children as active participants or co-producers (Boyden and Ennew 1997; Barnen and Kirby 2002). There is debate about whether academic research ‘on’ children should now normally be done ‘with’ or even ‘by’ children (Chae-Young et al. 2017). Researching ‘with’ or ‘by’ rather than ‘on’ children is seen as supportive of implementation of children’s rights (Beazley et al. 2009; Kellett 2010; Lundy et al. 2011).

Thanks to continued support from the universities and the National Lottery Community Fund, by 2020, the LBLV team was providing: flexible, direct or indirect support for children in their own localities to do their own research, build their case for change and make change happen; two-way connectivity with impact partners and decision-making processes, whether at community, local, national or international level; and training and mentoring for professionals to use the approach in their own work. By 2020 the LBLV team had conducted some 120 local projects along with national child-led surveys and engagements feeding into various decision-making processes. The team had worked with over 1000 children as researchers, and many thousands more children, had been involved as project participants using methods like surveys, research days, photo-voice and interviews. Many adults were also involved, whether as gatekeepers, helpers, impact partners or audience for the children’s research-based recommendations. Selection of child participants was negotiated with gatekeepers, prioritising, where practicable, children who were not otherwise engaged in participative activities such as school councils or eco-schools committees (Dale and Roberts 2017). Research with children was conducted in both the English and Welsh languages.

The work had evolved from human rights monitoring under the CRC, and the team devised a taxonomy derived from the reporting categories adopted by the Committee on the Rights of the Child to help distil from the projects an appreciation of the issues and concerns that children wanted to explore and things they wanted to change. The aim of this was to enable key messages from the children’s cumulative efforts to be fed back to the Committee responsible for monitoring implementation of the Convention (Little Voices Shouting Out 2015).

The themes are:

- A. Disability, basic health and welfare (includes health, health promotion, well-being)
- B. Education/leisure/cultural activities (includes school, training, skills and employability)
- C. Environment and amenities (includes climate action, pollution, conservation, circular economy)
- D. Road Safety
- E. Food
- F. Play, leisure, recreation, culture and art
- G. Community (includes topics relating to general public well-being, poverty, social exclusion affecting others, public security and public services)
- H. Civil rights and freedoms (includes identity, information, privacy/image, freedom of association, assembly, thought, conscience and religion, non-discrimination and remedies)
- I. Knowledge of rights/CRC
- J. Special protection

Where topics identified by children could be related to climate action or environmental protection, in the above classification they are treated as part of 'Environment and Amenities'. This category would also include local environmental issues which could be about school grounds or a local park in the children's immediate environment. Litter, dog mess and, increasingly, plastic waste and recycling were recurrent issues.

Thematic analysis of the LBLV project data shows children selecting as potential or actual research topics, issues about deforestation, plastics pollution, re-cycling and wildlife preservation, alongside a remarkably wide range of other topics. Some local projects produced relevant recommendations and impacts. For example, a primary school in south Wales deployed the methodology effectively to engage community leaders, local businesses and others in a plastic waste collection project.

By 2019, environmental issues had become sufficiently popular with LBLV groups for the team to be able to convene 4 'climate action summits' at which project groups could exchange knowledge and experiences, the last of which was combined with collection of children's views to feed into a Welsh Government consultation on Circular Economy policy ([Welsh Government Circular Economy 2020](#)).

The LBLV work is cited in Jane Davidson's book #futuregen ([Davidson 2020](#)). Understandably, she foregrounds (and elaborates upon) the environmental protection aspects of the work:

What is particularly interesting . . . is that primary-school-aged children through their research are calling for action on the key issues of the day: deforestation, habitats for wildlife, plastics in the ocean, endangered animals and the impact of fossil fuels.

In Wales they want more trees, more locally grown food, more wildlife. They want to see electric/hydrogen cars, less plastic, fewer factories, reduced carbon emissions and more recycling and reusing . . . a fairer and more tolerant society which provides better support for those who are homeless or in poverty; is less selfish, kinder, more accepting of others; and most importantly listens to the views of children and young people. ([Davidson 2020](#), p. 123)

Certainly, the project data supports a view of children—especially those under 11—identifying, initiating or connecting with the kinds of transformational initiatives that we know are necessary to achieve the SDGs or, in #futuregen-speak, 'well-being'. It is important to note however that majority of the children's projects' recommendations are not about action to be taken at macro or exo-system levels. They focus rather on what the children themselves can do in partnership with others in their immediate communities: growth and production of own food produce at home and at school, purchasing of locally sourced food, tackling food waste, the excessive use of single use plastics, the call for greener school spaces and free solar panels for schools: in other words, the sphere in which they can bring about change rather than the sphere in which they cannot.

In the wider context they identify broader action to be taken in partnership with others who possess decision making powers to achieve the SDGs: making public transport cheaper, increased access to affordable electric cars, tax on plastic packaged items, the use of natural products in clothes and widespread schemes that ensure supermarkets make use of their food waste by donating to foodbanks and homeless shelters. The LBLV projects did not constrain children to policy siloes or adult-led agendas. Instead, they empowered children to identify their own issues of concern in both their localities and the wider world, and to challenge and transform the world around them.

The LBLV team also helped the Campaign for a Children and Young People's Assembly for Wales to bring about the Welsh Youth Parliament and mentored the first Welsh Youth Parliamentarians in building their evidence-based case for change in their priority areas, which were: Life Skills in the Curriculum; Child and Adolescent Mental Health; and Plastic Waste. The LBLV team also supported children to feed into the Senedd Children, Young People and Education Committee 2020 national inquiry into children's rights ([Senedd Children and Young People and Education Committee 2020](#)). The experience of LBLV

and the campaign for a youth parliament in Wales demonstrates that the CRC can be used to produce a dynamic for change, both at national level and in immediate, everyday environments (Croke and Williams 2018).

The second decade of devolution in Wales brought forward radical legislation on both children's rights and sustainable development. However, early indications question how effectively they were working and whether stronger legislation that supported firmly entrenched social, economic, cultural and environmental rights would do better to ensure that public bodies are held to account. The initial demise of a national democratic platform for young people was met with considerable concern, but non-governmental actors, using the dynamic of the CRC and a combination of charitable and institutional resource, helped to continue support for children to speak out and influence change.

4. The Integration of Children's Rights and Sustainable Development

Vandenhole has described how a children's rights approach to sustainable development is still very much under construction (Vandenhole 2019). However, in Wales, shortly after the introduction of the SDGs, 'children's rights were re-imagined through the prism of sustainable development' and vice versa (Davies 2019, p. 33). This initiative was begun when Hoffman and Croke were commissioned to produce a children's rights approach (CRA) statement and guide for public bodies for the Children's Commissioner for Wales (Hoffman and Croke 2016). The reason for the development of this guide was that consecutive reports to the Committee on the Rights of the Child had reported on a policy to implementation gap (Croke and Williams 2015; Croke 2013; Croke and Anne 2007; Croke and Anne 2006). Development of successful policy on children's rights at the national level was identified as failing to be translated into practice by public bodies. The Guide was developed as a principled and practical framework to give advice to public bodies regarding how to adopt a children's rights approach to their work. Hoffman and Croke identified five principles (Hoffman and Croke 2016) the principles are: Embedding children's human rights, Equality and Non-discrimination towards children, Accountability to children, Participation of children, and Empowering children. These principles bear similarities to the principles included in other human rights approaches and children's rights approaches (Lang et al. 2011) and were identified as being the principles best suited to drive the implementation of a CRA for public bodies in Wales. The Guide is now widely adopted in Wales as the framework for a CRA for public services and the Children's Commissioner for Wales has named it 'The Right Way' (Children's Commissioner for Wales 2017).

This framework was also utilised in the development of guidance issued by the Children's Commissioner for Wales and the Future Generations Commissioner in 2017, to develop practical tools and examples to help public bodies consider children's rights across each of the Well-being goals and the Five Ways of Working under the Well-Being of Future Generations Act (Children's Commissioner for Wales and Future Generations Commissioner 2017). The Commissioners state:

As Wales' independent commissioners for Children and Future Generations we have distinct roles but common interests. We want to enable public bodies to put children's rights to be safe, healthy and to flourish here and now at the centre of their planning and delivery. We also want to ensure that they plan for the long-term—for the rest of the lives of children living in their communities now, and for future generations still unborn. We have worked together to consider how Wales' commitment to internationally recognised children's rights can work with the groundbreaking Well-being of Future Generations Act to meet children's needs—now and in the future. (Children's Commissioner for Wales and Future Generations Commissioner 2017, p. 5)

This is a significant effort and possibly also a global first, to support public body officials with practical tools to understand how the two agendas complement and reinforce each other and how they should be implemented (Figure 1). It demonstrates how the CRC can contribute to the sustainable development principle

and considers how the five principles of a CRA can be embedded across the five ways of working of the WFGA 2015. It offers case studies to help the 44 public bodies understand how the 5 principles of a CRA can be translated into practice. It suggests that to demonstrate how Public Service Boards (PSB) have paid due regard to the CRC when developing their Well-being Objectives and Well-being Plans a children's rights impact assessment should be conducted. The Children's Commissioner for Wales has developed a standard Children's Rights Impact Assessment for all public bodies to use and a simple self-assessment tool kit for services to measure the extent to which services give children and young people access to their rights, and how to plan improvements ([Self Assessment Tool Kit and Children's Rights Impact Assessment n.d.](#)). This responds in part to Nolan's critique of the international SDGs, by not neglecting children's rights monitoring mechanisms. (Nolan 2019)

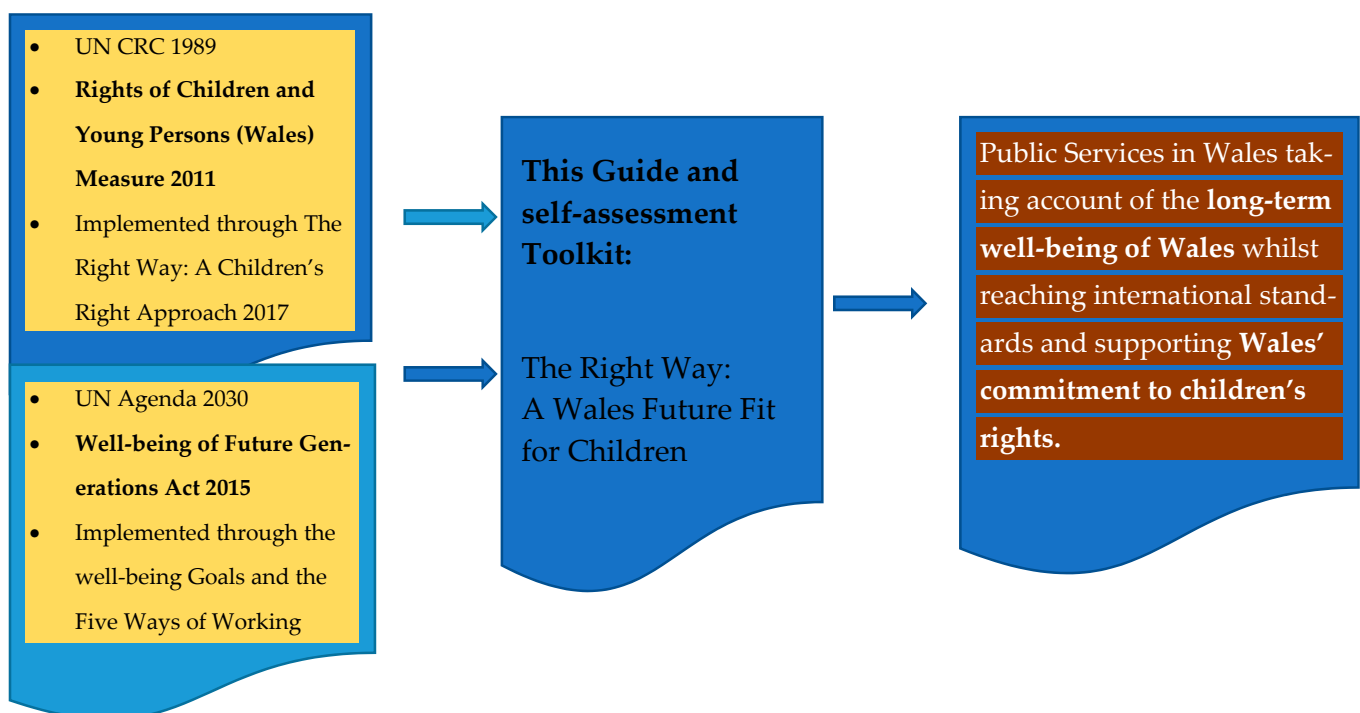


Figure 1. The Right Way: A Wales Future Fit for Children (Children's Commissioner for Wales and Future Generations Commissioner 2017, p. 5).

Critical to the combined approach, is an understanding of prioritising children, and giving them a seat at the table when a PSB has to consider the implementation of the Well-being objectives. The 5 principles of the CRA have contributed to a conceptualisation that envisions children as rights holders, with the capabilities to take advantage of their human rights, to advocate for the human rights of others as well as future generations. It challenges public bodies to be accountable to children currently and to consider future generations. This also challenges concerns recognised by Desmet in her evaluation of international environmental and sustainable development policy that the 'potential for recognising the rights and agency of children remains to a certain extent untapped' (Desmet 2019, p. 215).

Linked to the agenda on the realisation of children's rights, the Future Generations Commissioner has also identified work on Adverse Childhood Experiences (ACE) as a priority for action ([Adverse Childhood Experiences in Relation to the Work of the Future Generations Commissioner 2020](#)). The aim has been to focus on improving the well-being of future generations by preventing harm in early childhood. Wallace reports that 16 of the 19 Public Service Boards had identified ACEs as one of their priorities (Wallace

2019). This further evidences a focus on children. Throughout a Wales Future Fit for Children, best practice case studies are included that demonstrate how public bodies are already implementing a children's rights approach. For example, Pembrokeshire County Council made a corporate commitment to children's rights which has been translated into: strengthening their representative bodies; supporting and improving school councils; increasing adults' awareness of children's rights; and promoting the active citizenship of children and young people. They have also empowered children to assess corporate planning against standards of the UNCRC. The City and County of Swansea has recognized the importance of embedding children's rights into workforce development planning, and this has resulted in mandatory children's rights training for staff, children's rights being included in their Strategic Equality Plan and children being supported by staff to influence budgetary decisions. Abertawe Bro Morgannwg Health Board has established a Children's Rights Charter and a young people's advisory group that influences health services delivery and decision-making across the health authority. Rhondda Cynon Taff Local Authority have adopted the UNICEF Rights Respecting Schools initiative for all their secondary schools, encouraging whole school approaches to children's rights; developing rights literacy of children and teachers. These are just some examples that demonstrate how some public bodies in Wales are aiming to embed a children's rights approach that contributes to realising children's rights and the objectives of the WFGA 2015 (The practice examples are drawn from (Children's Commissioner for Wales and Future Generations Commissioner 2017)).

5. Concluding Reflections

Wales, despite being a devolved nation with limited, albeit increasing powers, has taken bold steps towards embedding children's rights and SDGs reform into law. From examining the issues that have arisen in the Welsh context and the ways in which they are beginning to be addressed, a pathway can be discerned towards better integration of the two agendas. This pathway consists of building on a children's rights approach to sustainable development, embedding participative practices and strengthening legal enforceability. To allow for transferrable learning to other contexts, the following reflections will highlight the strengths of the Welsh approach along with a critique of it, to show how it can be improved further.

The first objective of this article was to review how radical legislative frameworks emerged, promoting children's rights and sustainable development through mechanisms aimed at embedding each agenda in administrative and political decision-making. This strong foundation is not without its concerns, and there is room for improvement, especially as to legal enforceability. The Senedd Children and Young People and Education Committee, the Children's Commissioner for Wales and children's sector organisations have argued that the impact of the due regard duty under the Rights of Children and Young Person's (Wales) Measure 2011 would be greater if extended to public bodies across Wales, and if a legal remedy were to be provided for a rights violation. Kilkelly recognises that 'legal implementation can be a gradual process and take different forms and paths depending on the national context', however, she insists that 'legal incorporation matters' (Kilkelly 2019, p. 322). Legislative reform has brought the CRC into the law of Wales, but the next step is to ensure that public bodies can be fully held to account.

The second objective was to examine the importance attached to children's participation in decision-making and some of the practices developed in Wales to support this. Through the Welsh Youth Parliament, child-led projects such as LBLV and the participative approaches adopted by public bodies, children have been successfully engaged in influencing decisions, including within the sustainable development agenda. These are steps towards addressing the concerns that 'children remain largely invisible through tokenistic and poorly executed approaches to their participation' (Davies 2019, p. 42). However, the challenge remains to sufficiently resource, support and facilitate these initiatives so they can be, 'meaningful for all concerned' (Arts 2019, p. 233). This requires further work to embed children's participation in the routine operations of public bodies, enabling localised and bottom-up approaches to contribute to learning on sustainability (Vandenhole 2019).

In this regard, the inclusion of Education for Sustainable Development and Global Citizenship education in the 2020 national curriculum is a significant step (Welsh Government 2020). Through such education, children's understanding and knowledge will increase and even exceed those of older generations, giving them much to contribute in the years to come. Therefore, it is even more important for public bodies to meet the challenges of operationalising, within their decision-making processes, children's right to be heard and to negotiate, within the entanglement of 'top-down' mechanisms, recognition of children's agency.

The third objective considered the extent to which the children's rights agenda and the sustainable development agenda have become better integrated in Wales, through guidance provided to public bodies. Kilkelly (2020) and Nolan (2019) both referred to the dissonance between the agendas at the international level and Vandenhole (2019), pointed out that a children's rights approach to sustainable development is still very much under construction. The very early steps taken in Wales towards converging the two agendas are innovative and potentially offer a route to integrating the discourse on SDGs and children's rights. However, much work is now needed to simplify the current complex matrix of objectives, targets and tools, to enable public body officials to fully understand and effectively implement them.

To conclude, the Wales case study suggests that accountability for children's rights and sustainable development should be further strengthened in law. It supports the argument that the two agendas are interconnected and need to be better aligned. Charting a path towards such alignment requires the development of a children's rights approach to sustainable development, including recognition of the crucial contribution of children themselves. Children should be recognised as autonomous rights holders and empowered to be active agents inspiring transformative change. This requires in practice, that guidance must be offered to those duty bearers who are responsible for implementation, accompanied by the necessary resources. The Wales case study offers approaches, tools and methods that may help to operationalise that goal.

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Dialling in: Reflections on Telephone Interviews in Light of the Covid-19

Pandemic

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Abstract

Telephone interviews have always been the next best option to face-to-face interviews affecting researchers' perceptions of its use in qualitative research. This article considers the challenges against the use of telephone interviews as a primary mode of data collection posed by the 'gold standard' - face-to-face interviews.¹ With the rapid development of technology in recent years and an increased interest in virtual research, telephone interviews and its benefits as a mode of data collection may continue to be side-lined. The methodological strengths of telephone interviews will be explored by comparing it to face-to-face interviews and considering its use in light of the Covid-19 pandemic. I will be drawing from my legal research study on the role of the education system in informing children aged 7-14 of their criminal responsibility in schools, to provide reflections and examples to make my argument.

¹ Judith L. M. McCoyd and Toba Schwaber Kerson, 'Conducting Intensive Interviews Using Email' (2006) 5 Qualitative Social Work.

1. Introduction

Before the 1960s, telephone interviews were considered an unfeasible mode of data collection in research studies due to the lack of telephone ownership and unfamiliarity with the device.² This would imply that access to research participants was significantly limited using this method, and as a result may indicate why there was little academic interest in telephone interviews as a rigorous mode of research.³ However, with rapid advancements in telephone technology, especially with the advent of smartphones, most of the population are well-versed in its usage and often have become heavily reliant on their telephones; it has become “the primary electronic medium for interpersonal communication”⁴ and has changed the way in which individuals communicate. Presently, we use telephones extensively for a variety of purposes; namely, calls (voice and video), instant messaging, emails, social media, camera etc. yet, the use of telephone interviews is still considered an alternative option to the face-to-face interview in qualitative research. Face-to-face interviews are deemed the “gold standard”⁵ mode of interviews in qualitative research, however, with this shift in our relationship with mobile phones, it has become increasingly important to revisit the use of telephone interviews and consider whether it is underutilised as a primary method of collecting qualitative data. Moreover, with the Covid-19 pandemic forcing face-to-face interviews to stop during lockdown measures, the methodological strengths of telephone interviews in its own right need be better considered. This article will review existing literature on why telephone interviews remain a secondary

² Eloise C.J. Carr and Allison Worth, 'The Use Of The Telephone Interview For Research' (2001) 6 NT Research.

³ *ibid*

⁴ Robert Hopper, *Telephone Conversation* (Indiana University Press 1992).

⁵ McCoyd & Kerson (n1)

option, the methodological strengths of the mode and the impact of the pandemic on this. Finally, it will relate it to my own experience as a legal academic conducting telephone interviews with teachers in my ongoing doctoral research study.

2. Telephone Interviews in Qualitative Research

Since the beginning of the nineteenth century, interviews have been commonly used in anthropology and sociology as a qualitative methodology.⁶ Kvale defines an 'interview'⁷, as a data collection technique where "views are inter-changed between two or more people on a topic of interest to the participants involved".⁸ The focus is on the interaction between the individuals for the purpose of knowledge exchange or production and, simultaneously, takes into account the "social situatedness of the research data."⁹ The most common form of interviews are conducted face-to-face as it enables data to be collected through multi-sensory channels in the form of speech, hearing, visual, and non-visual elements.¹⁰ In comparison, Frey states that a telephone conversation is "an interactional sequence without the assistance of visual cues."¹¹ On this basis, telephone interviews challenge the conventional understanding of the function and purpose of face-to-face interviews¹² as the distance between the researcher and participant removes the visual element of the data collected.

⁶ Max Travers, 'New Methods, Old Problems: A Sceptical View Of Innovation In Qualitative Research' (2009) 9 *Qualitative Research*.

⁷ Steinar Kvale, *Interviews* (Sage 1996) 14.

⁸ Louis Cohen, Lawrence Manion and Keith Morrison, *Research Methods In Education* (8th edn, Routledge 2018).

⁹ Travers (n6)

¹⁰ Cohen, Manion & Keith Morrison (n8) 506

¹¹ James H Frey, *Survey Research By Telephone* (Sage 1990).

¹² Amanda Holt, 'Using The Telephone For Narrative Interviewing: A Research Note' (2010) 10 *Qualitative Research*.

Lechuga¹³ and Novick¹⁴ outline how notable texts, such as Patton's *Qualitative Research and Evaluation Methods* and Denzin and Lincoln's *The Sage Handbook of Qualitative Research* fail to adequately acknowledge telephone interviews in qualitative research. This is not a critique of these texts, as they are extensive works that cover many aspects of qualitative research, but rather it sheds light on the general position of telephone interviews in qualitative research. The omission of telephone interviews from such prominent and well-cited sources illustrates the lack of recognition given to it as a qualitative research method and implies that it is a mode of interview that has not been fully accepted or used widely by qualitative researchers.

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As Shuy highlights, doing interviews, can be time-consuming and one way to reduce fieldwork time is by doing the interviews on the telephone rather than face-to-face. Hence, telephone interviews being a 'short-cut' to the data collection process¹⁶ contributes to its perceived inferior position to face-to-face interviews in qualitative research. Chapple contends that "while entire books have been written about the advantages and disadvantages of telephone interview for the purposes of social survey work...much less has been written about telephone interviewing as a means of gathering qualitative data."¹⁷ Irvine corroborates this point by highlighting the need for methodological studies on telephone interviews in qualitative research that focuses

¹³ Vicente M. Lechuga, 'Exploring Culture From A Distance: The Utility Of Telephone Interviews In Qualitative Research' (2012) 25 *International Journal of Qualitative Studies in Education*.

¹⁴ Gina Novick, 'Is There A Bias Against Telephone Interviews In Qualitative Research?' (2008) 31 *Research in Nursing & Health*.

¹⁵ Judith E. Sturges and Kathleen J. Hanrahan, 'Comparing Telephone And Face-To-Face Qualitative Interviewing: A Research Note' (2004) 4 *Qualitative Research*.

¹⁶ Roger W. Shuy, 'In-Person Versus Telephone Interviewing', *Inside Interviewing* (Sage 2003).

¹⁷ Alison Chapple, 'The Use Of Telephone Interviewing For Qualitative Research' (1999) 6 *Nurse Researcher*.

on a wide range of topics.¹⁸ In addition, the literature on qualitative interviews tend to focus on the possible negative impact that telephone interviews have on the quality and richness of the data collected in comparison to face-to-face interviews.¹⁹

As such, there is no clear definition of a telephone interview provided in existing literature in this area. This could be attributed to the fact that there is a widespread understanding of the two words that make up the term, thereby inferring an assumed comprehension and acceptance of what it means. Nevertheless, Carr and Worth attempt to clarify that “a telephone interview in research terms is a strategy for obtaining data which allows interpersonal communication without a face-to-face meeting.”²⁰ This definition is broad enough to include telephone surveys as they also use interpersonal communication via telephones to obtain information; the difference being that the data obtained is typically quantitative. In the 1970s, the development of telephone technology encouraged the use of telephones in research, thus making it a useful instrument in market research and political polling.²¹ Telephone interviews in such social surveys aim at keeping the respondent’s inputs short by using highly focused and standardized questions to obtain relevant data.²² Generally, the widespread use of telephones in research was conducted by quantitative researchers and hence, there was a sense of hesitation to use telephone interviews as the main mode of collecting qualitative data.²³ Subsequently, it is often combined with other

¹⁸ Annie Irvine, Paul Drew and Roy Sainsbury, 'Am I Not Answering Your Questions Properly?' Clarification, Adequacy And Responsiveness In Semi-Structured Telephone And Face-To-Face Interviews' (2012) 13 *Qualitative Research*.

¹⁹ Irvine, Drew & Sainsbury (n18)

²⁰ Carr & Worth (n2)

²¹ Frey (n11) 21.

²² Irvine et al. (n18)

²³ Travers (n6)

methods such as face-to-face interviews and questionnaires to make up for any 'missing data' due to the lack of proximity to the interviewee.²⁴

This scepticism towards the use of telephone interviews has been expressed by a few qualitative researchers. For example, Taylor mentions how, as a social researcher with experience of being a respondent in 'telephone interviews' from marketing and research companies, she found that she left "such an encounter feeling suspicious and somewhat frustrated."²⁵ She also suggests that this is because the interviewers were not interested in responding to her queries about the research, instead their focus was on getting the information they needed from her, as quickly as possible.²⁶ Generally, quantitative research surveys or questionnaires conducted over the telephone require short responses from a large number of people²⁷ resulting in experiences similar to Taylor's. Such associations with survey-style telephone calls have contributed to the negative perception that telephone interviews are limited. Holt admits that she presumed the most effective mode for producing narrative data would be face-to-face interviews. However, it was not until she had issues accessing participants that telephone interviews were considered as a viable method for collecting narrative data.²⁸ Hence, it was the practicality of the circumstances that encouraged the use of this sparsely explored method. Taylor also used this method in her longitudinal study with adolescent boys and found it, in some circumstances, to be a compelling tool to elicit rich qualitative data.²⁹ For the purposes of this paper,

²⁴ Lechuga (n13)

²⁵ Anthea Taylor, 'I'll Call You Back On My Mobile: A Critique Of The Telephone Interview With Adolescent Boys' (2002) 25 Westminster Studies in Education.

²⁶ *ibid*

²⁷ Shuy (n16)

²⁸ Holt (n12)

²⁹ Taylor (n25)

telephone interviews in qualitative research will be using telephones as a mode of communication to elicit longer and varied responses from a smaller number of participants, with a particular focus on the information, examples and experiences they wish to share. The terms 'participant' and 'interviewee' will be used interchangeably in this article.

3. Telephone Interviews – Why is it a Secondary Option?

Data collected from telephone surveys/interviews, as mentioned above, prioritises the quantity of responses therefore, calls are kept brief.³⁰ Thus, the data collected through such methods are not perceived to be as rich in quality as qualitative research requires.³¹

Rubin and Rubin state that: “through qualitative interviews you can understand experiences and reconstruct events in which you did not participate.” To do this and understand how the interviewee feels, proximity to them is helpful as, among other things, it allows interviewers to pick up on visual cues and take note of the feeling in the room when information is shared.³² Face-to-face interviews permit researchers to access this information with ease, thereby being heavily favoured in qualitative research.³³ However, this does not necessarily preclude telephone interviews from achieving the same, as illustrated by Holt’s study, where sensitive narrative data was

³⁰ Linda Sweet, 'Telephone Interviewing: Is It Compatible With Interpretive Phenomenological Research?' (2002) 12 *Contemporary Nurse*.

³¹ Adrienne Trier-Bieniek, 'Framing The Telephone Interview As A Participant-Centred Tool For Qualitative Research: A Methodological Discussion' (2012) 12 *Qualitative Research*.

³² Herbert J Rubin and Irene Rubin, *Qualitative Interviewing* (Sage 1995).

³³ Novick (n14)

collected using this method.³⁴ Furthermore, counselling practices like the Samaritans and Talking Therapies would belie any criticism that telephone interviews cannot generate experiential data effectively.³⁵

This section will consider the main concerns for why researchers and by implication, research literature positions telephone interviews as a secondary option to the 'gold-standard' of face-to-face interviews.

3.1 Quality of Data

Most, if not all research literature state that the criteria for determining quality in qualitative research revolve around reliability, validity and objectivity.³⁶ For Kvale, in the context of qualitative interviews, this is determined by, “the extent of spontaneous, rich, specific and relevant answers from the interviewee”,³⁷ “the degree to which the interviewer follows up and clarifies the meanings of the relevant aspects of the answers,”³⁸ and the interview speaking for itself without requiring extra explanation.³⁹ This is further summarised by Kirkevold and Bergland, as creating the conditions for the interviewee to provide, “mostly uninterrupted, well-articulated complete picture of the phenomenon under study.”⁴⁰

Recently, numerous studies have reflected on the quality of data gathered from telephone interviews, and a large number of them concluded that they are “just as

³⁴ Holt (n12)

³⁵ Holt (n12)

³⁶ Uwe Flick, *An Introduction To Qualitative Research* (6th edn, SAGE 2018).

³⁷ Svend Brinkmann and Steinar Kvale, *Doing Interviews* (SAGE 2018).

³⁸ *ibid*

³⁹ *ibid*

⁴⁰ Marit Kirkevold and Ådel Bergland, 'The Quality Of Qualitative Data: Issues To Consider When Interviewing Participants Who Have Difficulties Providing Detailed Accounts Of Their Experiences' (2007) 2 *International Journal of Qualitative Studies on Health and Well-being*.

good” at generating meaningful data, as face-to-face interviews.⁴¹ Stephens states that in his telephone interviews “excellent data” was collected in all cases and he also comments on how a “friendly rapport” was achieved,⁴² thereby further supporting that telephone interviews can be an equally effective research method, apropos of data quality.

However, Irvine expresses concerns about the conclusions made in these studies as she argues that they make “broad and impressionistic comparisons.”⁴³ This is because there is a lack of rigorous analysis when comparing different modes of interview. To explore this, Irvine conducted a small-scale study which raised concerns about two factors – interview duration and researcher dominance.⁴⁴ When compared with face-to-face interviews, Irvine noted that the telephone interviews were on average, shorter and that the researcher took up more “airtime”, thereby shortening the time the interviewee could have spent talking.⁴⁵

This finding would imply that the quality of data collected from telephone interviews might be compromised as, in Kvale’s view, it would reduce the spontaneity and richness of the responses the interviewee could offer.⁴⁶ However, this reasoning can be countered with a fuller understanding of what occurs during a telephone interview, and one that is not solely focused on the researcher taking up more “airtime”. For instance, like visual cues, aural cues are commonly used to navigate through

⁴¹ Annie Irvine, 'Duration, Dominance And Depth In Telephone And Face-To-Face Interviews: A Comparative Exploration' (2011) 10 *International Journal of Qualitative Methods*.

⁴² Neil Stephens, 'Collecting Data From Elites And Ultra Elites: Telephone And Face-To-Face Interviews With Macroeconomists' (2007) 7 *Qualitative Research*.

⁴³ Irvine (n41)

⁴⁴ Irvine (n41)

⁴⁵ Irvine (n41)

⁴⁶ Brinkmann & Kvale (n37)

telephone conversations,⁴⁷ and therefore, within the context of an interview, making it a crucial way to clarify an interviewee's responses and confirm that they have fully understood what is being asked. Furthermore, as per Kvale's measure of quality mentioned earlier, following up on the responses given by the interviewee would only increase the validity and reliability of the data collected.⁴⁸

3.2 Duration of Interviews

Telephone interviews, when compared to face-to-face interviews, are perceived to be shorter in length by qualitative researchers, as it is associated with polling and surveys.⁴⁹ In addition to this, telephone interviews are oftentimes kept shorter to avoid participant fatigue.⁵⁰ This is a phenomenon that is usually associated with surveys where the participant becomes tired and as a result can negatively affect their participation with the research.⁵¹

However, in a study conducted by Vogl, it was found that there was no significant difference in the interview length, the number and proportion of words spoken by the participants or need for clarification between telephone and face-to-face interviews.⁵² Moreover, other studies have also shown that the mode of the interview does not determine the duration of the interview and in some cases found that interviewees were willing to spend anywhere between one to three hours participating in a telephone interview.⁵³

⁴⁷ Holt (n12)

⁴⁸ Brinkmann & Kvale (n37)

⁴⁹ Chapple (n17); Sweet (n30); Irvine (n41)

⁵⁰ Shuy (n16)

⁵¹ Paul J. Lavrakas, 'Respondent Fatigue', *Encyclopedia of Survey Research Methods* (Sage 2008).

⁵² Susanne Vogl, 'Telephone Versus Face-To-Face Interviews' (2013) 43 *Sociological Methodology*.

⁵³ Stephens (n42); Holt (n12)

Whilst, it is important to note that the duration of an interview cannot be conflated with quality of data, telephone interviews have often faced criticism of producing lower quality data as they are perceived to offer a shorter window of opportunity for the researcher to engage with the participant.⁵⁴ However, this need not be the case as it is found that participants are more likely to engage for longer and share more when they feel comfortable with the interviewer and their role in the research process, thereby offering, richer, in-depth data.⁵⁵

3.3 Rapport

The relationship between the interviewer and interviewee plays a significant role in the way the conversation or discourse is managed.⁵⁶ In order to obtain good quality data in interviews, building a relationship with the participant plays a key role.⁵⁷ Rubin and Rubin state, “given the need to build a relationship and the importance of visual cues in conversations, you’d rightly expect that telephone interviews are not a major way of conducting qualitative interviews.”⁵⁸ Developing rapport through technology is deemed to be less effective than in-person meetings,⁵⁹ as being in someone’s presence can make it easier to connect and ‘break the ice’ with strangers. This is not an uncommon viewpoint as it is assumed that both parties being in each other’s

⁵⁴ Sweet (n30)

⁵⁵ Moira Cachia and Lynne Millward, 'The Telephone Medium And Semi-Structured Interviews: A Complementary Fit' (2011) 6 *Qualitative Research in Organizations and Management: An International Journal*.

⁵⁶ Carol Miller, 'In-Depth Interviewing By Telephone: Some Practical Considerations' (1995) 9 *Evaluation & Research in Education*.

⁵⁷ *ibid*

⁵⁸ Rubin & Rubin (n32) 141

⁵⁹ Novick (n14)

physical presence helps to develop rapport, which forms a key part of a qualitative interview.⁶⁰

Lechuga argues that of all the characteristics that make up a successful qualitative interview there is no requirement that they be facing each other in-person⁶¹. In both interview formats, the interviewer has to put the participant at ease by introducing themselves, the study, clarify any doubts the interviewee may have,⁶² and obtain consent. All of the qualities mentioned above can be met in a telephone interview if the interviewer takes the time to have a contact call with the participant to arrange the interview,⁶³ and provides an agenda-based introduction,⁶⁴ which uses a small number of keywords to introduce themselves and the details of the study.⁶⁵ The interviewer can also ask if there are any doubts the interviewee would like clarified and check that they are happy to go ahead with the interview.⁶⁶ Evidently, the use of the telephone does not hinder the ability to achieve these qualities, but it merely changes the way these qualities are achieved. This forms a foundational rapport between the interviewer and interviewee which can then be built upon when the interview begins.

Creating and maintaining a comfortable interview environment helps to increase the rapport and builds trust between the interviewer and the interviewee.⁶⁷ This can also have an impact on the duration of an interview. Participants are more likely to engage

⁶⁰ Andrea Fontana and James H. Frey, 'The Interview: From Neutral Stance To Political Involvement', *The Sage handbook of qualitative research* (3rd edn, Sage 2005).

⁶¹ Lechuga (n13)

⁶² Cohen, Manion & Morrison (n8) 537

⁶³ Philip Burnard, 'The Telephone Interview As A Data Collection Method' (1994) 14 *Nurse Education Today*.

⁶⁴ Hanekke Houtkoop-Steenstra and Huub van den Bergh, 'Effects Of Introductions In Large-Scale Telephone Survey Interviews' (2000) 28 *Sociological Methods & Research*.

⁶⁵ Cohen, Manion & Morrison (n8) 537

⁶⁶ Rod Dicker and John Gilbert, 'The Role Of The Telephone In Educational Research' (1988) 14 *British Educational Research Journal*. Dicker & Gilbert (n38)

⁶⁷ Novick (n14)

actively in interviews and share more when they feel comfortable with the interviewer and the research process.⁶⁸ This is influenced by the personality and skill of the interviewer, and the attitude, nature and the personality of the participant.⁶⁹ Some may find meeting and talking to a stranger more daunting than speaking to them on the telephone, especially if they are shy or if the subject of the discussion is sensitive and embarrassing in nature.⁷⁰ Good rapport in this case will allow for the interviewee to share without inhibition, providing richer and more meaningful responses thereby improving the quality of data generated. As the abovementioned interpersonal demands are not dependent on the mode used in the interview, telephone interviews cannot be dismissed as a secondary option in qualitative research.

3.4 Visual Data

The absence of visual data in telephone interviews is a prominently cited concern amongst qualitative researchers.⁷¹ Novick suggests there is a bias towards face-to-face interviews which can be attributed to lack of visual data in telephone interviews.⁷² It is argued that being in the presence of the interviewee allows the interviewer access to cognitive and emotional content which can be vital in providing detail and richness to the data and the interpretation of the interviewee's verbal responses.⁷³ The importance placed on visual data, is one of the factors that keeps telephone interviews in a secondary position to face-to-face interviews.

⁶⁸ Novick (n14)

⁶⁹ Lechuga (n13)

⁷⁰ Burnard (n 63)

⁷¹ Stephens (n42); Novick (n14); Holt (n12); Lechuga (n13)

⁷² Novick (n14)

⁷³ Fontana & Frey (n60); Novick (n14)

Visual cues in face-to-face interviews can help the interviewer gauge the direction of the interview and it allows interviewees to know that the interviewer is present and listening by nodding or smiling when they are not speaking or asking questions.⁷⁴ These visual cues help the interviewer navigate through quieter segments of the interview. From his study with telephone interviews, Stephens notes that in the absence of visual cues there is a greater need to guide the conversation.⁷⁵ For example, to mitigate against silences in the interview, indicators such as ‘umm’, ‘ahh’ and ‘yes’ are used.⁷⁶ Holt corroborates Stephens’ experience and further mentions that there is a thin line between the researcher’s interjections directing the narrative, and, assuring the participants of the researcher’s presence.⁷⁷ Although the use of such indicators could be perceived to interject and guide the flow of the interview or take up “airtime”,⁷⁸ they are also used in everyday telephone calls to indicate one’s presence in the conversation. Therefore, it likely participants would find this to be a natural feature of a telephone call, just as nodding in face-to-face conversations. It is the responsibility of the interviewer to stay within the “line”, as Holt warns,⁷⁹ to create a “mostly uninterrupted” research setting,⁸⁰ to maintain objectivity thereby ensuring increased data quality.

Visual contextual data tells us about a participant’s identity and where they are situated.⁸¹ Depending on the relevance of the research setting and the topic of the

⁷⁴ Cachia & Millward (n55)

⁷⁵ Stephens (n42)

⁷⁶ Stephens (n42); Holt (n12)

⁷⁷ Holt (n12)

⁷⁸ Irvine (n41)

⁷⁹ Holt (n12)

⁸⁰ Kirkevold & Bergland (n40)

⁸¹ Holt (n12)

study, the visual context could indicate possible areas for further probing.⁸² For example, if the research setting is in an interviewee's home, it could provide the interviewer with more context about the individual, giving them the opportunity to ask further questions which are specific to their visual observations, if applicable to the study. This could complement and add layers to the data collected from their verbal responses. In some studies, where participant observation is part of the research objective, not being able to see the participant can be disadvantageous.⁸³ However, in most other cases, the discourse analysis focuses on and stays "at the level of the text."⁸⁴ This is common practice in interviews,⁸⁵ therefore, the absence of visual data in telephone interviews does not necessarily have a negative impact on data quality as it is commonly perceived.

The bias against telephone interviews can be ascribed to the absence of visual data and the implication of this on data quality.⁸⁶ To ensure the quality of data in telephone interviews, there is a need to fully articulate responses and behaviour.⁸⁷ This is because non-verbal behaviour and other visual contextual data can be easily misrepresented.⁸⁸ Therefore, in telephone interviews, participants explaining their behaviour and explicitly stating their perspectives on a topic, would provide richer interview transcripts, which are less susceptible to interpretation issues.⁸⁹ Alternatively, it has been contended that participants could misrepresent themselves

⁸² Novick (n14)

⁸³ Raymond Opdenakker, 'Advantages And Disadvantages Of Four Interview Techniques In Qualitative Research' (2006) 7 Forum: Qualitative Social Research <<http://nbn-resolving.de/urn:nbn:de:0114-fqs0604118>.> accessed 15 April 2021.

⁸⁴ Holt (n12)

⁸⁵ Novick (n14)

⁸⁶ Novick (n14)

⁸⁷ Stephens (n42)

⁸⁸ Sturges & Hanrahan (n15)

⁸⁹ Holt (n12)

in telephone interviews as the interviewer has no visual data to work with,⁹⁰ making it harder to know when misleading information is provided.⁹¹ The absence of visual cues and contextual data can give more leeway for such occurrences to take place, but there is nothing to suggest that this is more likely to happen in telephone interviews rather than face-to-face ones.

Overall, visual data can be useful in some types of research but generally, the lack of it in telephone interviews does not necessarily diminish the quality of data obtained from them because the words spoken by the participant take precedent.⁹²

4. Telephone Interviews – a viable primary method?

As mentioned earlier, telephone interviews are usually considered and used where face-to-face interviews are not possible. So far, the main reasons for the underutilisation of telephone interviews in qualitative research have been discussed. This section will focus on some of the reasons why telephone interviews can be beneficial in qualitative research.

Accessibility to participants is one of the key advantages of telephone interviews. It broadens the geographical scope of the research study at a low cost, as travel costs are mitigated, allowing for a wider range of participants to take part, including under-represented groups.⁹³ This makes wide-scale research more affordable for all

⁹⁰ Karl Nunkoosing, 'The Problems With Interviews' (2005) 15 *Qualitative Health Research*.

⁹¹ Rob Garbett and Brendan McCormack, 'The Experience Of Practice Development: An Exploratory Telephone Interview Study' (2001) 10 *Journal of Clinical Nursing*.

⁹² Novick (n14)

⁹³ Sturges & Hanrahan (n15)

researchers. It also allows for researchers to speak to participants who are hard to contact due to time constraints, making it more likely and easier for them to participate in research studies.⁹⁴ This way they can do the interview without having to spend extra time, money and effort travelling to and from the interview location.⁹⁵ Thus, telephone interviews are a more cost-effective method with greater access to participants than face-to-face interviews.

Telephone interviews provide more flexibility to both the interviewer and their participants. Interviewees can choose the time and setting of the interview to protect their privacy and ensure their comfort and convenience⁹⁶ by “remaining on their own turf.”⁹⁷ This increased privacy and relative anonymity in telephone interviews creates a conducive research setting for sharing sensitive information.⁹⁸ It also provides an increased sense of safety to the interviewer without having to visit difficult or dangerous environments.⁹⁹ Moreover, it gives interviewers the flexibility to take notes as they wish without distracting the interviewee.¹⁰⁰

Generally, in qualitative interviews the interviewer is in the driving seat, determining most aspects of the interview process. This lack of power within the interview situation can result in participants providing “imperfect, ambiguous, incomplete or otherwise unsuccessful representations of their actual knowledge and opinions” which negatively impacts the quality of the data obtained.¹⁰¹ Telephone interviews naturally allow

⁹⁴ Cachia & Milward (n55)

⁹⁵ Cachia & Milward (n55)

⁹⁶ Holt (n12)

⁹⁷ McCoyd & Kerson (n1)

⁹⁸ Sturges & Hanrahan (n15)

⁹⁹ Carr & Worth (n2)

¹⁰⁰ Carr & Worth (n2)

¹⁰¹ Shuy (n16)

participants to have greater control over the social space in which the research takes place compared to face-to-face interviews,¹⁰² redressing the inherent power imbalance. This reduces the social pressure and improves the rapport between the interviewer and interviewee.¹⁰³

Some types of visual data like one's appearance (class, race, gender, clothing, accent etc.) may influence the interviewee in face-to-face interviews, subjecting the data collected to bias.¹⁰⁴ Although, such observable characteristics can help the interviewer and the interviewee "orient towards each other,"¹⁰⁵ it can also create barriers between the interviewer and interviewee in the form of 'interviewer effect'.¹⁰⁶ Such characteristics can reduce the level of objectivity in the interview process thereby having a negative impact on the quality of data collected. Efforts are made in face-to-face interviews to neutralise 'interviewer effects' by adjusting the interviewer's appearance to suit the research environment, however, it is important to point out that telephone interviews naturally minimise such bias as it does not take into account visual factors.¹⁰⁷ An interviewer's accent is a significant characteristic that could influence power and privilege in a research setting and this applies to telephone interviews too.¹⁰⁸ Nevertheless, 'interviewer effect' is far more prominent in face-to-face interviews. Hence, the increased level of anonymity and reduced social presence in telephone interviews, minimises the influence of the interviewer, creating more effective conditions for the interview to produce higher quality data as previously

¹⁰² Stephens (n42)

¹⁰³ McCoyd & Kerson (n1)

¹⁰⁴ Shannon M. Oltmann, 'Qualitative Interviews: A Methodological Discussion Of The Interviewer And Respondent Contexts' (2016) 17 Forum Qualitative Sozialforschung / Forum: Qualitative Social Research <<https://www.qualitative-research.net/index.php/fqs/article/view/2551/3998>> accessed 7 July 2021.

¹⁰⁵ Holt (n12)

¹⁰⁶ Novick (n14)

¹⁰⁷ Shuy (n16)

¹⁰⁸ Oltmann (n104)

outline by Kirkevold and Bergland.¹⁰⁹ This diminishes issues with privilege and power imbalance in the interview process.¹¹⁰

5. The Impact of Covid-19 on the Use of Telephone Interviews

The Covid-19 pandemic has had a significant impact on the way our lives are conducted. As Teti et al. outline, the pandemic is a “social event that is disrupting our social order.”¹¹¹ The effects of this have also been felt in research, with researchers having to re-design their methodology due to social distancing and lockdown measures.¹¹² This has meant that alternative methods to face-to-face interviews had to be adopted for research to continue. These circumstances have caused a shift from the traditional way of conducting interviews to include the use of technology. The use of telephones and video-conferencing platforms such as Skype, Zoom, Microsoft Teams, Webex and GoToMeeting have become the norm¹¹³ for work, personal and research purposes. This illustrates how the use of technology in social interactions is becoming increasingly normalised, making it more effective for facilitating research than face-to-face interviews, especially during the pandemic. In times like this, our reliance on face-to-face interviews must be questioned and consideration should be

¹⁰⁹ Novick (n14)

¹¹⁰ Holt (n12)

¹¹¹ Michelle Teti, Enid Schatz and Linda Liebenberg, 'Methods In The Time Of COVID-19: The Vital Role Of Qualitative Inquiries' (2020) 19 International Journal of Qualitative Methods.

¹¹² Geraldine Foley, 'Video-Based Online Interviews For Palliative Care Research: A New Normal In COVID-19?' (2021) 35 Palliative Medicine.

¹¹³ Foley (n112)

given to whether other methods, like telephone interviews, should continue to be regarded solely as an alternative rather than a primary option.

It usually takes unforeseen issues of access for researchers to primarily use modes like telephone for conducting interviews.¹¹⁴ This article aims to broaden this perception, so that telephone interviews are considered a primary choice of method. I recognise that the purpose and nature of the research plays a big role in determining the mode of interviews used, and that telephone interviews may not suit some studies.¹¹⁵ For example, ethnographic studies or some highly sensitive topics may not be appropriate.¹¹⁶ However, the methodological strengths of telephone interviews are brought to light even more by the pandemic.

With the implementation of social distancing measures worldwide, access to participants became a key obstacle in research. Despite this, telephones allow for quick, simple, safe and cheap access to participants even in such circumstances. There are virtual research methods that could be equally advantageous for accessibility purposes, like online interviews.¹¹⁷ Nonetheless, as telephones are a form of technology that most participants would be familiar with and have access to without the need for internet, it casts a wider net to gather participants. Telephones ensure the inclusion of a wider range of age groups and participants from different socio-economic backgrounds, as virtual research methods will require more expensive technology such smartphones, laptops, computers and reliable internet connection.

¹¹⁴ Holt (n12)

¹¹⁵ Oltmann (n104)

¹¹⁶ Lechuga (n13)

¹¹⁷ Valeria Lo Iacono, Paul Symonds and David H.K. Brown, 'Skype As A Tool For Qualitative Research Interviews' (2016) 21 Sociological Research Online.

As a result, virtual research methods will only be considered in a limited capacity; especially, in relation to its impact on telephone interviews.

During the pandemic, many people have had to conduct their lives differently with working from home, caring responsibilities, home schooling, and health concerns to mention a few factors. This has increased work and home pressures for some, therefore making them harder to reach due to lockdown measures. For example, in a women-dominated profession like teaching,¹¹⁸ access to participants has become even harder due to added pressures during the pandemic. Studies show that work-life-balance for women during the Covid-19 pandemic has been disproportionately affected by the exacerbation of traditional gender stereotypes and inequalities within families and society as a whole.¹¹⁹ Understandably these are trying times for many people, so gathering participants can be tough even when using methods of data collection that are more conducive to the circumstances. Therefore, the flexibility telephone interviews provide to the interviewee by allowing interviews to be conducted at a time and place suited to them is even more important, and it may make participation in research more agreeable to them.

Research settings for interviews were limited during lockdown measures as people were not allowed to leave their homes. These restrictions meant that for many participants finding the most convenient setting may have been more challenging.

¹¹⁸ 'School Teacher Workforce' (*Ethnicity-facts-figures.service.gov.uk*, 2021) <<https://www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/school-teacher-workforce/latest#:~:text=Summary%20of%20School%20teacher%20workforce%20By%20ethnicity%20and%20gender%20Summary&text=in%202019%2C%2075.8%25%20of%20>> accessed 22 April 2021.

¹¹⁹ Heejung Chung, Holly Birkett, Sarah Forbes and Hyojin Seo, 'Covid-19, Flexible Working, And Implications For Gender Equality In The United Kingdom' (2021) 35 *Gender & Society*.

External factors such as distractions and disturbances around the participant may be a major cause of concern for the interviewer and potentially the interviewee. This is especially true for those with parental and caring responsibilities. In this case, the both the interviewer and interviewee have less control over the social space in which the interview takes place. Nevertheless, telephones present the option of going outside the home environment to participate in an interview, without having to rely on the internet.

Yet, video-conferencing platforms were heavily-used during the pandemic to conduct online meetings between people.¹²⁰ This established a new 'normal' where interactions with another person could take place with visual data available unlike with telephone calls. Although, video-calls allow the interviewer and the interviewee to see each other, we typically only see the interviewee's face, possibly missing visual cues from the rest of the body.¹²¹ This limits the visual data obtained and its relevance to the study must be considered. Notably, there is strength in "staying at the level of the text", allowing the interviewer to focus solely on the words spoken and the aural cues in the interview.¹²²

In addition, using video during online interviews will subject participants at home to the interviewer looking into their personal space, which could raise issues of privacy. The "researcher gaze" becomes even more penetrating and intrusive in such circumstances, causing some participants to feel more comfortable and safe¹²³ with

¹²⁰ Foley (n112)

¹²¹ Lo Iocono, Symonds & Brown (n117)

¹²² Holt (n12)

¹²³ McCoyd & Kerson (n1)

solely audio communication, especially when interviews may be conducted by a stranger. There are ways to blur or change backgrounds on the various video-conferencing platforms¹²⁴ however, it is notable that telephone calls do not present this issue, thereby requiring less effort on the part of the interviewee to protect their personal space.

Overall, the Covid-19 pandemic has had an impact on the way in which we conduct our lives and this may have lasting effects. This is true for the future of qualitative interviewing as such unprecedented circumstances have required researchers to broaden their thinking and embrace methods that were previously underutilised due to its perceived inferiority to face-to-face interviews. Telephone interviews are one such method, however, with the advent of the internet, online interviews have quickly overshadowed it as a mode of interview. Online interviews have been known to challenge methodological norms, bringing with it an sense of excitement.¹²⁵ It seems like the pandemic has fuelled this further with the advent and prominent use of numerous online platforms. As the trend shows, although telephone interviews provide a simple, cost-effective and widely accessible method of data collection, it may continue to be neglected as a primary method in qualitative research post-pandemic. It is worth noting, however, that all these online platforms are based on traditional qualitative methods like in-person meetings, telephone calls and letters.¹²⁶ Therefore, telephone interviews are a tried and tested mode of interviews, making it reliable and more well-established than online platforms. It also has minimal issues with regard to

¹²⁴ Lo Iocono, Symonds & Brown (n117)

¹²⁵ Novick (n14)

¹²⁶ Reference is made here to video-calls, conference calls and email interviews.

privacy and confidentiality unlike some online platforms.¹²⁷ The next section will be providing an example from my study to show how it can continue to be a useful and advantageous method now and in future research.

6. Reflections From My Study

My research explores the role of the education system in informing children aged 7-14 of their legal responsibilities, with a specific focus on criminal responsibility. The age of criminal responsibility in England and Wales is currently set at ten¹²⁸ which is significantly lower than the average age in Europe, which is fourteen.¹²⁹ One of the key reasons provided by government for the lack of legal change is that children aged ten have the ability to differentiate between right and wrong.¹³⁰ The effect of mandatory education on a child's understanding of their role as legal and moral agents, as required by this law, could have an impact on the appropriateness of the government's reasoning, but is not clearly defined. Therefore, my research aims to look into the primary and middle school national curriculum and what is being taught around criminal responsibility to children in this age group, in order to understand what they actively learn about in terms of their moral and legal responsibility. The aim is to reveal layers to the problem through exploratory research which may highlight a range of

¹²⁷ Bojana Lobe, David Morgan and Kim A. Hoffman, 'Qualitative Data Collection In An Era Of Social Distancing' (2020) 19 *International Journal of Qualitative Methods*.

¹²⁸ Section 16 Children and Young Persons Act 1963

¹²⁹ Ido Weijers, 'The Minimum Age Of Criminal Responsibility In Continental Europe Has A Solid Rational Base' (2016) 67 *NILQ*.

¹³⁰ HC Deb 18 December 2012, vol 555, col 3W 56

causes or alternative options, to protect children from the weight of the law. Here reflections from my doctoral research methodology will be discussed, however, empirical comparisons based on the findings of my research will not be considered as the study has not been completed at the time of writing this article.

I decided that the best place to start would be to speak to teachers who engage with children aged seven to fourteen to obtain insight into the legal consciousness of pupils in this age group, and to find out about what schools do to inform children of their legal responsibility. I started planning my methodology with only face-to-face interviews in mind however, due to the initial difficulties I experienced with accessing teachers and poor participation rates, I elected to include telephone interviews as well. Giving participants the option to choose a mode of interview, that suited their personal circumstances, allowed them to feel supported in the research process. This also allowed for flexibility in my methodology, which proved useful when Covid-19 social distancing measures came into place during my study. As part of my research I was able to conduct semi-structured interviews with twelve teachers. Six face-to-face interviews and six telephone interviews were conducted; this was wholly dependent on the option chosen by the teachers.

6.1 Benefits of Using Telephone Interviews

6.1.1 Access and Participation

As with some of the studies mentioned before, I used telephone interviews due to challenges I experienced with conducting face-to-face interviews. I contacted many schools in the North East of England to gain access to primary/middle schools however, in most cases, I could not speak to anyone beyond the reception staff. This made it difficult to cross the first hurdle of getting in contact with teachers. Using snowball sampling, I was able to overcome the 'gatekeeper' hurdle and generate more interest in my study as a contact, made through me or an intermediary, made it more likely for teachers to respond positively to my request to interview them. For example, one headteacher was happy to participate in my study however, with Christmas concerts coming up, she had no time or space to meet in-person. Having the option to do the interview on the telephone made it much easier to work around her schedule thus increasing the participation rate in my study. My sample size would have reduced significantly if telephone interviews were not used as teachers, with their busy schedules,¹³¹ would have found it hard to make time to speak to me in-person.

6.1.2 Costs

Using telephone interviews broadened my sample to include teachers from schools beyond Newcastle-upon-Tyne, which minimised my travel costs and broadened my geographic diversity (to include different types of schools) within the North East of England. Furthermore, as the telephone interviews were conducted using the free minutes on my mobile phone plan, I did not have to incur any costs when conducting the interviews. Only four interviews required me to travel out of Newcastle and they all took place on the same day, as the teachers in the area knew each other, minimising

¹³¹ Helen Ward, 'Teachers In England Work Longest Hours In Europe' (*TES*, 2019) <<https://www.tes.com/news/teachers-england-work-longest-hours-europe>> accessed 15 April 2021.

my travel costs. PhD students like myself who do not drive and those with limited funding will be able to minimise costs with the use of telephone interviews making research more feasible and affordable. Telephone interviews also helped reduce the time spent planning the interview, travel back and forth and conducting the interview.

6.1.3 Conducive Research Settings

Giving participants the choice regarding the mode of interview allowed them to decide on the research setting most conducive to them. The trend that emerged was that teachers who chose to speak to me during work hours preferred doing it on the telephone whereas, those who were able to make time outside work hours chose to meet in-person. Those who chose to do it on the telephone were able to find a time and space that worked best for them, putting them at ease as they were in a familiar environment and they could prepare for the call. As the researcher, although I had control over the interview process, sharing this power over the social space, by allowing the interviewee to determine the interview time and setting, helped those teachers build trust in me.

6.1.4 Redressing Power Imbalance

There was a perceived reciprocity felt from both ends in the interview process; they were doing me a favour by sharing their knowledge and experience with me, whilst I could make the interview more participant-centred by accommodating their needs. The participants were told what they were going to be asked beforehand so that they had some time to think about it. Knowing what would happen in the interview reduced

the uncertainty around the interview process, making the participants feel more equal in status. This contributed towards balancing the power relations in the interviews.

As I was not physically required to go anywhere for the interview, the participants had the possibility to call off or rearrange the telephone interview knowing that it would not be too inconvenient for me. This distance provided by interacting on the telephone gives the interviewee more freedom to participate in the interview as they wish. Furthermore, the 'interviewer effects', with the exception of accent, were mostly mitigated in the telephone interviews I conducted, keeping the interviews more objective and less subjected to bias.

6.2 How Did the Challenges Posed by Face-to-Face Interviews Affect My Telephone Interviews?

6.2.1 Interview Duration

As I carried out both face-to-face and telephone interviews, I was able to make a comparison between the length of the interviews using the two modes. My legal research study has a small sample size and therefore, I cannot make a generalisation, however, I can investigate the general assumption that telephone interviews are shorter using my findings. I found that the average duration of the telephone interviews was approximately 34 minutes, whereas face-to-face interviews were only around 22 minutes long. However, it is worth noting that both my longest interview (50 minutes) and my shortest interview (19 minutes) were conducted using telephones. Thus, from my study it is hard to determine whether telephone interviews by nature will be shorter; it appears to be dependent on other factors which will be discussed below. The longer

interviews (with the exception of one interview) took place outside working hours which allowed the participant to take more time out to share their teaching experience with me. Three out of six of the telephone interviews that took place during office hours stayed mainly within the 20 minute range; this also included the shortest interview.

As teachers are generally quite busy,¹³² the time constraints on them may have had an effect on the length of the interview. I took this into consideration when asking for their availability to participate in the interview. Additionally, I designed the interview questions to take roughly 15-20 minutes if they provided short answers. This was to ensure that the teachers would be able to answer all the guiding questions and time dependent, they could answer any further questions based on information shared in their responses. None of the telephone interviews were stopped by participants because of time constraints. Instead, all my interviews naturally came to an end just as in-person conversations do. Due to the exploratory nature of my research, the preliminary findings suggest that approximately 20 minutes was sufficient for the teachers to share relevant parts of the curriculum, their teaching experiences, and provide specific examples. Hence, the research purpose is important when considering the use of telephone interviews research and the way they are conducted must be tailored accordingly.

6.2.2 Quality of Data

The length of the interview did not play a major role in my research as all the teachers covered the guiding questions and provided some examples to support their

¹³² Ward (n131)

responses; the level of detail in the examples shared was the only difference. For example, a few of the teachers would summarise their experiences to share their main point, whereas some other teachers would explain their experiences further by furnishing their answers with more detail. This was primarily dependent on the personality of the teacher. The talkative participants liked to provide more details whereas the others were happy to respond to the guiding questions and further questions succinctly. During the data analysis process, I found it interesting that I had to sift through the more detailed interviews while the more succinct answers made the thematic coding process easier. Hence, longer interviews did not always indicate that there were more relevant points shared and this was true for both telephone and face-to-face interviews. From my research process so far, there is no notable difference in the quality of data collected through telephone interviews and face-to-face interviews.

6.2.3 Rapport

Cold-calling and emailing schools without a mutual contact gave me the impression they were suspicious of me and my research. Using snowball sampling made it easier to build trust as there was a mutual contact who introduced me to participants favourable towards partaking in my research. Apart from me, the participant also had the mutual contact to deal with in the research process, making it easier for them to speak to a stranger like me. I found that the more unknown the mutual contact was to me and/or the participant, the likelihood of using telephone interviews increased. The telephone provided the distance necessary to make the participant feel comfortable and safe enough to speak to me. Almost all the participants I approached with my inquiry seemed to find it fascinating and were happy to share anything that they knew. This positive outlook and curiosity into my research meant that most of the participants

engaged actively during the interview process. This was the same for both the telephone and face-to-face interviews hence, it added to the quality of responses provided by the interviewees.

Only one of the teachers in a face-to-face interview seemed less engaged but that could be because she only taught language classes, as a result, her responses were usually limited as she must have felt there was not much she could contribute to a discussion on criminal responsibility. There was more engagement from this participant when I tried asking general questions about the students she teaches and their ability to understand concepts like legal responsibility. Other teachers in my sample who did not teach classes/workshops related to legal responsibilities drew on their previous experience teaching British Values or PSHE (Personal, Social, Health and Economic education) to respond to the questions. Starting my interview with questions on the interviewee's teaching background provided me with information that permitted me to frame or order the questions better for each individual. This technique was equally beneficial in both modes of interviews.

6.2.4 Absence of Visual Data

Initially, it was difficult to navigate through the telephone interviews without visual cues that would indicate if the participant was done talking, taking a pause to think, or whether they understood the question from the way I phrased it. However, as I carried out more telephone interviews, it was easier to let the participants take their time in telephone interviews to pause and make indications through aural cues. I also got into the habit of articulating my thoughts and actions clearly which set a precedent for the interviewee to do the same so that we could both discern what was going on. In

addition to the verbal cues I used to replace the effects of nodding, it also helped to ask the interviewee if they had more to share. Additionally, I repeated their point so that I could clarify that my interpretation of what they said was correct. This helped them know I was paying attention, improved my understanding of what was shared and increased data quality.

As highlighted by the literature, the lack of visual data in telephone interviews left me concerned about whether I would be missing key information relevant to my research. However, after conducting my first telephone interview, I realised that the visual data that I obtained in my face-to-face interviews were not relevant to my research. In fact, it helped me listen more actively as I only had to focus on listening and taking notes, rather than making eye contact. Moreover, note-taking can sometimes be unpleasant or distracting for participants.¹³³ As such, I took more notes during my telephone interviews than my face-to-face ones, which proved useful during the transcribing process. The absence of visual cues freed up my attention to engage in note-taking and the interview process better.

On the whole, using telephone interviews in my research proved to be very useful and advantageous, especially with the onset of the pandemic. It provided quality data from a wide range of teachers from different types of schools, which brought out meaningful layers to my findings. In my experience of telephone interviews so far, the advantages have outweighed any factors that could negatively impact the data collected, making it as strong as my face-to-face interviews methodologically. Therefore, in future

¹³³ Miller (n56)

studies I would be inclined to use telephone interviews as the sole primary method of data collection .

7. Conclusion

Telephone interviews are the original synchronous form of interviews using technology. Researchers, including myself, have defaulted to using it when issues such as accessing participants and difficulties conducting face-to-face interviews due to travel costs, geographical distance, time constraints, or health and safety measures, have arisen. In my case, as a legal researcher exploring a non-legal setting like schools, I experienced barriers that affected the participation rate in my study. The use of telephone interviews as a primary mode of research alongside face-to-face interviews helped overcome this, and it proved to be an equally advantageous mode of interview for collecting data. It has methodological strengths that allow it to stand on its own right, rather than being in the shadow of face-to-face interviews in qualitative research. Some benefits are: it is flexible, safer, cost-effective, facilitates higher participation rates without diminishing the quality of data generated. Furthermore, it reduces the imbalance in power relations that may be experienced between the interviewer and the interviewee, and provides an anonymity that could facilitate the sharing of sensitive data, without concerns of 'surveillance.'¹³⁴ Nevertheless, it is

¹³⁴ Holt (n12)

constantly met with scepticism due to the lack of physical proximity to the interviewee resulting in lost visual data. The importance placed on this visual data, may not be necessary in all studies and hence, researchers should broaden their perception of qualitative research by considering other modes of interviews.

Lockdowns during the Covid-19 pandemic made face-to-face interviews impossible, forcing researchers to broaden their methodological approaches through the use of technology. With the advent of virtual research methods such as online interviews, telephone interviews continue to remain side-lined. As Novick states “it seems that telephone interviews neither have the endorsement enjoyed by face-to-face interviews, which are seen as the gold standard, nor the excitement generated by internet interviews, which are seen as ‘challenging methodological boundaries’.”¹³⁵ This suggests that as virtual research methods become more prominent, telephone interviews may continue to be side-lined. This article hopes to remind researchers of the strengths of telephone interviews in light of the pandemic and advocates for its use as an effective, primary mode of qualitative interviews.

¹³⁵ Novick (n14)