



**EFFECTIVE POLICE STATION LEGAL ADVICE**  
**COUNTRY REPORT 2: ENGLAND AND WALES**



**BY**

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## 1. INTRODUCTION

This Country Report for England and Wales has arisen out of a comparative study into police station legal advice, led by Dr Vicky Kemp, University of Nottingham. She received a small grant from the British Academy/Leverhulme to undertake semi-structured interviews with defence lawyers and policy officers responsible for criminal legal aid in six jurisdictions. Dr Miet Vanderhallen was the consultant responsible for the research undertaken in Belgium and the Netherlands, assisted by Enide Maegherman, both from the University of Maastricht.

Criminal procedure in England and Wales is rooted in the adversarial, party-based tradition in which the police enjoy a significant level of investigative autonomy; there is no pre-trial supervisory role of the prosecutor or other judicial officer. The Police and Criminal Evidence Act (PACE) 1984 is the most important statute governing the investigation of crime and the rights of suspects held in custody, including the provision of free and independent legal advice. The legislation was enacted following a Royal Commission on Criminal Procedure (1981), which examined police practices following a number of high profile miscarriage of justice cases. Under s.58(1) of PACE, suspects arrested and held in custody are entitled 'to consult a solicitor privately at any time' and there is an associated requirement that the police inform detainees of this right (Code C, para. 3.1).<sup>1</sup>

The police are responsible for investigating most crimes and deciding whether to charge a suspect in relation to the majority of offences, although the Crown Prosecution Service (CPS) will decide on the outcome decision in relation to serious offences.<sup>2</sup> Criminal investigation is, for most crimes, the exclusive responsibility of the police.

Following the European Court of Human Rights (ECtHR)'s decision in *Salduz v Turkey* (*Salduz*)<sup>3</sup> there has been a rapidly changing position across Europe. Such change has been encouraged through recent EU Directives; with a number of jurisdictions having now introduced a clear right to legal assistance at the early stages of the police investigation. However, as Jackson (2016) notes, while there has been recognition of principle of access there has been very different conceptions about the scope of the right of access and what role lawyers should in practice play when they obtain access. Nevertheless, there is an increasing acceptance of the need for a more active defence role at the pre-charge stage of the criminal process.

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<sup>1</sup> Accompanying PACE are detailed Codes of Practice, with Code C setting out requirements for the detention, treatment and questioning of non-terrorism related suspects in custody.

<sup>2</sup> For more information about the pre-charge process in England and Wales see Blackstock et al. 2014: 70-83.

<sup>3</sup> (2009) 49 EHRR 421.

In relation to the relevant EU Directives, the British government has opted into the Directive on the right to interpretation and translation [2010/64] and on the right to information in criminal proceedings [2012/13] but opted out of the Directives on the right to a lawyer [2013/48], improving procedural rights for young suspects [2016/800] and the right to legal aid for suspects and accused persons in criminal proceedings [2016/1919]. The ECtHR has strengthened the role of legal advisers in the police interview and there are also signs in the jurisprudence that the Court envisages lawyers playing a broader role than simply one of protecting the accused's rights (Jackson, 2016: 1007). There are interesting developments which could usefully be explored in England and Wales, particularly over requiring a more active role for defence solicitors. While PACE has provided suspects with the right of access to a legal adviser for many years, the role, as Jackson (2016: 1011) notes, "falls short of giving lawyers any full-blooded adversarial role that is reserved for the trial process." Instead, the Code of Practice states that, "The solicitor's only role in the police station is to protect and advance the legal rights of their client" (Code C, Note 6D).

While PACE has provided access to free and independent legal advice for over 30 years, it is timely to examine factors that may have implications for effective police station legal advice. It is also important to consider implications for requiring a more active role for legal advisers, particularly when considering the increasing importance of the police interview when being dealt with at trial. In addition, it is also important to consider various factors which can impact on the take-up of advice and also the quality of such advice, particularly in these times of austerity. There are also advances in technology influencing changes in the criminal justice system; it is useful to explore the potential for such developments to assist in helping to improve suspects' legal rights and access to legal advice.

## **2. METHOD**

Five semi-structured interviews were undertaken with defence lawyers and policy officers responsible for criminal legal aid. There were four interviews conducted with criminal legal advisers based in three different firms and in different locations – Kent, London and Birmingham. Three male respondents interviewed are senior partners in three large criminal defence practices, the fourth respondent is a female accredited representative based at one of the three firms.<sup>4</sup> Also interviewed together were two male policy advisers, one from the Ministry of Justice, the other from the Legal Aid Agency. A generic topic list

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<sup>4</sup> References are made in this report to both male and female research participants but for reasons of confidentiality they are referred to in the masculine and a coded reference is used instead of their initials. Legal advisers are also referred to as 'solicitors' or 'lawyers', which includes non-solicitors who are accredited to provide legal advice.

was used for all interviews – one for defence practitioners and the other for legal aid policy officers. The interviews were transcribed and analysed using NVivo, which assists in the identification of key themes.

### **3. ORGANISATION OF POLICE STATION LEGAL ADVICE IN ENGLAND AND WALES**

#### **3.1 Publicly funded police station legal advice**

The Legal Aid Agency (LAA) contracts out publicly funded criminal legal services to solicitors in private practice who meet certain quality requirements.<sup>5</sup> For publicly funded police station legal advice, suspects can either select their own nominated solicitor or use the duty solicitor. Remuneration for solicitors is on a case-by-case basis and from 2008, instead of being paid for the time spent on cases, solicitors receive a fixed fee. In 2008, the LAA launched Criminal Defence Service Direct, a telephone-only advice call-centre, now named Criminal Defence (CD) Direct. Cases which fall outside of the LAA Contract are referred to CD Direct, including minor non-recordable offences, people arrested on warrant for failing to appear at court, arrested for driving with excess alcohol and taken to the station to provide a specimen, and those detained in relation to breach of police or court bail conditions.

**Notification system.** When suspects have requested legal advice, the police will call the details through to the defence solicitor call-centre (DSCC). The call-centre then has to decide if the case is referred on to a solicitor or allocated to CD Direct. The DSCC telephones both 'own' and duty solicitors to advise them of the referral and firms can have their own arrangements for how they are notified of a referral. This can either be to individual solicitors, to the firm involved, or to a central point if a firm is based in more than one location. Working for a large firm, for example, a solicitor said that during office hours they tend to centralise referrals through one telephone number and the calls are then re-directed to the local office involved (FR.2). Based at another large firm, a solicitor said that they have a 24-hour centralised reception for offices based in different locations. He pointed out that this means the DSCC have someone to talk to when referring a case and that person will take down basic details of the case. Instead of using the telephone, he said that the information is then passed on to the on-call legal adviser via an email. The solicitor also commented on receiving requests for legal advice directly from clients and from third-parties (IS.2).

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<sup>5</sup> There are also four Public Defender Offices, managed by the LAA, which deal with publicly funded criminal defence work.

The solicitors said that they would try to speak to a client after receiving a request for legal advice but commented that making contact could be difficult at some stations.<sup>6</sup> As one solicitor put it:

“Some police stations are better than others - some are terrible. It can be very frustrating if you’re woken up by the DSCC at two in the morning and when you call the station it rings and rings and ends up cutting you off. You have to ring back and go through it all over again” (BV.2).

Another solicitor said, “Some police stations are notorious for not answering the phone” (SB.2).

**Availability of lawyers.** Solicitors commented on the difficulty of providing cover for police station legal advice, particularly out of office hours. One solicitor said it was difficult to “juggle between four and six people who are on call every evening and out of hours during the weekend” (FR.2). This problem had been identified by the researcher in an earlier study when custody sergeants complained about solicitors ‘stacking’ cases, which could then lead to delays (Kemp, 2013a: 190). After receiving a referral for legal advice, however, it is not feasible for solicitors to wait until the police are ready to conduct the interview before accepting other cases.

The solicitors said that the situation over delays was worsening due to financial cutbacks leading to firms employing fewer legal advisers to cover police work. A solicitor also commented on the tendency for the police to centralise custody facilities in order to create efficiencies, but this had also led to redundancies in solicitors’ firms. Accordingly, as he put it, “We haven’t got the reps anymore because we’ve had to make them redundant. The police will have to wait, or we’ll get an agent. You have a mismatch between the desire to be more efficient and firms having to respond to survive the cuts” (IS.2).

**Telephone contact.** The LAA contract specification requires legal advisers to contact their client within 45 minutes of receiving a referral. The solicitors stressed the importance of speaking to their clients after receiving a referral. Indeed, a solicitor said that as part of the branding at his firm, they impose a 15-minute deadline for contacting clients so that they know they will receive a quality service (IS.2). The specification states that if it is not possible to contact clients within 45 minutes, solicitors must make a note on the case file which explains why the requirement was not complied with. As noted above, with custody telephones not always being answered by the police, the solicitors said that some firms do

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<sup>6</sup> This was a problem identified by the researcher when examining four large custody suites in different areas. It was noted that the custody phones were not always answered by the police, particularly at busy periods of time (Kemp, 2013a: 195).

not attempt to contact their client over the telephone but instead wait until they attend at the station, which can be many hours after a suspect requests legal advice.<sup>7</sup>

The solicitors in this study said that while they would speak to their clients initially over the telephone, they would always attend the police interview to advise them in person. At the initial stage, therefore, a solicitor said that the purpose of the call is to, "introduce ourselves, reassure our client that we have been contacted by the police, and to tell them that they will be at the station as soon as the police are ready for the interview" (SB.2). When speaking to clients in custody over the telephone, the solicitors said they would warn them that the conversation can be overheard.<sup>8</sup> One solicitor said, "I'll tell my clients that walls have ears and they're not to say anything to me about the alleged offence" (BV.2). Another solicitor remarked, "I remind my clients that anything they tell me about the offence over the phone will be captured on the custody video" (IS.2).

This lack of privacy limits what solicitors can discuss with their clients over the phone, thereby undermining access to legal advice. While there are arrangements in some police stations to facilitate a confidential conversation between solicitors and their clients, this is not the case in all stations. When commenting on privacy, for example, a solicitor, who advised clients at a number of different stations said that there was just one where there is a room for suspects to talk to their solicitor confidentially over the telephone.<sup>9</sup> The lack of arrangements for facilitating a confidential discussion between solicitors and their clients is contrary to section 58(1) of PACE, which gives suspects a right to consult privately with their solicitor at any time. In addition, Code C of PACE states that it is a fundamental right that detainees must be allowed to communicate with their solicitor in private (Code C, para. 6J).<sup>10</sup>

When talking to their clients over the telephone, a solicitor said that he would advise them not to talk to other people in custody about the offence. The solicitor said that if a client had mental health problems, for example, he would 'strongly advise' them not to discuss the allegation with the community psychiatric nurse (CPN). He said, "The problem

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<sup>7</sup> In a recent study which involved interviews with 100 detainees, some respondents were not aware that they could speak to their solicitor over the telephone. There were others who had asked to speak to their solicitor over the telephone but had been told by the police to wait for the interview before speaking to them (Kemp, 2018 forthcoming).

<sup>8</sup> Not only can custody staff overhear a telephone conversation, but custody suites are required to have 24-hour CCTV and microphones to record what is happening.

<sup>9</sup> This is also the researcher's experience after having observed over twenty police custody suites and in only one were there facilities for suspects to have a confidential conversation with their solicitor. See also Pattenden and Skinns (2010) when considering the lack of privacy for suspects talking to their solicitor over the telephone.

<sup>10</sup> The Code does acknowledge that such arrangements can be impractical at some stations due to the design and layout of the custody area, or the location of telephones. While this is understandable in older custody suites it is unacceptable that such facilities are not always available in modern purpose-built custody suites (Kemp, 2018 forthcoming).

is they see the nurse and they are very nice but you don't want them talking to them because what they say isn't confidential" (BV.2).

A solicitor also pointed out that it was not possible to speak to clients over the telephone when they do not speak English. The police will arrange for an interpreter to be involved but they are not generally available until the police are ready to conduct the interview. In the meantime, the police use 'language line' when booking suspects into custody as this provides a three-way conversation between the suspect, the police and the interpreter. While such an arrangement would be useful for solicitors to help communicate with clients early on, this is not always available to facilitate a private conversation between a solicitor and their client at the police station.

**Criminal Defence Direct.** While defence practitioners and legal scholars were initially resistant to the setting up of CD Direct as a national telephone service (Bridges and Cape, 2008), it is now recognised as providing a useful service. As one solicitor remarked:

"We have CD Direct now and so we don't go down to the station in the middle of the night for a drink drive offence or to deal with cases where someone has refused to give the police their name and address. This sort of advice is taken out of our hands now" (SB.2).

However, another solicitor was of the view that the CDD was a 'backwards step' as, he said, "My firm impression is that those who have the contract for the CDD do not actually provide advice in cases referred to them." He explained that when he is contacted by the CDD to be told that a client has been arrested on a warrant, or is in breach of bail, he asks what advice his client has been given but he never receives a reply.

**Potential obstacles to accessing legal advice.** Solicitors commented on some police officers using tactics to try and deter suspects from having legal advice.<sup>11</sup> When asking clients why they did not ask for a solicitor in the police station, for example, this solicitor stated:

"For the past 20 years I've been told the same thing by clients that they didn't have legal advice because they were told by the police that we'd keep them waiting a long time. They want to get out quickly, either because they have a job to go to, they have their kids to sort out, or they need a fix. We're blamed for the delay, but we'll be ready for the interview as soon as the police are ready to go" (IS.2).

This was the view of another solicitor when commenting on the pressure clients are under when in custody. As he put it, "They don't want to wait. They're in a cell and time is going slower than they have ever known before. They think they'll have to wait if they have a solicitor and some officers encourage that thought" (BV.2). It was arising out of such concerns that when first speaking to their clients the solicitors said they would reassure

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<sup>11</sup> In an early study of the duty solicitor scheme, Sanders et al. (1989) noted various police ploys being used to try and discourage suspects from not having a solicitor.

them that they will be at the station as soon as the police are ready to conduct the interview. One solicitor said that he would tell clients, "We aren't far away, and we will be there as soon as the police are ready for the interview. I also tell them that if the police say we're going to be delayed then not to believe them because it simply isn't true" (SB.2). Solicitors also commented on suspects declining legal advice because they do not think they need a solicitor, particularly those who have been through the system many times before.<sup>12</sup>

Another police ploy, identified by researchers, is for the police to read out to suspects their legal rights quickly and/or unintelligibly (Sanders et al., 1989). Rather than always being intended as a ploy, however, one solicitor said that the police can fail to impart what the rights mean in practice due to the routine and standard way in which people are advised of their rights. He explained what he meant when saying, "There's a degree of chaos in the police station which can lead to various mantras being said but without the meaning being conveyed" (FR.2).<sup>13</sup> Another solicitor commented on the difficulties faced by suspects when being asked to make a decision about legal advice. As he remarked, "It's very much that detainees are being processed. They're in alien territory and effectively told that they have to go along with what the police say" (FR.2).

With research identifying problems for suspects when deciding whether to have a solicitor, PACE was revised and now if suspects decline legal advice when being booked into custody, the custody sergeant is to offer them the opportunity to speak to a solicitor over the telephone (Code C, para. 6.5). The solicitor can then address any questions that a suspect might have about legal advice, particularly any concerns over delays. Despite this change, the solicitors in this study said that they do not receive such calls from the police and only in one custody suite has the researcher observed the police complying with this requirement (Kemp, 2013a: 195).

Research has also highlighted how police investigators can blame solicitors for delays as a way of encouraging suspects to change their mind after having requested legal advice (Kemp, 2013a: 200). This led to a change to the PACE Code of Practice and in addition to speaking to detainees to enquire about the reasons for their change of mind, an officer of inspector rank or above, "makes, or directs the making of, reasonable efforts to ascertain the solicitor's expected time of arrival and to inform the solicitor that the suspect has stated that they wish to change their mind and the reason (if given)" (Code C, para. 6.6. (d)).

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<sup>12</sup> There were similar findings arising out of a survey of over 1,000 users in the criminal process. Many of those who said they did not want a solicitor said this was either because they were guilty or innocent (Kemp, 2010: 38).

<sup>13</sup> This was the researcher's finding when observing custody officers reading out to suspects their legal rights (Kemp, 2012: 29).



Most solicitors said that they did not receive such calls and instead, as this solicitor explained, "What happens is that we call up to find out what's going on and we're told our client has gone into the interview. The inspector had agreed to this [the suspect changing his mind about legal advice] without contacting us and it's too late then" (IS.2). A solicitor who is regularly in the police station said that he did receive calls from the police but that this was 'sporadic'. As he put it, "Sometimes we will get a call from an inspector, other times we will get a call from the OIC [officer in the case] telling us that our client no longer wants us. I will inform him that he needs to go through to the inspector and I ask to speak to the client". In the majority of cases, however, the solicitor said, "We don't find out that the client has cancelled us until we call custody to chase them on the interview and they inform us that the client has changed their mind and been interviewed without a lawyer" (BV.2).

**Voluntary interviews.** The solicitors said that the police are increasingly inviting suspects to attend for a voluntary interview instead of arresting and detaining them in custody.<sup>14</sup> While the number of voluntary interviews has risen gradually over recent years, these have also increased following restrictions placed on the police use of pre-charge bail, imposed in April 2017.<sup>15</sup>

While initially there had been some confusion over whether suspects would receive legal aid for voluntary interviews, it has now been clarified that suspects have the same PACE safeguards as detainees; that is to have access to free and independent legal advice when interviewed under caution by the police. However, it was of concern to one solicitor that not all police officers are aware of this safeguard. Indeed, commenting on his experience he said, "It's happened in front of me when an officer has told my client he has to pay. I've had to point out that it's free legal advice and the officer apologised" (BV.2).

When the police detain suspects, there is a standard procedure through which they are advised of their legal rights; their response to the offer of legal advice is recorded on the custody record. There is, however, no standardised process when dealing with suspects in voluntary interviews. Solicitors felt that there is still some confusion over the status of voluntary interviews, which means that suspects are not always in a position to

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<sup>14</sup> Joint inspection reports of police custody, by HM Inspectorate of Constabulary and Fire and Rescue (HMICFRS), help to highlight how voluntary interviews are increasingly being used by the police instead of bringing suspects into police custody.

<sup>15</sup> Such restrictions were imposed because the police were repeatedly bailing some suspects over a long period of time (Kemp, 2013b: 41-44). The police now have to limit pre-charge bail to 28 days but the unintended consequence of this has been a dramatic fall in the use of bail without charge, leading to the emergence of suspects instead being 'released under investigation' (Cape, 2017). This approach is unsatisfactory as it leaves suspects and their legal advisers in many cases not knowing whether an investigation is continuing and when it might be concluded.

make an informed decision over their legal rights, particularly when forgoing the right to legal advice.

One solicitor said there were two types of voluntary interviews: those held in police stations and those held elsewhere, including in suspects' homes. When suspects are interviewed on a voluntary basis at a police station, where there is a custody suite, the solicitor said that their legal safeguards are strong because they could be taken briefly into police custody. The custody sergeant then goes through a medical questionnaire to check if the suspect has any physical or mental health problems and advises them of their legal rights. However, when voluntary interviews are held in stations without a custody suite, or at other venues, solicitors raised concerns over suspects' legal rights being undermined, particularly if the police are reluctant for a solicitor to be involved. As this solicitor explained, "If the suspect asks to speak to a solicitor, the police tell him that they will have to be taken to another station so that a solicitor can be contacted, and this takes a long time" (IS.2). Another solicitor commented on how it was off-putting for clients to be told that they would have to be taken to a custody suite to arrange for a solicitor and, as such, he said, "Your client will often say its fine and that they're happy to go ahead without a solicitor. The police adopt this approach to deter people from having a solicitor. It happens quite a lot" (BV.2).

Another factor solicitors said could undermine suspects' access to legal advice in voluntary interviews is the more informal approach adopted in such interviews. One solicitor remarked, "It can be a bit more relaxed [in a voluntary interview] and the client thinks it's not important so why bother with a lawyer" (FR.2). It is not only suspects who have this perception. Trained Appropriate Adults can also hold such views, and this can influence changes in the way they deal with suspects. When dealing with detainees, for example, they are trained to encourage suspects to have a solicitor, but this is not always the case in voluntary interviews because they are not considered to be formal (Kemp and Hodgson, 2016: 132). This highlights the need for suspects' legal rights to be available in a way which assists them in making informed decisions, including during voluntary interviews.

In a recent development, the Home Office has consulted on proposed revisions to the PACE Code of Practice. This includes a new provision in Code C which explicitly states that the "rights, entitlements and safeguards that apply to the conduct and recording of interviews with suspects are not diminished simply because the interview is arranged on a voluntary basis" (Code C, para. 3.21(b)). If the proposals are accepted, the officer interviewing a suspect on a voluntary basis must carry out many of the duties of the custody officer. That is, to inform the suspect of their right to a lawyer, to call the DSCC if a lawyer is requested, check whether an Appropriate Adult or interpreter is required, provide written notification of suspects' legal rights, and record what action is taken (Code

C, paras. 3.21A and 3.21B). However, as Cape (2017) notes, the proposed changes raise some significant questions, and highlight some intractable problems, not least, the question of whether the police interviewer can fulfil many of the functions of the custody officer and that the process can become transparent and verifiable.

Of particular concern to solicitors in this study is a proposed change to PACE which would permit police officers to use body-worn videos when conducting interviews under caution away from the police station (Home Office, 2017). In response, one solicitor said, "They're just putting feelers out at the moment, but it isn't going down well. I don't think it's a good idea because you'll have the same problem that you have with voluntary interviews being conducted away from the station" (BV.2). There is also the problem that many suspects are likely to agree to be interviewed by the police on the street without a solicitor if this means that their case can be dealt with quickly and avoids the need for them to be taken to a police station.

### **3.2 Pre-Interview disclosure**

So far as disclosure of evidence by the police is concerned, PACE Code of Practice C (para. 11.1A) states that before a suspect is interviewed, both they and, if they are represented, their solicitor must be given sufficient information to enable them to understand the nature of any offence, and why they are suspected of committing it. This is to allow for the effective exercise of the rights of the defence. However, whilst the information must always be sufficient for the suspect to understand the nature of any offence, the Code does not require the disclosure of details at a time which might prejudice the criminal investigation. Accordingly, it is a matter for the investigating officer to decide what information should be disclosed but as this is at the discretion of the investigating officer, the solicitors noted how the quality of disclosure could vary.<sup>16</sup>

It was when attending at the station in time for the police interview that solicitors said they would be given pre-interview disclosure by the police. However, as one solicitor remarked:

"We always get given what they call disclosure, but the quality and quantity can vary substantially. Often, I'm given just three lines of disclosure which tells me nothing. I'll advise my client that the police are holding back, and we don't know what we're dealing with so don't say anything and let's see what happens. You can't win with little disclosure. It's a poor tactic" (SB.2).

In a similar vein, a solicitor said that when given the most basic disclosure he tells the officers, "You're going to interview my client and he's not going to answer any questions and each time you show him any evidence I'm going to have to stop the interview. I tell

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<sup>16</sup> The Court of Appeal similarly does not require the police to disclose information to the defence at the pre-charge stage.

them that this will be every five minutes if necessary and we'll be here all night. On the other hand, I tell the police that if they give me sensible and proper disclosure we can get on with it" (IS.2).

Another solicitor explained that the quality of disclosure could depend on the attitude of the officers involved, and their supervisors, as well as the seriousness of the offence. As he put it:

"With young officers all you tend to get is typed disclosure with very little information. I'll ask additional questions, but you rarely get a reply. Sometimes you get the stock answer that the officer's not prepared to answer my questions. After they've said that a few times I sometimes respond by telling them that I don't think my client will want to answer any of their questions. With the more experienced officers they tend to understand that if they have a good case the best thing they can do is show their hand" (SB.2).

When asked about the quality of disclosure, a third solicitor replied, "I could bang my head against the wall with new officers at times. They're trained to give limited disclosure, regardless of what they've got. It's totally backwards" (BV.2).<sup>17</sup>

There were changes taking place in one area, however, with a solicitor describing the police as being, 'slightly more pro disclosure'. He felt this was due to "officers seeing that playing the disclosure game doesn't really serve anybody's purpose" (FR.2). He had also remarked that some officers were becoming less antagonistic to 'no comment' interviews, recognising instead that this is a basic right for suspects.

When dealing with very serious offences, the solicitors commented on getting 'drip' or 'phased disclosure', particularly when dealing with murder investigations. A solicitor said that with phased disclosure it starts with the police saying:

"Your client has been arrested for murder and we would like to hear his account. You ask for more information, but they want your client's account first. The next stage is to drip in a bit of disclosure, then later drip in a bit more. You have to decide if, and when, your client needs to say something, knowing that at a later stage the police will be challenging your client's account of events" (SB.2).

Another solicitor described this disclosure process as being 'very formalised and strategic'. He continued saying:

"You know that substantial amounts of information have been held back from the start and they will wait to see how interviews progresses. It doesn't matter how many times you ask for more information because you don't get anywhere" (FR.2).

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<sup>17</sup> There were similar issues observed relating to disclosure in a study of new arrangements for duty solicitors (Kemp, 2013b: 25-34).

While discussing what they require by way of disclosure, the solicitors said that they do not expect to be shown witness statements. As this solicitor remarked, "You never get to see the statements and if there's video evidence you won't be shown it until the interview and then your client will be asked to comment on it," Commenting on the importance of disclosure when advising clients, he continued by saying:

"The police need to work out that if they have strong evidence they need to show it early on. There's nothing stronger than showing a suspect CCTV evidence and asking if it's them. There are targets in the criminal justice system to achieve early guilty pleas and we need the police to understand that disclosure is key here" (SB.2).

While legal advisers will request but not always receive any disclosure, the solicitors said that in some cases the police did not have any evidence to disclose. When asked by the researcher if the police interview was a 'fishing trip', with the police wanting to see what they might discover when asking the suspect questions, not all the solicitors felt this was the case. One solicitor replied:

"The police shouldn't interview without any evidence, but they do. I think it's because they're paranoid about any potential civil action for unlawful arrest. I've heard it a number of times from officers that they have to conduct an interview even if one isn't needed because they already know what's happened. In the more extreme cases, when they don't have any evidence, I think it's about covering their backs. If they don't do this, they can be challenged on why someone was arrested and held in custody for hours when they don't have any evidence. They're into a civil suit then. I think the interview isn't for evidential purposes but to avoid a claim. It's the police abusing their position" (SB.2).

When considering disclosure, a solicitor commented on the importance of gaining access to his client's full custody record. He explained why when saying:

"It's crammed full of information you need to know. I check the basis on which the detention was authorised, how long they have been held in custody, and if for too long I want to know the reasons why. I also check to see if their time in custody has been properly reviewed. I can also see what property was seized and check whether my client has made any significant comments. Are there any further allegations? You also need to check whether your client has eaten or had anything to drink. Have they got any health problems? Have they seen the FME (forensic medical examiner)? If so, what was the outcome? Are they fit? Did they consume any alcohol or drugs? I could go on" (IS.2).

Despite the importance for this solicitor in gaining access to clients' full custody record, it seems that routinely the police provide solicitors with a copy of the front sheet. Indeed, the solicitor said that when he asks for a copy of the custody record he is often told by the police that he can only have the front sheet. However, he then directs them to paragraph

2.4 of Code C of PACE, where it states that a solicitor must be permitted to inspect the whole of the detainee's custody record.

### **3.3 The role of the lawyer providing legal advice and assistance at the police station**

#### **3.3.1. Consultation**

After receiving disclosure from the police, the solicitors said they would next have a private consultation with their client and that there is no time limit on how long this takes. The advice solicitors would give to their clients at this stage was said to depend on a number of factors, not least the quality of the disclosure and what their client has to say about the alleged offence. For all the solicitors, it is important in the consultation, particularly when dealing with clients arrested for the first time, to gain their trust and confidence and to assess their vulnerability and fitness to be interviewed.

In cases with little or no disclosure, the solicitors said they would be more likely to advise their clients to make 'no comment', on the assumption that the police are withholding evidence.<sup>18</sup> One solicitor remarked, "I can only speak for myself but if I have limited disclosure then I can't assess the strength of the evidence" (BV.2). He explained why this was so when saying:

"If you don't know what information the police have and your client starts talking then what he says could be utter rubbish. It could end up being a confession. I don't let them go into the interview without knowing what's happening. Some people might have a problem with that, but the bottom line is we have to act in the best interests of our client" (BV.2).

When dealing with their clients, however, such an approach was not always easy to adopt. As one solicitor remarked, "Clients often want to talk, to say what happened to try and justify their actions" (SB.2).

All the solicitors agreed that having good disclosure is crucial if they are to advise their clients properly and, where appropriate, to deal with cases quickly. As this solicitor remarked, "If the police provided us early on with comprehensive disclosure then this can help us to get things dealt with a lot quicker. It's in our financial interest to encourage a client to make an admission but we can only do so if the police have a case against them" (FR.2). When commenting on the range of factors to be considered when advising clients of what to say in the police interview, this solicitor stated:

"There are many reasons why you might advise someone to remain silent. Sufficiency of disclosure is definitely one, but if I feel I'm being ambushed or stitched up by the police then I'll protect my client. I might start by telling them not to say anything if

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<sup>18</sup> See also Kemp (2012: 54-56) when considering legal advice and 'no comment' responses.

their account puts them at the scene of the crime. When the disclosure comes out in the interview I can always stop it and I might then advise my client to make a response" (IS.2).

There are cases where solicitors believe it is essential for clients to give their account of what happened in the interview - if a defence is raised, for example, or there is alibi information and such information usually needs to be given early on to the police. One solicitor said that this information can be provided through a prepared statement which sets out an account as described by the client. Commenting on why this was preferable, he said:

"It's difficult to explain to jury members what happens at the police station. They won't understand why a defendant started talking in the middle of the interview and without being able to give them an explanation they can become confused and this can go against your client" (SB.2).

When using a prepared statement, another solicitor said that they try to keep these very short (FR.2).

### **3.3.2. Legal assistance during the interview**

Overall, the solicitors said that their role in the interview is to ensure that it is done properly. As one solicitor put it, "To make sure there's no inappropriate or unnecessary questions, or any oppressive behaviour" (BV.2). In describing one case where he felt the police had been acting oppressively, the solicitor said that this client was being dealt with for an offence of death by dangerous driving. While his client was making 'no comment' responses to police questions, an officer said, "I'm having to go and speak to this chap's family and how do you think they're going to feel about this?" The solicitor said he intervened and told the police not to put his client under such pressure. Without a legal adviser being present, however, the solicitor commented, "He could have cracked because he felt terrible. Someone had died and whether or not he's criminally liable, he's going through an emotional trauma and that sort of questioning is appalling" (BV.2).

Another solicitor said that his role in the interview is to:

"Make sure that there's a fair interview and my client gets an opportunity to do what they want. If they want to exercise their right of silence, then I'm there to make sure they're not hectorred or badgered by the police. If they want to give an account, then I'll make sure they aren't being taken advantage of with an officer trying to put a certain slant on it - trying to put words in their mouth" (SB.2).

Further commenting on their role, this solicitor said:

"I'm there to advise my client as an on-going right. He's reminded by my presence that he can stop the interview at any time for a private consultation. I've told them that I won't advise them on tape. I'm there to make sure the interview is fair and that

my client is not oppressed or bullied. I can make sure they have an opportunity to get their account across and to remind officers that they have an obligation to investigate all leads, including those that support him" (IS.2).

The solicitors interviewed in this study are experienced legal advisers and they have no hesitation in intervening if required to do so during the police interview. This includes interrupting the interview if their client starts to answer questions when they have been advised to make 'no comment'. However, solicitors commented on adopting different approaches. For example, one research respondent said, "I'll interrupt just once to remind my client that we'd agreed how to deal with the interview. I don't see it as my role to tell them what to do". However, he continued saying, "If the police start hectoring my client, or try to undermine my advice, then I'll interrupt and tell my client to say nothing" (SB.2). Another solicitor said that if a client starts to respond to police questions he will remind him of his advice. If the client continues to ignore his advice, then he will ask for a private consultation. After that he said, "It's a matter for the client whether they want to answer police questions or not" (IS.2).

Another reason for intervening, commented on by a couple of solicitors, is to clarify a question put to their client by the police. By way of an example, in a case involving a 12-year-old suspect, a solicitor said:

"The officer had a script and he asked my client if he had damaged the wall. My client said 'no' but the officer then asked him why he had damaged the wall and if he'd done it deliberately. I intervened telling the officer that he wasn't listening to my client and he wasn't allowing for his defence. I told him to stop reading from his paperwork and talk to my client" (BV.2).

Solicitors also commented on intervening when the police asked ambiguous questions. When dealing with domestic violence cases, for example, a solicitor said that a typical question the police ask is, "Do you remember assaulting your wife?" When receiving the response 'no', the solicitor intervenes to clarify the question by asking, "Does the response 'no' mean that he doesn't remember assaulting his wife or that there was no assault?" (FR.2). The solicitors said that sometimes their interventions feel as if they are helping to train the police on questioning suspects. While this is not their role, one solicitor remarked, "I have to do it sometimes to stop my client from being adversely affected" (BV.2).

When explaining why it was important to intervene during the police interview, if required to do so, this solicitor remarked:

"We keep being told by the Presiding Judge that it's not a game in the police station anymore. If my client was giving 'no comment' replies and he starts answering questions, then I'm concerned that he doesn't understand the legal consequences of what he's doing. I'll stop the interview so that I can speak to him. I've had varying



reactions from the police to that, some don't want to stop the interview but when I persist they'll stop it" (FR.2).

Pointing out the consequences of not intervening later, during the trial, this solicitor said:

"If there's oppressive questioning and the solicitor doesn't say anything, then a court would look at it and ask why he didn't intervene. You're then on the back foot. I'll tell the police if they're being oppressive and advise them that anything my client says from now on in the interview should be rendered inadmissible" (BV.2).

Another solicitor commented on the importance of ensuring that any concerns they might have are included on the recording of the police interview. Using a case by way of example, he stated:

"We were dealing with a very serious offence and the police were putting my client under increasing pressure to respond to their questions. They were getting more and more offensive and, at one stage, an officer was physically leaning into my client's face. For the benefit of the tape I described what the officer was doing, and my comment was later played to the jury at the Crown Court and it had a positive impact on the trial" (FR.2).

There were concerns raised that the fixed fee for police station work discourages some solicitors from intervening because they want to keep the interview short. Therefore, one solicitor said, "Anything like an interjection or stopping the tapes is going to cause a delay and for some solicitors all they see is that their hourly rate starts to drop" (BV.2).

**Written summary.** The solicitors were asked if they thought it would be helpful to have a requirement for a written summary of the interview to be prepared and agreed at the end of the police interview, as happens in other jurisdictions. This solicitor thought it was a good idea when he replied:

"The police ask my client if he has anything else to say at the end of the interview, but it might be useful if the officer summarised the interview. This could include asking us if we agree if there's been an admission and, if so to what offence. It could also help to agree whether there's a realistic prospect of conviction" (FR.2).

Concerns were raised, however, that if the interview was not summarised fairly that this could harm the case. For example, commenting on summaries made later by the police, one solicitor said, "They don't always summarise the interview accurately. I think it's more a cock-up than a conspiracy. Sometimes officers don't understand what comprises a defence" (IS.2). When reflecting on the potential for requiring a summary of the interview to be agreed, the solicitor continued:

"You could only do this in cases where a solicitor is involved, and they would need to make sure that the summary is accurate. If it isn't accurate, then the solicitor shouldn't agree it. If it becomes an evidential issue, then the judge is going to ask why you didn't challenge it. That's our starting point" (IS.2).

Another solicitor said that it would be an improvement if legal advisers were able to make representations to the police and/or the CPS over the outcome decision following the interview. He pointed out that such representations could help to reduce the number of weak and ill-considered cases proceeding unnecessarily to court and, in those cases which are prosecuted, to ensure that the evidence supports the type of offence charged (SB.2).

**After the police interview.** The solicitors said that at the end of the police interview they would generally leave the station because the police can take hours before deciding what action to take. Explaining the process, one solicitor said, "If the police are going to the CPS for a decision you'll be there for hours and I need to move on to the next job. I always meet up and debrief my client after the interview, but this is usually just for reassurance" (BV.2). In a similar vein this solicitor remarked, "It's just not viable to wait around, it can take hours if it goes to CPS" (SB.2). While not waiting at the station, this was the comment from a third solicitor:

"You're generally limited to ringing up but by that time you might be told that your client has been remanded. You can try and overturn the decision but it's a bit late in the day. You don't tend to get the heads up from the police about what happens next unless you're hanging around" (FR.2).

The solicitors also commented on the police sometimes providing solicitors with an opportunity to make representations if they want to remand their client in custody after charge, but this was not always the case. As this solicitor said, "We do get opportunities to make representations over the remand but not the charge. Some officers are really good and they'll call me straightaway but a lot of them time they don't let me know" (BV.2).<sup>19</sup>

### **3.3.3. Diversion procedures**

There is the potential for diverting suspects from the criminal process but generally the police do not consider such a decision until after the police interview. The solicitors did say that when they first talk to the police they might ask if there is potential for their client to receive a caution, if they considered this was an appropriate course of action. This was the comment from one solicitor:

"I'll ask the police if my client can be cautioned, even if they haven't disclosed any evidence as this helps me when I talk to my client. I might be told that he can have a caution but if they haven't given me disclosure I'll warn my client that that they're holding back on me. Without any evidence we'll go into the interview and make no comment but it's so frustrating if in the middle of it they produce a statement from the complainant. I'll then have to have another consultation and if the evidence is

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<sup>19</sup> Research has also identified difficulties for solicitors when trying to make representations to the police following the police interview (Kemp, 2012: 52-53).

strong I'll tell my client to confess because he can get a caution instead of a conviction.

It is wrong that we have to go through this ridiculous game to get there" (BV.2).

Another solicitor commented on how helpful it would be to have some transparency in the system, "I'll often tell clients that making admissions won't help them unless there's an offer of diversion. It's quite difficult to work out whether a caution is on the agenda and it would be helpful to know this from the outset" (FR.2).

A solicitor gave a note of warning when considering the potential for diversion with the police when he remarked:

"You have to be really careful because you don't want to be an agent of the police trying to persuade people to accept a caution if they have a defence. If it's appropriate, I'll ask the police if a caution is available. If they say they don't know I'll ask them to speak to the duty inspector so that if this option is available, I can discuss it with my client. It's important to treat the case holistically and it isn't in your client's best interest to get a conviction if a caution on offer. You have to make an assessment in every case" (IS.2).

The difficulty for solicitors in influencing diversion is that the police often make these decisions when they have left the station. This solicitor said, "If I'm told it's going to be a caution and he's admitted it then I'll agree to this, but I won't wait for him to be cautioned. If I don't know what's going to happen, I'll let the police know that we'll need to chase the outcome" (SB.2). Another solicitor was confident that the police would not impose an out-of-court disposal in cases where there were no admissions. However, he did say that there had been cases where the police had called his client back for an interview and, in his absence, and without an admission, their client had been given an out-of-court disposal. He responded saying, "I've made a formal complaint about this because it's terrible. It's so underhanded of the police. Why didn't they call me in?" (BV.2). The solicitor also raised concerns over suspects who do not have a solicitor accepting a caution when the offence is not admitted.<sup>20</sup>

#### **4. STRUCTURE OF LEGAL AID REMUNERATION AND IMPLICATIONS FOR QUALITY**

##### **4.1 Organisation of legal aid**

Criminal legal aid work is based on a 'judicare' model which comprises solicitors in private practice being remunerated for work undertaken on a case-by-case basis. Solicitors' firms must hold a contract with the LAA to provide publicly funded work and to comply with

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<sup>20</sup> Suspects were under pressure from the police to accept out-of-court disposals when a police target to increase the number of detections was introduced in 2002. From 2003 to 2008, this led to 135% increase in out-of-court disposals, with many people accepting cautions unnecessarily because the offence was not admitted and/or there was insufficient evidence to prosecute. While the target has been abandoned, it shows how managerial influences can undermine legal safeguards (Kemp, 2014).

certain quality requirements. This allows both solicitors and non-solicitors to provide police station legal advice, but both have to be accredited to do so. There are also four Public Defence Solicitors' Offices (PDSO), managed by the LAA, which provide criminal legal aid services. While most clients have their own nominated solicitor, there is a duty solicitor scheme which provides 24-hour cover throughout England and Wales. The policy officers explained that the duty rotas are based on the number of solicitors put forward by each contracted firm, and those involved in the PDSO, participating in each local area. There is strong competition between firms for duty solicitor slots because, as the policy officers observed, duty work helps attract new clients.

All suspects and detainees in police custody are entitled to free and independent legal advice but, on average, less than half are known to request a solicitor and just over one-third receive such advice (Plesence et. al., 2011). Since the introduction of CD Direct, the solicitors said that they attend in person when dealing with a request for legal advice. When a solicitor was asked if he would provide telephone advice instead of being present at the police station he replied, "Absolutely not. That's no substitute for attendance. It's just a lazy solicitor who doesn't want to get out of bed" (IS.2).

#### **4.2 Remuneration**

Solicitors used to be remunerated for the time spent on cases when providing police station legal advice but, since 2008, they are now paid a fixed fee. With a lower fee payable for solicitors providing telephone-only advice, there is a financial incentive encouraging solicitors to provide face-to-face advice. Due to the financial crisis, the fixed fee payable for all police station work was reduced by 8.75 per cent in 2015. This means that the national fixed fee for providing telephone-only advice is now £27.60, with a slightly higher rate of £28.70 being paid in London. There is a fixed fee paid for attending at the police station, which varies regionally. With an average fee of £181.50 being paid, the lowest fee of £126.58 is paid in Blackpool and at £274.66, Heathrow has the highest fee.<sup>21</sup> In cases involving very serious and/or complex cases, solicitors can be paid an 'escape fee', which increases the amount paid. As a policy officer explained, "If the time spent by the legal adviser (based on an hourly rate set out in regulations) increases it can hit the escape fee threshold. At this point, solicitors can claim for additional work undertaken at an hourly rate" (KN.2).

The solicitors complained that fixed fees do not provide sufficient remuneration for police station work. For one solicitor, the fee meant they were no longer paid for telephone calls and, he said, this has an impact on the way solicitors behave because, "It's a case now of just focusing on the interview. We attend at the station and give advice. There's

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<sup>21</sup> Ministry of Justice (2016).

more we could do but we aren't paid for it" (SB.2). Another solicitor commented on how the low fee means that his firm often uses accredited representatives to provide advice rather than a qualified solicitor. Reflecting on the fee he said:

"We're no longer paid for the time spent on cases and for travelling and waiting. Every case is individual, and you have to ignore the fees paid and get on with the job. There's no relationship between what we're paid for and what we're actually there to do. If the government keeps attacking and dis-incentivising good practice then for us to survive death by a thousand cuts, firms have to change the way they work" (IS.2).

A third solicitor said that despite the fixed fee, his firm would attend police interviews and assist clients in relation to issues arising outside of the interview. However, he noted that "Probably 70 to 80 per cent of our police work is uneconomical" (FR.2).

A solicitor acknowledged that he could break even when dealing with very low-level offences because, being dealt with quickly, this meant, "You've doing three or four of them back to back." He also noted that there is still a lot of work involved when he said, "You have to go back to the office, make up a file. It all takes time. There're no swings and roundabouts with police station fees. The fee is so low we can't make a profit to subsidise other cases" (FR.2). This was the response from another solicitor when asked about the swings and roundabouts in police station cases:

"It's total nonsense. Whenever the Ministry of Justice or the LAA talk about 'swings and roundabouts', or tell you that the changes are cost neutral, its rubbish. They make the changes to save money and they've already achieved the projected savings so why are they looking for more cuts?" (IS.2).

Another solicitor commented on the fee failing to remunerate solicitors when dealing with terrorist offences:

"It's disgraceful what's paid in these cases for the amount of effort you have to put in and how stressful the work is. It's the same for murder cases and any serious offence. You're in the station for days on end. When you're back at the office you're on the phone to the family and dealing with them. You write off four to five days and you get a fee of around £200 to £300" (FR.2).

In a similar vein, this solicitor commented on the way that the fixed fee can discourage experienced solicitors from being involved in serious cases. As he put it:

"The last thing you want is a serious case at the weekend because you put in many hours and just get the one fee. Solicitors won't go so a rep gets sent out, but they are turning down these cases because there's too many hours and too little remuneration. So perversely, instead of encouraging senior lawyers to deal with serious offences, I get paid far more for dealing with straightforward cases" (SB.2).

Solicitors acknowledged that because of the fixed fee they would use experienced accredited representatives to deal with very serious offences. However, as this solicitor pointed out:

“They don’t want to do the work. It’s not because they’re worried about the offence but because they know they’re going to be at the station for days and days. If you pick up a murder on a Friday, your weekend is gone, and all a rep will get is £100” (BV.2).

As noted above, there is an ‘escape fee’ which is intended to remunerate solicitors at a higher rate than the fixed fee when dealing with very serious offences and complex cases. The escape threshold varies regionally, with Blackpool having the lowest threshold at £379.75 and Heathrow the highest at £931.93. Once the escape fee has been met, the solicitor is paid this sum together with any additional time spent on the case, claimed at a set hourly rate depending on the type of work undertaken.<sup>22</sup> The solicitors pointed out that there is a high threshold for the escape fee, which means that it rarely applies; the additional time spent on such serious and complex cases is remunerated at around £50 an hour for work undertaken during office hours. The remuneration was felt to be unsatisfactory, with this solicitor noting:

“You have to do a lot of work and none of the time spent waiting around counts towards the fee. It’s literally the time you are with your client and when you’re in the interview. It’s the waiting that takes the time. The officers go off to write up your second lot of disclosure and you know it’s going to take a long time and all you can do is wait” (BV.2).

While not having the statistics, a policy officer was of the view that not many cases meet the escape fee (KN.2). One solicitor said, “It’s only a tiny proportion of cases where we get an escape fee” (IS.2). Commenting on difficulties experienced in relation to claiming the fee he said, “Even when you claim for an escape fee it’ll be rejected and if you have to argue for it they’ll say you didn’t have to spend that 12 minutes of time on the case, which then takes it under the escape fee. No one pays for the time we spend arguing and appealing these cases” (IS.2).

In relation to remuneration for police station work more generally, the policy officers were of the view that this was sufficient. One explained why when saying:

“I know that a lot of solicitors think it’s not well paid but it’s potentially the gateway to cases proceeding to court, where they are better remunerated. Repeat clients are important to solicitors and so I think that’s another reason why they’re interested in police station work. I accept it isn’t a handsome payment, but it seems to be sufficient

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<sup>22</sup> That is, whether it was duty or own solicitor work and if was during office hours or unsocial hours (Ministry of Justice, 2016).

because we tender contracts every few years and we get enough people interested in doing the work" (KN.2).

While the solicitors in this study said that they put time and effort into police station cases over and above the fixed fee, it was recognised that this was not the situation in other firms. On the contrary, solicitors were concerned that the low fee meant that some firms conduct the minimal amount of work on cases, which fails to provide clients with a quality service. As this solicitor put it:

"Because of the poor levels of pay, you'll find that a lot of solicitors will see police station work as a necessary burden to getting work in. They're mainly interested in picking up a client and the pressure of money, resources and time means that procedural safeguards fall by the wayside. Their priority is not to miss a call because they could lose out on a new case. This can be exhausting for smaller firms as they can have people on call two or three times a day, or on call for days on end. That's one of the reasons why our firm got bigger, so we could try and have more capacity" (FR.2).

Another solicitor said that while court work has helped to subsidise police station work, recent proposals mean that this could change. For example, in relation to the fee solicitors receive under the litigator's graduated fee, which pays solicitors for the preparatory work in Crown Court, he remarked:

"The problem is that the flat fee for Crown Court work is becoming unviable. It's happened already with the burglary fee and I can't keep making a loss on these cases. I'll see the client in the police station, but I'll suggest that he sees the duty solicitor at court because I don't want to lose money on it. If they [the government] cut at the top end, then I can no longer afford to cross-subsidise loss-making cases with other work that delivers more of a profit margin" (SB.2).<sup>23</sup>

Currently, with the same fee being paid for all but the most serious and complex of offences, a solicitor commented:

"Morale among solicitors is really low. There are consultations on the funding of legal aid and changes to the criminal justice system, but no one is listening to us. It's becoming difficult to get criminal lawyers to engage because they think we're doomed and they're just hanging on at the moment" (IS.2).

A suggestion put forward by a solicitor was to have a different rate payable for very serious offences when experienced solicitors were involved. He said:

"There should be a grading of legal advisers and the seriousness of the offence. If you have a grade A solicitor, being an experienced duty solicitor of 10 years or more, then they should be able to claim a higher fee if they deal with a category A indictable only

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<sup>23</sup> Research has shown how recent reductions in criminal legal aid fees has led to a negative impact on the quality of summary cases dealt with at court (Welsh, 2017).

offence. The A category solicitor could provide advice on less serious category, but they would then be paid at a lower rate. As Category A offences should be dealt with by an experienced solicitor, a Category B solicitor or accredited representative would be discouraged from dealing with such cases as they would be paid at the lower rate" (SB.2).

When considering this suggestion another solicitor remarked:

"It would certainly be an improvement on the current system. You don't get senior solicitors interested in spending time on cases in the police station. We really struggle to get people to go out for terrorist cases and serious matters because they're in the police station for days and don't get paid much for it" (FR.2).

Another solicitor said that historically there had been a different hourly rate paid for solicitors dealing with more serious offences and this had a positive impact on quality by encouraging experienced solicitors to deal with the most serious offences (IS.2).

### **4.3 Quality of police station work**

There are quality requirements for solicitors to uphold under the LAA criminal contract. This includes solicitors' firms needing to meet the quality standard required under Lexcel or SQM (Specialist Quality Mark), or any other quality assurance standard as approved by the LAA from time to time (LAA, 2017a). Accompanying the contract is a specification which includes key performance indicators and quality measures which have implications for police station work (LAA, 2017b). This includes a requirement for both own and duty solicitors to contact a client when first notified of a request for legal advice within 45 minutes of receiving the call (para. 9.23). This target must be met in at least 80 per cent of cases (para. 9.24). As noted above, however, there are evidently solicitors who do not speak to their client until attending at the police interview, which can be many hours after a request for legal advice has been received.

The solicitors in this study commented on training and supervision within the firm as being important in upholding quality. Although, as this solicitor remarked:

"It's more about how the firm operates. It's not just police work but if the firm encourages people to be up-to-date, to read and discuss what's happening in the law, to talk about cases, then you're in a mutually supportive environment where you'll get good quality advice because people know what to do" (SB.2).

An independent peer review process is used by the LAA to undertake an independent audit of the standard of work undertaken under the contract. Firms must agree to the standard of their contract work being assessed by this process and to provide information to enable the review to be undertaken. There are five ratings that a peer reviewer can give a firm for work undertaken under the contract. A score of one to three has to be achieved in order for firms to continue to hold a contract with the LAA. If the firm scores



below a mark of three, this will be failing to meet the contract requirement that work must be performed with reasonable skill, care and diligence. The contract will then be at risk.<sup>24</sup> Firms with a score of four or five can make representations to challenge the score but if the score is upheld, this will be taken as a fundamental breach of contract. For those firms achieving a score of three and higher, the LAA will absorb the costs but firms with a score of four or five are required to reimburse the LAA for the peer review at a cost of around £1,400.<sup>25</sup>

One solicitor commented positively on his experience of being a peer reviewer for the LAA when he said:

“This is better mechanism for judging the quality of firms than what we had before. That involved a team of LAA employees coming in with a form and ticking boxes and it led to crazy results. Peer review is better, but it isn’t perfect” (IS.2).

The solicitor did comment on peer review being helpful in criticising firms for relying on agents who are poor at doing the work. Instead, as he noted, “It’s the responsibility of the firm to ensure that the agent does a good job” (IS.2).

While recognising the negative effect that the fixed fee can have on police station legal advice, solicitors in this study said that it was important for the reputation of their firms to provide a quality service for clients. As this solicitor put it, “The job isn’t about the fee, it’s about the ethos of the firm in doing a good job. Giving good advice and representing people well - that’s not going to change” (SB.2). Another solicitor commented on the importance of having well-trained accredited representatives to do the job. He said:

“We train and supervise our staff. They have a mentor and some academic input. We do a course where we go through Ed Cape’s bible on police station training in seminars and lectures. They have to understand the basic toolkit before we let them go to the police station so that they can do a quality job. It’s then reinforced through training and supervision and building people up to deal with more serious cases. It’s a massive input to train someone properly to do police station work” (IS.2).

While the solicitors involved in this study are committed to provide a quality service, they raised concerns that this is not the situation in all firms. For instance, one solicitor said:

“Dare I say that I think certain firms are not bothered by what happens in the police station. I’ve seen so many cases at the Crown Court, particularly involving young vulnerable clients, where they’ve been cross-examined by a QC for days over what was said in the interview, which was a load of nonsense. You’ve had a solicitor or a

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<sup>24</sup> A score of one is ‘excellent’, two is ‘competence plus’ and a score of three is ‘threshold competence’. With a score of four this is ‘below competence’ and a five is ‘failure in performance’ (Legal Action Group, 2017).

<sup>25</sup> For further details see Legal Action Group (2017) and LAA (2017a).

rep just sit there in the interview and let their client comment freestyle in a way that makes no sense. The narrative was nonsense in the first place and there's just pages and pages of it to go through at court" (FR.2).

When commenting on the ethos in his firm, another solicitor remarked, "We provide a quality service irrespective of the fixed fee. All our lawyers are passionate about justice and about our clients and providing good client care." However, he did raise concerns over issues of quality when employing agents from outside the firm when he said, "If a rep isn't part of the firm then there's always the fear that they're looking to do a quick job and the client isn't happy because they've been rushed" (BV.2).<sup>26</sup>

A particular concern raised by one solicitor was over the negative attitude that some firms have towards their clients. As he put it, "I think some firms see their clients as scumbags who come from scumbag families. Nobody's going to spill any tears if they go down at the end of the day. They're dealing with a cohort of criminals and some of them will be convicted. At the end of the day, they just want to see if they can make any money out of them" (FR.2).<sup>27</sup>

Another solicitor felt that there are perverse incentives in the fixed fee when he said: "The fixed fee dis-incentivises attendance on a client for a minute longer than is necessary. It also incentivises firms to stack cases high and push them through fast. The message coming from government is loud and clear. They never talk about the value we provide but only about the cost" (IS.2).

PACE allows both solicitors and non-solicitors to provide police station legal advice but, early on, research found that some solicitors' firms were routinely delegating work to non-solicitors, including clerks and secretaries (McConville et al., 1994). In response, the Law Society set up an accreditation scheme and this has helped to improve the quality of police station work (Bridges and Choongh, 1998). In providing a quality service, the accreditation scheme is based on legal advisers being based in solicitors' firms, within which they are trained and supervised by an experienced criminal defence solicitor. However, a solicitor raised concerns over the non-solicitor provision of police station work with agencies setting up to provide police station legal advice through accredited representatives. He explained when saying:

"You can set up an agency as an accredited representative and use other reps which is completely unregulated. I don't know how this is happening in our system, but it is. They aren't being supervised by a solicitor and they don't hold a contract with the LAA to undertake this work. Firms pay them a fee to go out to police stations and deal with

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<sup>26</sup> This is not only inefficient but costly when dealing with such issues in a Crown Court trial.

<sup>27</sup> Newman (2013) observed solicitors dealing with their clients and noted that some solicitors held deeply negative feelings towards their clients and that they would push them to plead guilty.

cases, particularly in London. They aren't properly equipped, and they don't care what happens next in cases" (IS.2).

Another solicitor was critical of some solicitors' firms for depending on agencies to cover police station work when he said:

"Not all solicitors adhere to the adversarial principles. They aren't concerned to do the best possible job for their client from start to finish but to get rid of the case to a rep who's as cheap as possible. If the client gets charged, then all the better as they get another fee. That shouldn't undermine the need to do a good job in the police station, but it does" (FR.2).

Similarly, a solicitor said, "If you have a firm who doesn't care less and it's all about how much money they can make, then the quality of advice will disappear because the focus is on how quickly you can get in and out of the station" (SB.2).

When considering how solicitors could assist clients in trying to reduce delays, a solicitor commented on the difficulties they face when saying:

"We're totally in the hands of the police. Our clients constantly ask us how long is it going to take and how long can the police keep me here? They don't want to hear 'for 24 hours', but there's only so much we can do. We can put pressure on the police by regularly chasing them up but that's it" (BV.2).

The solicitor also commented on the difficulties solicitors face when dealing with children as suspects. He remarked, "Apart from those under 18 years having to have an Appropriate Adult, PACE makes no distinction whether the police are dealing with children or adults. They can be held in custody for the same length of time as adults and this just shouldn't happen" (BV.2).<sup>28</sup>

For the solicitors involved in this study, there is a worrying development with agencies increasingly covering police station work. A solicitor described how this was happening, saying:

"There's a massive market of people coming out of universities with a law degree and with £35,000 worth of debt. They can't get a training contract and so it's attractive to train as an accredited rep and you're then in a position to start earning. The agencies charge solicitors a higher fee and pay the reps around £35 to £40 a case" (IS.2).

The solicitor recognised that an agency is a cheaper and more flexible model when compared to what is required of solicitors' firms in providing a quality service under a legal aid contract. While he is of the view that it is important to provide a quality service, he emphasised that using agents is not the way to achieve it:

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<sup>28</sup> In a comparative study of young suspects, it was found that an adult- rather than child-centred approach was adopted by the police when dealing with young suspects. It was recommended that a child-friendly approach should be required, including the introduction of a shorter PACE clock for young suspects (Kemp and Hodgson, 2016: 177).

“You need firms to invest in the next generation of lawyers. If agencies were banned the reps would be brought into solicitors’ firms and they would learn from other people how to do police station work well. They’ll be trained and under the supervision of a solicitor and with a much better career trajectory than working in agencies, particularly postgraduates” (IS.2).

Within the current system the solicitor complained, “The government have created a system in which accredited reps for agencies are just cannon fodder. They’re cheap, disposable, on zero-hours contracts and with no employment rights” (IS.2). This is contrary to developments in other European countries, where the jurisprudence arising out of the ECtHR is encouraging a more active role for defence solicitors (Jackson, 2016). While solicitors involved in this study were committed to providing a quality service, they increasingly felt this was being undermined due to the financial pressures of having to deal with a high volume of cases quickly.

**Training and quality requirements.** When commenting on quality measures for police station work, a solicitor mentioned differences of approach being adopted by firms that have implications for quality. In relation to training contracts, for example, he said:

“It depends on the firm. In some firms you will be well trained and given lots of support. You’ll be surrounded by people of high quality who will expect a certain standard from you and you come out at the other end as a quality individual. Alternatively, you have firms where there’s just three of you. No one has any time for you and the next day you have to do a trial. I don’t know to what extent the SRA<sup>29</sup> can regulate that but I don’t honestly believe the government are remotely interested in quality” (IS.2).

In his firm, a solicitor commented on the importance of new staff observing experienced legal advisers providing legal advice as part of their training to be an accredited representative. He said, “We get them to shadow people so they can see different ways of dealing with cases. It makes it more flexible and easier to get them through accreditation when they have watched different people” (FR.2).

The solicitors said that they would train legal advisers in their own firms to intervene in the police interview as and when required to do so. They recognised, however, that it is more difficult for junior staff to intervene, particularly when faced with argumentative police officers. While some police officers do not take kindly to legal advisers interrupting their questions, a solicitor said that his firm’s culture requires advisers to be robust in the interview. Through in-house training, he said, “I spend a lot of time telling my reps [legal advisers] that if the police threaten to ban them from the interview then they should wear this as a badge of honour. We haven’t had any adviser who hasn’t been threatened with

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<sup>29</sup> The Solicitors’ Regulation Authority (SRA) is the regulatory body for solicitors in England and Wales.

being excluded" (SB.2). Another solicitor said that his firm had successfully sued the police for physically excluding one of their accredited representatives from the interview for implying that the police were not doing their job properly (FR.2).

A solicitor said that he uses his experiences in the police station when training staff. In one case, for example, he describes a situation where the police had put his chair at the back of the interview room. When retelling this story, he said:

"I told the police I wasn't prepared to sit in the chair where they'd put it. I told them I'll stand up or sit on the floor, but my client will see me. An officer wanted to get a superintendent involved but I wouldn't budge. It's important to know what PACE says about this so the police can't threaten you" (SB.2).

While the solicitors said that they would train legal advisers to adopt a tough stance and stand up to the police, it was accepted that this not always easy. On the contrary, as one solicitor explained:

"I think a lot of people can forget what their role is in the interview. They don't want to upset anybody. Unless you're an assertive person, someone who can speak up and be confident about it, then you're going to struggle. Your client doesn't want you to upset the police at lot of the time, but this is ridiculous because we're there to protect them" (BV.2).

When commenting on his experience as a legal adviser the solicitor remarked:

"I did the accreditation a while ago now, but it was the training I received in the firm which prepared me well for this work. There is an extremely experienced solicitor who took us through things and he's exceptional on police station matters and I feel confident because he trained me. We also have random monthly checks on cases by a supervising solicitor and this includes going through our notes to check that people are being given good advice. If there are training needs arising out of that review, then it's passed up to a supervising lawyer to deal with" (BV.2).

**Joint training.** A couple of solicitors mentioned how joint training between the police and legal advisers could, in some cases, help to break down barriers in some cases. One solicitor commented on the poor relationship that they have with some police officers. He said:

"I don't think they like us generally. They see us as an unfortunate necessary hindrance to their interview. We cause delays and they have to wait for us. Then they have to give us disclosure and wait for us to speak to our client. They don't like it if we interrupt the interview. In many ways, solicitors aren't good for the police. I don't care if I'm honest as my priority is my client and not the police. I'm not there to make friends but it would help if the police had a better understanding of my role" (BV.2).

This was the response from the other solicitor:

"I've offered to go along and talk to the police talk about some of the issues from our point-of-view. There's a massive misconception in the police about what the solicitor's role is. That's got to be down to a failure of training. There's also the problem of the media representing our role in the police station" (IS.2).

In a similar vein this solicitor said, "It would be helpful for us to get together and for the police to know why the defence are doing what they do. Disclosure is key here, but you never get to see the statements or the CCTV evidence before the interview" (SB.2).

## **5. TECHNOLOGY**

Technology is being embraced in the criminal justice system in England and Wales in order to deliver swifter and more efficient justice. The vision of the CJS Common Platform Programme, for example, is to design and deliver a shared process to transform the way practitioners in the criminal justice system work. There is to be a portal within the Common Platform through which the defence can access information and evidence to assist them in participating and collaborating with the CPS and courts. The intention is to encourage defence solicitors to use IT to digitalise the new processes, thus creating an efficient and streamlined process for the benefit of all (HM Courts Service, 2016). While solicitors interviewed in this study were positive about technology helping to improve the criminal process, there were also concerns raised about its limitations, particularly the way in which technology can undermine the legal rights of suspects and defendants.

When commenting on technology having a positive impact this solicitor said:

"We're moving towards a Common Platform and personally I'm very pro digital working. Our firm has an App and that helps clients get in touch with us. We also aim to make information available over the internet for our clients. Somewhere they can go to check what their rights are if they're stopped by the police, for instance" (IS.2).

The solicitor was sceptical of other technological developments, however. When commenting on police officers giving evidence from police stations via a video link, for example, he said "I'm not a big fan of the police giving evidence remotely. We had a case locally where the sergeant of one of the officers could be heard coaching him through his evidence" (IS.2).

A solicitor, based in a different area, complained about virtual courts when he remarked:

"I hate them because they separate the lawyer from their client. The magistrates, court clerk and other advocates all agree that the most effective location for the defence advocate is in court. You can speak to the prosecutor face-to-face and meet your client's family, which can be important if you want an address for bail or other conditions. If you're in court though, you can't be in the police station dealing with your client face-to-face" (SB.2).

The solicitor also commented on how difficult it was to try and develop a relationship with a client over a video-link when saying:

“Someone else could have dealt with the client at the police station and the first time I meet him is at court. I have to evaluate whether there are any mental health problems or other needs. You have to deal with tricky issues around the plea if it’s an either way offence. It isn’t just about having a private conversation, but you have to build a relationship with your client and I can’t do that properly over a video screen” (SB.2).

After first meeting his client face-to-face, however, the solicitor said that he was content to use video-technology for other routine hearings, particularly if this saved his client from coming out of prison for a short visit” (SB.2). Another solicitor made a similar comment when he said, “I’ve got no problem with a video-link for a PTPH (plea and trial preparation hearing) in the Crown Court. My client would frankly prefer this to being on a bus for three hours and being ferried to and from court in one of the horrible vans they use” (IS.2).

Having had lots of experience of virtual courts and using video-links when talking to clients a solicitor believed this technology was appropriate in some cases but not in others. He explained why when saying:

“For very straightforward cases it’s okay. If the defendant consents to it I don’t have a problem. I don’t like it when it’s being imposed on you. I found out belatedly that in [one area] they are using video links when dealing with all suspects, including under 18-year olds, which they’re not supposed to do. There’s a practice direction coming out so that should knock it on the head” (FR.2).

This was the comment from a solicitor when reflecting on how technology could be used to assist communication in the police station:

“It would be much better to Skype a custody suite rather than phone them when making representations to the police. You would also have a better conversation with your client when it’s over a video-link and it would be major improvement to see your client. It’s important that we are present for the interview though” (FR.2).

Through the Common Platform it is intended that defence solicitors will be able to have electronic access to the evidence disclosed by the CPS. In preparation for this, and with advances in technology, one solicitor commented on the police increasingly using electronic case files. He felt that this could lead to disclosure being given earlier on to the defence. As the solicitor explained, “If we’re all plugged into the same system, there’s no reason why a case can’t be built on both sides from the start” (FR.2). While recognising that there will be limitations to what the police are prepared to disclose prior to the interview, the solicitor felt that gaining early access electronically could assist the defence. He said:

"It could help to speed things up and we can start working on the case. If we've got disclosure early on it will help to make everyone more efficient. It would also provide an audit trail for later on about what evidence was disclosed and when and that then couldn't be challenged" (FR.2).

Another solicitor also felt that electronic disclosure was possible when saying:

"We get disclosure prior to court via email occasionally. If we have a case coming up for the next day, let's say, I'll ask the officer to email the disclosure and it helps to save time. There's no reason why we can't receive disclosure in the same way before the interview" (BV.2).

By providing some disclosure electronically prior to the first interview, this would assist the defence in taking a more active role in the pre-charge process.

**Police Station App.** All research respondents were positive about the potential for an App, or other digital resource, to advise suspects of their legal rights. One solicitor said:

"I think it's a perfect platform to build on all sorts of technological advances. The App could be coded to ask suspects why they don't want a lawyer. It can tell them that it's free and that there are solicitors independent of the police who are available to help them. An App can also ask people why they don't want a solicitor and provide information to help them make an informed decision. Their answers to questions could be recorded and this information could be accessed later on if required at court" (FR.2).

Another solicitor was critical of the police for giving suspects only basic information about their rights and for not checking that they clearly understand those rights. For example, the solicitor said that on one occasion:

"I overheard a custody sergeant asking a detainee if he wanted legal advice. He refused, and the officer asked him why he didn't want a solicitor. The suspect replied that he just didn't want one and the officer said that was fine. If pressed, he could have said that he couldn't afford a solicitor or that he didn't want to wait. This is where an App could help to give people more information about their rights" (BV.2).

When reflecting on the App providing information to suspects about their legal rights, a solicitor commented on the potential for providing additional information to what is set out in their letter of rights.<sup>30</sup> As he put it, "A question on the App can be 'Do you want to see a solicitor?' but the question that then arises is 'What is a solicitor?' and you could deal with that. Tell them what a solicitor is and how they can help them" (SB.2).

A policy officer commented on the App having the potential to provide a way of facilitating the completion of electronic legal aid forms, particularly when the client and solicitor are in different locations. As he put it, "If clients can have a virtual interaction

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<sup>30</sup> A copy of the Notice of Rights and Entitlements provided by the Home Office is set out in the Appendix.



with their solicitor then we could look at having a virtual form. If there's a touch screen, or something like that, they could electronically complete the legal aid application form remotely" (FG.2).

The idea of suspects using the App to provide verbal feedback on their experience in the police station was also supported by the solicitors. As this solicitor remarked, "In terms of it being a data collection tool for analysis would be tremendous. We know that in the police station there are some 'rotten apples' and if it's the same names that keep coming up then this would help to identify them more easily" (FR.2). The solicitor also commented on the App being a vehicle through which to help bring about fundamental change in the police station. He said:

"The App idea is a bit of blue sky thinking in a very grey world. I think it could make a big difference and bring about a paradigm shift. We've had the same mentality in the police stations for the last 25 years and it hasn't really changed much. The police have got a bit more professional and there's a better quality of officer coming through. But it's hampered by an infrastructure and culture that is so far behind the game. It's still 'us and them'. It's a game in the police station and it shouldn't be" (FR.2).

In practical terms, another solicitor commented on the App helping to improve communication by providing a virtual link for solicitors to both the police and their clients. As this solicitor put it, "It's definitely something we should think about. We don't have one client at a time in our line of work and it would help us to communicate better" (BV.2). While the App could help to improve communication between solicitors and their clients, the solicitors stressed that it should not be used to replace legal advisers being present in the police interview.

## **6. CONCLUSION**

This research study has provided an important update on the organisation and delivery of police station legal advice in England and Wales, particularly following a recent cut in the legal aid fee paid for this work. When considering the effective role of legal advisers in the police interview, a key issue arising for the solicitors in this study is payment under the fixed fee. On a positive note, a higher fee is paid when legal advice is provided face-to-face and this has the desired effect of encouraging solicitors to be present in the police interview. However, with the same fee being paid in the vast majority of cases, irrespective of the seriousness of the offence, the number of interviews and how long cases take to deal with, this has implications for the quality of legal advice. In particular, it seems that many solicitors concentrate on the police interview and tend not to address wider legal issues concerning their client's detention.

The fixed fee also discourages experienced solicitors from being involved in police station work, including when dealing with very serious and complex cases. An 'escape fee'

means that solicitors will receive a higher fee for such cases, but it seems that the threshold for this fee is seldom met. A suggestion arising in this study is that payment for police station work could be graded, based on the seriousness of the offence and the status of the legal adviser. This would enable a higher fee to be paid when an experienced criminal defence solicitor deals with very serious and complex cases. By incentivising the involvement of experienced solicitors in police station work, this could help to improve the quality of decisions made in cases, which could help to achieve efficiencies and cost savings.

Solicitors and non-solicitors can provide publicly-funded legal advice to suspects, but both must be accredited to do so and it is intended that only those firms with an LAA criminal contract can provide such legal services. It is of concern to note, therefore, that agencies set up by non-solicitors can by-pass the LAA contract requirements by using accredited representatives who are not under the supervision of experienced criminal defence practitioners.

In seeking to improve the effectiveness of police station legal advice, the findings from this study suggest the need for a more active role for legal advisers. However, this would require changes in the pre-charge process, particularly in relation to the police disclosure of evidence. Without disclosing at least some evidence prior to the interview, the solicitor's advice to their client will invariably be to make 'no comment' and this means that the case cannot be progressed at this early stage. Without having early access to disclosure, the current process builds in inefficiencies and delays. This means that not only will some cases proceed unnecessarily to court, but, once at court, there are fewer cases where a guilty plea can be entered at the first hearing and more cases will proceed to trial.

Commenting on the importance of disclosure in cases in court, Quirk (2006: 48) notes that the police occupy an anomalous position in the criminal process in that they are "accorded an inquisitorial, investigative role in an adversarial system, yet they continue to be perceived, by both themselves and the public, as agents of the prosecution." Accordingly, it is noted how some officers are reluctant to give the defence potentially exculpatory evidence and, rather than undertaking objective inquiries, police investigations can be structured to 'construct' cases against those whom police officers believe to be guilty. The same problems were seen to arise within the pre-charge process, with the police being reluctant to give disclosure to defence solicitors prior to the interview.

Inefficiencies and delays were identified in an analysis of a number of ineffective and cracked trials heard in the Crown Court, which were due to the fragmented way in which organisations operate within the criminal process (Kemp, 2013b: 56-72). In addressing such problems, it was suggested that there needs to be improved working practices between criminal justice practitioners, to include earlier and more robust reviews of the evidence. If the police provide early disclosure, and defence solicitors are required to have

a more active role at the pre-charge stage, this could help to deal with cases more quickly and effectively. There could also be significant cost savings if solicitors are able to make representations to the police over the case disposal, particularly if this avoids cases proceeding unnecessarily to court or, once at court, reduces the number of trials, or at least the number of issues to be addressed at trial.

With advances in information technology, the government intends to transform the criminal process to deliver a more efficient criminal justice system. The introduction of a Common Platform Programme will provide a portal within which criminal justice agencies can access information and evidence to assist in participating and collaborating with the CPS and courts. The Common Platform could be used by the police to provide solicitors with disclosure prior to the interview; this would help to clarify precisely what information was provided and when. It is also important for the views of solicitors to be taken into account when considering the impact of such changes on legal safeguards from the defence perspective.

There is support from the research participants for using a Police Station App as a digital resource for suspects to help them make more informed decisions, particularly over the waiver of legal advice. It is recognised that the App could help to improve procedural safeguards, by ensuring that suspects are fully informed of their legal rights and providing a mechanism through which they can report their experiences within the criminal process. The App also has the potential to provide a virtual link between solicitors and their clients, as well as with the police, but also highlighted were some limitations. The solicitors stressed that technology should not be used to replace the face-to-face contact they need to have with their clients, many of whom are vulnerable, or be used as a substitute for solicitors being present in the police interview.

While suspects have had access to free and independent legal advice in England and Wales for over 30 years, this research study has raised a number of issues having implications for the quality of police station work. In addition, with the ECtHR encouraging a more active role for defence solicitors in the pre-charge process, it is important that such developments have a positive influence on changing practices in England and Wales. It is also intended that technology will transform the criminal justice system, but it is important to ensure that such changes do not undermine procedural safeguards.

## References

Bridges, L. and Cape, E. (2008) *CDS Direct: Flying in the Face of the Evidence* (London: Centre for Crime and Justice Studies).

Bridges, L. and Choongh, S. (1998) *Improving Police Station Legal Advice* (London: Blackstone).

Cape, E. (2017) 'Recording Interviews with Body-Worn Cameras: The Latest PACE Codes Consultation', *The Justice Gap*: <http://thejusticegap.com/2017/11/recording-interviews-body-worn-cameras-latest-pace-codes-consultation/>

HM Courts Service (2016) *Introduction to CJS Common Platform Programme (Blog)*: <https://insidehmcts.blog.gov.uk/2016/06/30/introduction-to-common-platform-programme/>

Home Office (2017) *Revising PACE codes C, H, E and F*: <https://www.gov.uk/government/consultations/revising-pace-codes-c-h-e-and-f>

Kemp, V. (2018) *Digital Legal Rights: Users' Perspectives on PACE Safeguards* (forthcoming).

Kemp, V. (2014) 'PACE, Performance Targets and Legal Protections', *Criminal Law Review*.

Kemp, V. (2013a) 'No Time for a Solicitor: Implications for Delays on the Take-up of Legal Advice', *Criminal Law Review*.

Kemp, V. (2013b) *Bridewell Legal Advice Study: Final Report*: <http://eprints.nottingham.ac.uk/27834/1/Kemp%20BLAST%20Final%20Report.pdf>

Kemp, V. (2012) *Bridewell Legal Advice Study: Interim Report*: <http://eprints.nottingham.ac.uk/28246/1/Kemp%20BLAST%20Interim%20Report.pdf>

Kemp, V. (2010) *Transforming Legal Aid: Access to Criminal Defence Services*: [https://www.justice.gov.uk/downloads/publications/research-and-analysis/lsrc/2010/TransformingCrimDefenceServices\\_29092010.pdf](https://www.justice.gov.uk/downloads/publications/research-and-analysis/lsrc/2010/TransformingCrimDefenceServices_29092010.pdf)

Kemp, V. and Hodgson, J. (2016) 'Police Interrogations and Safeguards for Young Suspects', in M. Vanderhallen et al. (eds) *Interrogating Young Suspects: Procedural Safeguards from an Empirical Perspective* (Intersentia: Cambridge).

Legal Action Group (2017) *Getting Through a Peer Review*: <http://www.lag.org.uk/magazine/2017/05/getting-through-a-peer-review.aspx>

Legal Aid Agency (2017a) *2017 Standard Crime Contract: Standard Terms:*

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/596285/2017-scc-standard-terms.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/596285/2017-scc-standard-terms.pdf)

Legal Aid Agency (2017b) *2017 Standard Crime Contract: Specification:*

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/596286/2017-scc-specification.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/596286/2017-scc-specification.pdf)

McConville, M., Hodgson, J., Bridges, L. and Pavlovic, A. (1994) *Standing Accused: The Organisation and Practices of Criminal Defence Lawyers in Britain* (Oxford: Clarendon Press).

Ministry of Justice (2016) *The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2016:* <http://www.legislation.gov.uk/uksi/2016/313/schedule/3/made>

Newman, D. (2013) *Legal Aid Lawyers and the Quest for Justice* (Oxford: Hart).

Pattenden, R. and Skinns, L. (2010) 'Choice, privacy and publicly funded legal advice at the police station', *Modern Law Review*, 73(3).

Pleasence, P, Kemp, V. and Balmer, N. (2011) 'The justice lottery? Police station advice 25 years on from PACE', *Criminal Law Review*.

Quirk, H. (2006) 'The Significance of Culture in Criminal Procedure Reform: Why the Revised Disclosure Scheme Cannot Work', *The International Journal of Evidence and Proof*.

Royal Commission on Criminal Procedure (1981) *The Royal Commission on Criminal Procedure Report*. Cmnd 8092 (London: HMSO).

Sanders, A., Bridges, L., Mulvaney, A., and Crozier, G. (1989) *Advice and Assistance at Police Stations and the 24 Hour Duty Solicitor Scheme* (London: Lord Chancellor's Department).

Welsh, L. (2017) 'The Effects of Changes to Legal Aid Provision in Summary Criminal Cases: A Case Study', *Journal of Law and Society*.

## Appendix

### Notice of Rights and Entitlements

#### Remember your rights whilst detained

The rights in this Notice are guaranteed to you under the law in England and Wales and comply with EU Directive 2012/13 on the right to information in criminal proceedings.

Your rights at the police station are summarised on this page  
There is more information in paragraphs 1 to 11 on the next pages.  
Full details are in the police Code of Practice C.

1. Tell the police if you want a solicitor to help you while you are at the police station. This is free.
2. Tell the police if you want someone to be told where you are. This is free.
3. Tell the police if you want to look at their rules – they are called the Codes of Practice.
4. Tell the police if you need medical help. Tell the police if you feel ill or have been injured. Medical help is free.
5. If you are asked questions about a suspected offence, you do not have to say anything. However, it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.
6. The police must tell you about the offence they think you have committed and why you have been arrested and are being detained.
7. The police must let you or your solicitor see records and documents about why you have been arrested and are being detained and about your time at the police station.
8. If you need an interpreter, the police must get you one. You can also have certain documents translated. This is free
9. Tell the police if you are not British and you want to contact your embassy or consulate or want them to be told you are detained. This is free.
10. The police must tell you how long they can detain you for.
11. If you are charged and your case goes to court, you or your solicitor will have a right to see the prosecution evidence before the court hearing.

If you are not sure about any of these rights, tell the police custody officer  
See the pages after the summary for more information about how the police should treat and care for you.

This version of the Notice of Rights and Entitlements has effect from 2 June 2014

Please keep this information and read it as soon as possible. It will help you to make decisions while you are at the police station.

#### 1. Getting a solicitor to help you

- A solicitor can help and advise you about the law.
- Asking to speak to a solicitor does not make it look like you have done anything wrong.
- The Police Custody Officer must ask you if you want legal advice. This is free.
- The police must let you talk to a solicitor at any time, day or night, when you are at a police station.

- If you have asked for legal advice the police are usually not allowed to ask you questions until you have had the chance to talk to a solicitor. When the police ask you questions you can ask for a solicitor to be in the room with you.
- If you tell the police that you don't want legal advice but then change your mind, tell the police custody officer who will then help you to contact a solicitor.
- If a solicitor does not turn up or contact you at the police station, or you need to talk to a solicitor again, ask the police to contact them again.

**Free legal advice about some less serious matters:**

- In some cases involving less serious matters, free legal advice is limited to telephone advice from qualified advisors from the Criminal Defence Service (CDS) Direct unless limited exceptions apply when a solicitor should come to the police station, such as:

~ the police want to ask you questions about an offence or carry out an eye witness identification procedure.

~ you need help from an "appropriate adult". See "People who need help".

~ you are unable to communicate over the telephone, or ~ you allege serious misconduct by the police.

**When free advice is not limited to telephone advice from CDS Direct:**

- You can ask to speak to a solicitor you know and you won't have to pay if they do legal aid work. If you do not know a solicitor or the solicitor you know cannot be contacted, you can speak to the duty solicitor. It is free.
- The duty solicitor has nothing to do with the police.

**3. To arrange free legal advice:**

- The police will contact the Defence Solicitor Call Centre (DSCC). The DSCC will arrange for legal advice to be given, either from CDS Direct, from a solicitor you have asked for or from the Duty Solicitor.
- The DSCC and CDS Direct are independent services responsible for arranging free legal advice and have nothing to do with the police.

**If you want to pay for legal advice yourself:**

- In all cases you can pay for legal advice if you want to.
- When free legal advice is limited to telephone advice from CDS Direct you can still speak to a solicitor of your choice on the telephone if you want to but they would not be paid for by legal aid and may ask you to pay them. The DSCC will contact your own solicitor on your behalf.
- You are entitled to a private consultation with your chosen solicitor on the telephone or they may decide to come to see you at the police station.
- If a solicitor of your choice cannot be contacted, the police can still call the DSCC to arrange free legal advice from the Duty Solicitor.

**2. Telling someone that you are at the police station**

- You can ask the police to contact someone who needs to know that you are at the police station. This is free.
- They will contact someone for you as soon as they can.

**3. Looking at the Codes of Practice**

- The Codes of Practice are rules which will tell you what the police can and cannot do while you are at the police station. They include details of the rights summarised in this Notice.
- The police will let you read the Codes of Practice but you cannot read it for so long that it holds up the police finding out if you have broken the law.

- If you want to read the Codes of Practice, tell the Police Custody Officer.

#### **4. Getting medical help if you are unwell or injured**

- Tell the police if you feel ill or need medicine or have an injury. They will call a doctor or nurse or other healthcare professional and it is free.
- You may be allowed to take your own medicine but the police will have to check first. A nurse will usually see you first, but the police will send for a doctor if you need one. You can ask to see another doctor but you may have to pay for this.

#### **5. Right to remain silent**

If you are asked questions about the suspected offence, you do not have to say anything.

However, it may harm your defence if you do not mention when questioned something which you later rely on in court.

Anything you do say may be given in evidence.

#### **6. Knowing about the offence you are suspected of committing and knowing why you have been arrested and detained**

- The police must tell you about the nature of the offence they think you have committed. This includes when and where they think it was committed.

The police must tell you why they think you committed the offence and why they believe they needed to arrest you.

- At the police station, the police must tell you why they believe you need to be detained.
- Before you are asked any questions about any offence, the police must give you and your solicitor enough information about what the police think you have done so you can defend yourself but not at a time which would harm the police investigation.
- This applies to any other offences the police think you have committed.

#### **7. Seeing records and documents about your arrest and detention**

- When you are detained at a police station, the police must:

~ Record in your custody record, the reason and need for your arrest and why they believe you need to be detained.

~ Let you and your solicitor look at these records. The police custody officer will arrange this.

- This applies to any other offences the police think you have committed.
- The police must allow you or your solicitor access to documents and materials essential to effectively challenging the lawfulness of your arrest and detention.

#### **8. Getting an interpreter and translations of certain documents to help you**

- If you do not speak or understand English the police will arrange for someone who speaks your language to help you. This is free.
- If you are deaf or have difficulty speaking, the police will arrange for a British Sign Language English interpreter to help you. This is free.
- If you do not speak or understand English the police will get the interpreter to tell you why they are detaining you. This must be done each time a decision is made to keep you in custody.
- After each decision to keep you in custody and after you have been charged with any offence, the police must also give you a record in your own language of why you are being detained and of any offence you have been charged with, unless there are special reasons not to. These are:



~ If you decide you don't need the record to defend yourself because you fully understand what is happening and the consequences of not having the record and you have had an opportunity to ask a solicitor for help to decide. You must also give your consent in writing.

~ If having an oral translation or summary through an interpreter instead of a written translation would be enough for you to defend yourself and to fully understand what is happening. The custody officer must also authorise this.

- When the police ask you questions and don't make an audio recording, the interpreter will make a record of the questions and your answers in your own language. You will be able to check this before you sign it as an accurate record.
- If you want to make a statement to the police, the interpreter will make a copy of that statement in your own language for you to check and sign as correct.
- You are also entitled to a translation of this Notice. If a translation is not available, you must be given the information through an interpreter and provided with a translation without undue delay.

### **9. Contacting your embassy or consulate**

If you are not British, you can tell the police that you want to contact your High Commission, Embassy or Consulate to tell them where you are and why you are in the police station. They can also visit you in private or arrange for a solicitor to see you.

### **10. For how long you can be detained**

- You can normally be detained for up to 24 hours without being charged. This can be longer but only if the offence could be tried by a judge and jury in a crown court and a Police Superintendent or a court allows it to happen. After 36 hours only a court can allow the police more time to detain you without being charged.
- Every so often a senior police officer has to look into your case to see if you should still be kept at the police station. This is called a review. Unless you are not in a fit state, you have the right to have a say about this decision. Your solicitor also has a right to have a say about this decision on your behalf.
- If the review officer doesn't release you, you must be told why and the reason recorded in your custody record.
- If your detention is not necessary you must be released. If the police want to continue investigating the offence, you can be released on bail.
- When police ask a court to extend your detention:
  - ~ You must be brought to court for the hearing.
  - ~ You must be given a copy of the information which tells the court about the evidence and why police want to keep you in custody.
  - ~ You have a right to have a solicitor with you at court.
  - ~ The police will only be allowed to keep you in custody if the court believes it is necessary and that the police are investigating your case carefully and without wasting time.
- If the police have enough evidence to send you to court, you may be charged at the police station or by post, to appear at court to be tried.

### **11. Access to the evidence if your case goes to Court**

- If you are charged with an offence, you or your solicitor must be allowed to see the evidence against you as well as evidence which may help your defence. This must be done before your trial starts. The police and the Crown Prosecution Service are responsible for arranging this and providing access to relevant documents and materials.

### **Other things to know about being at a police station**

#### **How you should be treated and cared for**

These are short notes about what you can expect while you are kept at the police station. To find out more, ask to see the Codes of Practice. They include a list of where to find more information about each of these things. Ask the police custody officer if you have any questions.

#### **People who need help**

- If you are under 18 or are mentally vulnerable, for example if you have learning difficulties or mental health problems, then you have a right to have someone with you when the police do certain things. This person is called your "appropriate adult" and they will be given a copy of this Notice.
- Your appropriate adult must be with you when the police tell you about your rights and tell you why you are being kept at the police station. He or she must also be with you when the police read the police caution to you.
- Your appropriate adult can also ask for a solicitor on your behalf.
- You can speak to your solicitor without your appropriate adult in the room if you want to.
- The police might also need to do one of the things listed below while you are at the police station.

Your appropriate adult must, unless there are special reasons, be with you for the whole time if the police do any of these things:

~ Interview you or ask you to sign a written statement or police notes.

~ Remove more than your outer clothes to search you.

~ Take your fingerprints, photograph or a DNA or other sample.

~ Carry out anything to do with a witness identification procedure.

- Your appropriate adult should be given an opportunity to be available in person or on the phone, when the police review your case to see whether you should be detained further.
- If your appropriate adult is available, they must be present when the police charge you with an offence.

#### **Getting details of your time at the police station**

- Everything that happens to you when you are at the police station is recorded. This is called the Custody Record.
- When you leave the police station, you, your solicitor or your appropriate adult can ask for a copy of the Custody Record. The police have to give you a copy of your Custody Record as soon as they can.
- You can ask the police for a copy of your Custody Record up to 12 months after you leave the police station.

#### **Keeping in touch**

- As well as talking to a solicitor and having a person told about your arrest you will usually be allowed to make one phone call.
- Ask the police if you would like to make a phone call.

- You can also ask for a pen and paper.
- You may be able to have visitors but the custody officer can refuse to allow that.

### **Your Cell**

- If possible you should be kept in a cell on your own.
- It should be clean, warm and lit.
- Your bedding should be clean and in good order.
- You must be allowed to use a toilet and have a wash.

### **Clothes**

If your own clothes are taken from you, then the police must provide you with an alternative form of clothing.

### **Food and drink**

You must be offered 3 meals a day with drinks. You can also have drinks between meals.

### **Exercise**

If possible you should be allowed outside each day for fresh air.

### **When the police question you**

- The room should be clean, warm and lit.
- You should not have to stand up.
- The Police Officers should tell you their name and their rank.
- You should have a break at normal meal times and a break for a drink after about two hours.
- You should be allowed at least 8 hours rest in any 24 hours you are in custody.

### **Faith Needs**

Tell the police if you need anything to assist you to practise your religion whilst at the station. They can provide religious books and other items, as necessary

### **Times when the normal rules are different**

#### **Getting a solicitor to help you**

There are some special times when the police urgently need to ask you questions before you have talked to a solicitor. Information about these special times is given in the Codes of Practice. These set out what the police can and cannot do while you are at the police station. If you want to look up the details, they are in paragraph 6.6 of Code C of the Codes of Practice.

There is one special time when the police will not let you speak to the solicitor that you have chosen. If this happens you must be allowed to choose another solicitor. If you want to look up the details, it is in Annex B of Code C of the Codes of Practice.

#### **Telling someone that you are at the police station**

There are some special times when the police will not allow you to contact anyone. Information about these special times is given in the Codes of Practice. If you want to look up the details, it is in Annex B of Code C of the Codes of Practice.

#### **Breath tests**

If you are under arrest because of a drink drive offence, you have the right to speak to a solicitor. That right does not mean you can refuse to give the police samples of breath, blood or urine even if you have not yet spoken to the solicitor.

#### **Detention under the Mental Health Act 1983**

The police can also detain people at a police station for assessment under the Mental Health Act. If you have been detained under the Mental Health Act this does not mean that you have been arrested for an offence.

It means that the police must arrange for you to be seen by a doctor and an Approved Mental Health Professional qualified to carry out the assessment. You must be assessed within 72 hours (3 days) of your arrival at the police station but the police will try to arrange this as soon as possible. During this time the police may transfer you to a more suitable location to enable the assessment to take place.

Whilst waiting for your assessment, the police may arrange for you to be seen by an Approved Healthcare Practitioner. They cannot make the assessment but they will help you with any other health concerns you may have and help explain what the assessment means.

### **Independent Custody Visitors**

There are members of the community who are allowed access to police stations unannounced. They are known as independent custody visitors and work on a voluntary basis to make sure that detained people are being treated properly and have access to rights.

You do not have a right to see an independent custody visitor or to ask them to visit you but a visitor may ask to see you. If an independent custody visitor does visit you while you are in custody they will be acting independently of the police to check that your welfare and rights have been protected. However, you do not have to speak to them if you do not wish to.

### **How to make a complaint**

If you want to complain about the way you have been treated, ask to speak to a police officer who is an inspector or a higher rank. After being released, you can also make a complaint at any police station, to the Independent Police Complaints Commission (IPCC) or through a solicitor or your MP on your behalf.

