

# BLAST == REPORT

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# **Bridewell Legal Advice Study**

**Adopting a ‘whole-systems’ approach  
to police station legal advice**

**BLAST II**

**FINAL REPORT**

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**Legal Services Research Centre**

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## **Table of Contents**

|   | <i>Page</i> |
|---|-------------|
| Executive Summary   | 3           |
| 1. Introduction   | 9           |
| 2. Background   | 10          |
| 3. BLAST II Research Study  | 13          |
| 4. BLAST II Research Findings   | 16          |
| A) Police custody and working relations between custody sergeants and the defence | 16          |
| B) Implications for the take-up of legal advice, duration and case outcomes       | 21          |
| C) Police disclosure and the quality of pre-charge decision-making                | 25          |
| D) Positive policing, police custody and social control                           | 34          |
| 5. Discussion   | 50          |
| 6. References   | 53          |
| 7. Appendix A: A small-scale study of Crown Court cases                           | 56          |
| 8. Appendix B: Statistical outputs from analysis of police custody records        | 73          |

## **EXECUTIVE SUMMARY**

### **Background**

The Bridewell Legal Advice Study (BLAST) was intended to help improve access to legal advice by involving duty solicitors early on in the pre-charge process. By providing early access to legal advice, and encouraging closer working arrangements between custody sergeants and duty solicitors, the intention was also to increase efficiencies and reduce delays. This report presents the findings arising out of the second phase of BLAST, which was operational in a busy city-centre police station from July to October 2012.<sup>1</sup> The research focused on working practices between the police and the defence and also on the quality of legal decision-making in the pre-charge process. Set out in this Executive Summary are key issues arising out of this second phase of BLAST.

### **Findings**

The take-up of legal advice was seen to increase slightly during this second phase: rising from 40.5 per cent in 2011 to 42.3 per cent in 2012. This meant that the request rate was similar to that in BLAST I, which was at 43.0 per cent. From the modelled data, which controlled for other variables, there was found to be just nine minutes difference in the average length of time suspects were held in police custody when comparing the second phase of BLAST with the corresponding period in 2011. When examining the raw data for 2012 with custody records held for this station in 2009, there was seen to be an increase of over two hours in the average custody duration: increasing from 7:50 hours in 2009 to 10:00 hours in 2012.<sup>2</sup> On a positive note, there was seen to be a reduction in the average time taken in cases depending on whether or not legal advice was requested. In the first phase of BLAST, for example, the modelled data suggested that suspects who requested legal advice spent an average of five hours longer in custody than those who did not. In this second phase that difference had been reduced almost to four hours. There was little difference to be found in the outcomes of cases, when comparing the findings arising from BLAST II with those from the comparator year of 2011. However, the volume of cases brought into the Bridewell over the year was seen to decrease by almost 900, and the number of cases where suspects were bailed to return to the police station had increased from 54 in 2011 to 241 in 2012.

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<sup>1</sup> The first phase of BLAST was operational from February to May 2011. In that study the focus was on effective working practices between the police and the defence and also on the criminal process.

<sup>2</sup> See Kemp (2013) for details of the 2009 data. The Bridewell is Police Station B.

These findings suggest that this second phase of BLAST has been no more effective than the first phase in seeking to reduce inefficiencies and delays. This is not surprising when considering some of the issues arising:

- The police tended not to have any evidence when bringing suspects into custody. This had been a key finding in Phase One, and the police had undertaken to provide training to front-line officers to encourage them to undertake pre-arrest investigations in appropriate cases. It had not been possible for the police to prioritise this activity in time for the second phase of BLAST due to other demands on the training schedule.
- The number of referrals to the Bridewell was very low, particularly during the first four weeks of the Initiative. While the police had made changes which reduced the number of suspects brought into custody for minor offences, the Olympic Games also had an effect. In particular, police officers were required to take leave prior to the Games, and then to assist the Metropolitan Police when the Olympics were held at the end of July 2012.
- While the number of suspects brought into the Bridewell was subsequently seen to rise, following the escape of a detainee from custody there was an increase in security. This led to all legal advisers being barred from entering into the ground-floor custody suite, and having restricted access to the first floor. Not surprisingly, this was seen to have a negative impact on the new arrangements and on relations between the police and the defence.

### ***Working relations between custody sergeants and duty solicitors***

There had been improvements in working relations between the police and the defence during the first couple of weeks of the second phase, but only between a minority of custody sergeants and duty solicitors. There were some custody staff who seemed to resent the intrusion of duty solicitors into the ground-floor custody suite and the escape of a detainee seemed to provide an opportunity for reactionary attitudes within the police to become dominant. Similarly, while some duty solicitors took the opportunity to engage positively with custody sergeants, others were reluctant to change their existing practices and they continued to wait for the police interview before engaging in cases. Once security measures

were tightened up in the Bridewell, all legal advisers, whether willing to engage or not, were effectively denied access to custody sergeants.

The increase in security meant that the new arrangements could not be effective in helping to improve relations between practitioners. Without legal advisers having access to custody sergeants they were not able to make representations in cases. However, this was not seen to change current practices as most legal advisers seemed to adopt a passive approach in relation to police station work and seldom were representations made in any event. On the contrary, both the police and the defence seemed to tolerate unduly long delays and also, on occasions, the unlawful detention of suspects. While the exclusion of legal advisers from the main custody suite would have led to them becoming passive within the pre-charge process, the introduction of fixed fees for police station legal advice also seems to have encouraged a minimal response in relation to police station work.

### ***Police disclosure and the quality of pre-charge decision-making***

When examining the quality of legal decision-making within the pre-charge process a critical issue was seen to be the extent to which the police were prepared to disclose any evidence to the defence prior to the police interview. There were seen to be differences of opinion among police investigators about the amount of evidence they were willing to disclose. Some recognised that without providing any evidence they would expect a ‘no comment’ interview. Others, who were more distrusting of legal advisers, would disclose little or no evidence and, not surprisingly, these investigators complained about having ‘no comment’ interviews when solicitors were involved. There was also a difference of opinion between police investigators over when CCTV evidence would be shown to the defence. Some investigators would show this during the police interview, after first having taken the suspect’s account of events. Others said they would not show this evidence during a suspect’s first period of detention.

There was rarely seen to be any meaningful discussion taking place between police investigators and legal advisers when considering the strength of the evidence. This could lead to misunderstandings and a course of action being taken which could otherwise have been avoided. In cases where a police investigator considered the evidence to be ‘overwhelming’ and it was not, for example. Or where the strength of the evidence was not disclosed to the legal adviser, a ‘no comment’ interview could lead to a suspect being charged and the case later being discontinued in court. It could also lead to suspects who were eligible for a caution being prosecuted instead. While the involvement of legal advisers

would help to protect their client by prompting them to make ‘no comment’ in the police interview, an increasing number of suspects were bailed to return to the police station. As legal advisers rarely accompanied their clients on these second interviews, without having the benefit of legal advice suspects were more likely to have a responsive interview and to accept a caution even though no additional evidence had been produced.

There were concerns raised by the police over some legal advisers routinely advising their client to make ‘no comment’, irrespective of the strength of the evidence disclosed. This could lead to suspects who were eligible for a caution instead being prosecuted. Some police officers thought this was the cynical intention of the defence when seeking an additional legal aid payment in court. While some police investigators said they would accept cases back from the court for a caution to be imposed instead, others would refuse this course of action.

### ***Positive policing, police custody and social control***

The police were seen to be under pressure to take positive action when receiving an incident report and this section explores three different ways in which police custody and/or the criminal process could be used inappropriately when responding to such pressure. First examined was the potential ‘net-widening’ effect of bringing suspects into custody and invoking the criminal process for minor offences and borderline criminal activity. With the police still being under pressure to increase the detection rate there was a tendency for a criminal sanction to be imposed in cases even though it was not in the public interest to do so. There was also seen to be no effective filtering of cases entering into the criminal process even though police investigators described a significant minority of cases that they would deal with as ‘drivel’.

The second issue explored was that of police practices which involved ‘rounding up’ of known offenders and bringing them into custody for serious offences, such as a house burglary. It was said by custody officers to be mainly prolific offenders who were arrested and detained in custody for many hours without the police having any evidence. They also said that routinely these offenders would have their footwear and mobile phones removed and sent off for forensic examination. The ‘suspects’ would then be bailed to return to the police station subject to pre-charge conditions, usually including a condition of residence and a curfew. With the forensic tests often taking many months the bail conditions were seen by some police officers to be an effective form of social control and punishment. While prolific

offenders tended to request legal advice when brought into custody, there were no challenges coming from the defence over these practices.

The third issue concerns cases involving domestic violence where the police were seen to be under considerable pressure to take formal action. This was seen to cause difficulties in cases where a complaint was made to the police but the victim did not want to make a statement or support a prosecution and there was no corroborating evidence. As there was insufficient evidence in such cases for the CPS to support a charging decision the police would tend to impose a caution instead, as this created a formal record showing that the suspect had come to the attention of the police. Such practices tended to be challenged by legal advisers, as a caution also requires there to be sufficient evidence to prosecute, but only around a quarter of suspects who received a caution requested legal advice.<sup>3</sup>

## **Discussion**

The research findings have helped to identify a fragmented system which can lead to inefficient case management and poor legal decision-making. There were found to be poor working relations between the police and the defence, as well as between the police and the CPS. Indeed, lawyers more generally seem to have been sidelined within the pre-charge process. With no effective access to custody sergeants, solicitors tend to challenge police decisions in court, or otherwise they can become accepting of police practices which can undermine the legal rights of their clients. In relation to the CPS, prosecutors have become more remote from the police in relation to pre-charge decision-making, which can lead to issues being addressed in court rather than resolved earlier on in the police station.

This study is intended to provide an evidence base for national and local policy makers when considering reform of the criminal justice system. It has helped to highlight some of the complexities involved when adopting a ‘whole-systems’ approach to evaluating the criminal process. The system requires agencies to be ‘independent’ but at the same time to be ‘interdependent’ when working together to achieve an efficient and effective system of justice. It also highlights the time and effort required in turning processes around. Indeed, while there had been no progress in helping to improve working relations between the police and the defence during the second phase of BLAST, subsequently some progress has been made with legal advisers now being allowed to enter into both custody suites.

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<sup>3</sup> This also includes a reprimand which, for a juvenile offender, is the equivalent of a simple caution.

It is in the police station where the criminal process is invoked and what is said in the police interview at this early stage can determine whether cases later on are either won or lost. With problems having been identified in the Bridewell, and to see whether such issues were endemic within the wider criminal justice system, a small-scale study was undertaken of Crown Court cases.<sup>4</sup> This study highlights the fragmented way in which the criminal process operates, not just between practitioners but also between the different stages from the police station through to court. The findings in both the police station and the Crown Court help to illustrate how performance targets set for individual organisations, as well as the structure of legal aid remuneration, can influence silo methods of working which lead to inefficiencies and delays. These are not local problems as similar issues have been raised in the White Paper, ‘Swift and Sure Justice’ (Ministry of Justice, 2012). In particular, there are criticisms of target-setting which has encouraged a fragmented rather than coherent service.

When considering the potential for reform in this police force area, Chief Officers were presented with a proposal to consider developing a new performance measure which could be piloted as part of the government’s reforms of the criminal justice system. The new measure would seek to encourage a ‘systems-based’ approach to performance management by measuring the performance of cases from arrest through to conviction. This could be piloted in relation to ‘either way’ offences being dealt with in the Crown Court and the potential impact on case management could then be evaluated at different stages of the criminal process. This could include measuring how long cases take from arrest through to charge, for example, which is an area where currently there can be significant delays. It could also include a measure of how many police decisions to charge later on lead to a conviction at court. In seeking to improve legal decision-making within the Crown Court, and in order to reduce delays and the number of cases proceeding unnecessarily to trial, there could be a requirement for an early joint review of new cases by the CPS and the defence.

There is willingness among Chief Officers in this county to address the problems raised and to work together in seeking to improve the effectiveness and efficiency of the criminal process. However, in taking forward such change this requires the support and engagement of national policy makers and other stakeholders.

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<sup>4</sup> This included cases from the Bridewell and from other police stations in the county, as well as from a neighbouring county.

## **1. Introduction**

The new arrangements under the Bridewell Legal Advice Study (BLAST) were first piloted over a three-month period from February 2011.<sup>5</sup> The Initiative was aimed at helping to improve access to legal advice by placing duty solicitors full-time in a busy city-centre police station. Locating duty solicitors within the station was intended to help engender closer working relations between custody sergeants and legal advisers, thereby helping to improve efficiencies and reduce delays. This was particularly important because legal advisers had been excluded from the main custody suite in this station for over six years.<sup>6</sup> For a number of reasons, which are set out in the BLAST Interim Report, the first phase of the Initiative was not effective in meeting these aims and objectives.<sup>7</sup> The police and the defence agreed to address the issues raised and to support a second phase of BLAST, which commenced in July 2012, subject to a three-month review.

Set out in this report firstly, by way of background, is a brief summary of key issues arising in BLAST I and then the changes agreed for BLAST II. This also includes a brief description of how the new arrangements were seen to operate in practice during the first four weeks of the Initiative. Also highlighted are two main issues which were seen to have had a negative impact on the number of referrals and on relations between the police and the defence. Following a brief summary of the methods involved, the main findings arising out of the BLAST II research are examined. It became apparent four weeks into the second phase that BLAST II was not going to be any more effective in meeting its aims and objectives than the first phase. As the police station is the start of the criminal process, and to examine whether some of the issues identified were endemic within the criminal justice system more generally, a study was undertaken of Crown Court cases.<sup>8</sup> The findings arising out of this second phase of BLAST and the Crown Court study were presented to local Chief Officers and proposals for change were discussed.

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<sup>5</sup> The police station involved has not been named and instead the colloquial term the ‘Bridewell’ has been used.

<sup>6</sup> In addition to duty solicitors the Initiative was supported by other legal advisers who were experienced accredited police station representatives. The terms ‘solicitor’ and ‘legal adviser’ are used interchangeably in this report.

<sup>7</sup> See Kemp (2012).

<sup>8</sup> Some of the findings arising out of the study of Crown Court cases are included in Appendix A.

## **2. Background**

The BLAST Initiative involves duty solicitors being based full-time in a busy city-centre police station. In the first phase the research study examined relationships between custody sergeants and legal advisers and also working practices within the criminal process. It is important to mention the context within which these new arrangements were operating, with legal advisers having been excluded from the main custody area for over six years. While statistical analysis of custody records for Phase One found the Initiative to have had little impact on the take-up of legal advice and the average length of time people were held in custody, there were noted to be some improvements in relationships between the police and the defence. However, there were also noted to be potential barriers to the new arrangements working effectively. After three months in operation the first phase was concluded and the research findings were presented to local practitioners.

Set out by way of background are first the key issues arising out of Phase One of BLAST which needed to be addressed if the new arrangements were to be effective in helping to improve access to legal advice and to reduce delays. Next outlined are the changes made to the arrangements, which were intended to address the problems identified. Also presented are some of the issues found to have implications for the operation of the BLAST Initiative, which arose out of early observations.

### ***2a) BLAST I – key issues arising***

The first phase of BLAST was subject to a three-month review and an Interim Report was circulated locally to the police and the defence. Included in that Report were proposals for addressing some of the problems identified. The three main problems highlighted were as follows:

- There had been difficulties with the DSCC<sup>9</sup> receiving referrals from custody sergeants of cases to be referred on to the on-site duty solicitor. This was leading to custody sergeants instead referring these cases under the usual duty solicitor arrangements, which led to some confusion with cases not being referred directly to the solicitors' room.

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<sup>9</sup> The ‘Defence Solicitor Call Centre’ receives from the police all requests for legal advice which are then passed through to the appropriate solicitor.

- While duty solicitors were available to provide early access to legal advice the police tended not to have any evidence when bringing suspects into custody. As the Initiative progressed it seemed disingenuous to try to encourage suspects to have early legal advice but then have to wait many hours before being interviewed by the police.
- It had been agreed with senior police officers in custody that duty solicitors would be able to enter into the ground-floor custody suite, wearing a yellow lanyard so that they were visible to the police. There were some custody staff who resented this intrusion and duty solicitors could be chastised for entering into this space. With duty solicitors not wanting to put any strain on their future relations with custody staff, as time went on they tended not to enter into the custody suite.

***2b) BLAST II – changes made to the new arrangements***

In response to the issues raised it was agreed between the police and the defence that the following changes would be made in Phase Two:

- Instead of contacting the DSAC when recording a request for the on-site duty solicitor, the DSAC and Legal Services Commission agreed that all requests for the duty solicitor during weekdays (9 am to 5 pm) would be made by custody sergeants directly to the on-site duty solicitors. The solicitors were then to contact the DSAC to provide details of cases referred.
- The police agreed to provide training to front-line officers which would require them to carry out pre-arrest investigations, when appropriate to do so. It was also agreed that, in cases where the police came into custody with some evidence, there would be an expectation of an early interview in cases involving the duty solicitor. This was intended to help expedite cases.
- In order to help improve relations between custody sergeants and legal advisers it was agreed with senior police officers that duty solicitors would have access to the ground-floor custody suite when invited to enter it by custody sergeants or police investigators.

In the second phase the research focus was to be on the quality of legal decision-making within the police station. The Crown Prosecution Service was invited to be involved in this second phase but due to work pressures this invitation was declined.

### ***2c) BLAST II in action***

During the first four weeks of BLAST II my intention, as in the first phase, was to combine my role as a researcher with that of a facilitator. This first observational phase of the research was also used to help familiarise myself with how the new arrangements were working in practice and to report any issues arising to either the police or the defence. Initially this tended to involve reminding custody staff about the new arrangements. In the first four-week period, two key issues were seen to arise as follows:

- Front-line police officers were tending not to have any evidence when bringing suspects into custody. The police confirmed that they supported the proposal for the police to carry out pre-arrest investigations, in appropriate cases, and to encourage an early interview. The training for front-line officers had been delayed and was said to be scheduled for early 2013. As in BLAST I, without the police having any evidence when bringing suspects into custody the early availability of legal advice was unlikely to help expedite matters.
- There was a low volume of cases being brought into the Bridewell, which meant that the number of referrals to the duty solicitor was proportionately also low. The lack of referrals initially placed a strain on the new arrangements, particularly as duty solicitors were providing cover in the station but not always receiving a referral for legal advice.

As discussed below, when considering relations between the police and the defence, it is thought that the Olympic Games would have had an impact on reducing the number of detainees brought into the Bridewell during the early stages. Four weeks into the new arrangements a prisoner escaped from custody and security was increased. With new doors, locks and bolts this led to all legal advisers being barred from entering into the ground floor custody suite, and having restricted access to the first floor. This meant that there was no opportunity for duty solicitors to wait around the custody suites and have informal discussions with custody sergeants, which can be helpful in developing positive working relationships.

A short while later there was to be another change to the ground floor, which further restricted the movements of legal advisers within the Bridewell.<sup>10</sup> When entering into the reception area there was a small room which legal advisers, appropriate adults and interpreters would use when waiting for their case to be dealt with. This room was then taken over by custody staff as an additional rest room and instead legal advisers and others were sent through to the duty solicitors' room, which was further up the corridor and out of sight of custody staff.<sup>11</sup> Not surprisingly, these changes were later seen to have had a detrimental impact on relations between the police and the defence.

### **3. BLAST II Research Study**

It was once again agreed by the local agencies that the second phase of BLAST would be subject to research undertaken by the Legal Services Research Centre, the independent research division of the Legal Services Commission. The focus for this research study was on the quality of legal decisions made in the pre-charge process, which included examination of working relationships between practitioners within the criminal process.

During the first observational phase of the study, which covered the first four weeks of the new Initiative, it was helpful to see how the new arrangements were working in practice and to use this information when considering the appropriate research questions to be addressed. It was during this four-week period that the research specification was prepared, which included the proposed research questions.<sup>12</sup>

Firstly, and in order to provide a comparison between both phases of BLAST, the following two research questions considered in the first phase were also examined in Phase Two:

1. Has the Initiative led to changes in communications between custody sergeants and duty solicitors?
2. What impact did the Initiative have on the take-up of legal advice, duration and case outcomes?

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<sup>10</sup> Solicitors would enter into the reception area and report to the desk station, with detention officers liaising between them and police officers.

<sup>11</sup> This was also a small room which meant it was physically difficult to accommodate so many people. It was also difficult for duty solicitors to hold confidential conversations in cases when other people were present.

<sup>12</sup> Some of the research questions had been dependent on gaining access to police electronic case files. While such access had been agreed with the police, there were long delays in completing the required vetting procedures and formal access was not confirmed until early 2013 – too late for this study. Accordingly, the research questions were revised.

In relation to examining the quality of legal decisions made in individual cases, the following research questions were addressed:

3. What evidence are the police disclosing to the defence prior to the police interview?
4. Does the evidence disclosed to the defence have an effect on what is said in the police interview?
5. How are the police ensuring that the legal rights of suspects are upheld during their detention and investigation in police custody?
6. How are the police and the defence ensuring that the legal rights of suspects are upheld when criminal sanctions are imposed?

### ***Methods***

A mixed-methods approach has been adopted to allow the research questions to be examined from different perspectives. There were two distinct phases to the research study which are commented on as follows:

#### *Research Study: Phase One*

The first phase of research was conducted over a period of 20 days from the commencement of the new arrangements – from 9 July to 3 August 2012. These ‘first observations’ were predominantly of the two custody suites and the procedures utilised by the police to process suspects were examined. This included noting custody sergeants’ responses when dealing with cases eligible for the on-site duty solicitor. There were observational notes made of suspects being booked into custody and of interactions taking place between the police and the defence. I also took the opportunity to speak informally to custody sergeants, police officers and legal advisers and their comments were recorded in a fieldwork diary.

#### *Research Study: Phase Two*

The research focus in the second phase was on individual cases and the quality of legal decision-making. It had been anticipated that arising out of the first observations would be cases which involved the on-site duty solicitor, which could then be examined. However, due to the low volume of cases dealt with at the Bridewell during the first four weeks of the Initiative, this was not feasible. The methods in the second phase included observations, a

study of individual cases, interviews with police investigators and a statistical examination of police custody records.

These ‘second observations’ were conducted over a period of 17 weeks – from 6 August to 2 December 2012. The observations were more sporadic during this second phase and in total there were 32 days spent observing police investigators and the custody suites; 29 days during the hours of the Initiative (weekdays between 9 am and 5 pm) and three days were spent observing at night-time over three weekends. In these ‘second observations’ my main focus was on the work of the Police Review Team (PRT), which comprises police investigators who prepare cases on behalf of front-line police officers. These investigators conduct interviews with suspects and liaise with the police and/or the CPS over the case outcome.

My observations included the PRT office where practitioners would discuss cases and other relevant issues between themselves and also with other police officers. Also during this second phase the custody suites and the duty solicitors’ room would be observed. Notes were recorded in my fieldwork diary of relevant comments made by practitioners in relation to the new arrangements and/or individual cases.

In total 45 cases have been reviewed. These include 20 cases which were dealt with by the Police Review Team and a further 25 cases arising out of my observations of police custody and duty solicitors. Within the PRT sample I was shown the written disclosure provided to the defence and/or the front custody sheet, and examined the custody records in all 20 cases; in eight of those cases I went on to observe the police investigator providing disclosure to the defence; in four of these I also observed the police interview. In the 25 ‘fieldwork’ cases, I had first made a note of potentially interesting cases and then followed these up through examination of the relevant custody records. In six of these cases I observed the police providing disclosure to the defence and in three cases I observed the police interview.<sup>13</sup>

It was during the second phase of the research study that structured interviews were held with seven members of the Police Review Team.<sup>14</sup> The average length of the interviews was 35 minutes and these were digitally recorded and fully transcribed. Finally, a quantitative analysis of 7,500 custody records has been undertaken by Ash Patel, from the Legal Services

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<sup>13</sup> In total I observed the police providing disclosure to the defence in 14 cases and sat in on the police interview in seven cases.

<sup>14</sup> For reasons of confidentiality the initials of the police investigators interviewed have been replaced with a coded reference. In addition, and for the same reason, comments made by the police and the defence are referred to in the masculine even though references also relate to female participants.

Research Centre. This comprised all new records opened during the second phase of the BLAST Initiative, from 9 July to 5 October 2012, and during the corresponding three-month period in 2011.

#### **4. BLAST II: Research Findings**

The research findings are explored within four different sections. As noted above, the first section examines implications of the new arrangements on relationships between the police and the defence, and secondly presented are findings arising out of a statistical analysis of police custody records. In the third section are explored issues concerning the quality of legal decisions made in the police station, and in the fourth section, we examine the police use of custody within the context of positive policing and social control.

##### **4.A Police custody and working relations between custody sergeants and the defence**

The new BLAST arrangements meant that duty solicitors were available in the police station during weekdays, from 9 am to 5 pm. Custody sergeants were to inform suspects who had refused legal advice that duty solicitors were available in the station<sup>15</sup> and all requests for the duty solicitor were to be referred directly to the solicitors' room. The potential impact of the new arrangements on working relations within police custody is first examined from the perspective of custody sergeants and then the defence. This also includes consideration of the potential impact of increased security measures on working relations between the police and the defence following the escape of a prisoner from custody.

###### ***Custody sergeants' attitudes towards legal advice and advisers***

From the commencement of BLAST II, duty solicitors commented on some custody sergeants being more encouraging of the on-site scheme than others. When first observing custody sergeants booking suspects into custody it was noted that most would mention the on-site duty solicitor to suspects who refused legal advice, although this could have been due to my presence reminding them of the Initiative. After the new arrangements were 'bedded down', after a couple of weeks, it seemed that most custody sergeants were fairly non-

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<sup>15</sup> This requirement was little more than is currently expected because when suspects decline legal advice they should be offered the opportunity of speaking to a solicitor over the telephone (see PACE Codes of Practice para. 6.5). While there were occasions where custody sergeants would invite a suspect to speak to a solicitor over the telephone if they had refused legal advice, this was not routine practice.

committal about the new arrangements. There were some cases where they did not mention the on-site duty solicitor when legal advice had been refused, but in other cases they would do so. It seemed that legal advice was encouraged in cases where the custody sergeants perceived the suspect as being either ‘deserving’ or ‘needing’ of legal advice, when dealing with first-time offenders for minor offences, for example.<sup>16</sup>

There were a small number of custody sergeants who were seen to be enthusiastic and supportive of the new arrangements. Indeed, this was commented on by duty solicitors who noticed an increase in the number of referrals when these sergeants were on duty. Conversely, there were also a small number who were seen to be opposed to the new arrangements because, as one put it, “This is costing the taxpayer money and as a taxpayer I resent it” (F/N 11.7.12).<sup>17</sup> Another custody sergeant, who also seemed to resent the Initiative for encouraging legal advice, appeared to be discouraging a suspect from having legal advice in the following case:

*Case A.1 (F/N.2)*

Custody sergeants are required to read out to suspects their three legal rights and to note decisions made in respect of each right.<sup>18</sup> In this case the custody sergeant had rolled all three rights together and he then asked the suspect if he wanted to exercise any of those rights. The suspect looked somewhat bemused and replied, ‘No’. When the suspect was being searched I took the opportunity to ask the custody sergeant what he had been arrested for, he replied ‘assault by penetration’, which is a serious sexual assault. I pointed out to the custody sergeant that he had not mentioned the on-site duty solicitor. The custody sergeant rectified this omission and when the suspect was next asked if he wanted legal advice he replied in the affirmative. The suspect was later bailed back to the police station and no further action was taken.

Another custody sergeant appeared to collude with a police officer when seeking to deter a suspect from having legal advice in this case:

*Case A.2 (F/N.5)*

In this case I overheard a police officer speaking to a suspect while they were waiting in the queue to be booked into custody. The suspect had been arrested for cultivating cannabis and the officer told him that he was ready to go straight into the interview if he did not have a solicitor. The suspect said that his solicitor had been informed of this arrest and would be at the station in just over an hour. As the suspect was booked into custody the custody sergeant informed him that the officer was ready to conduct the interview and if he wanted to see his

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<sup>16</sup> Similar issues were discussed in the BLAST Interim Report - see Kemp (2012) pp. 29-33.

<sup>17</sup> This is the reference to the ‘fieldwork note’ (F/N) and the date on which the observation/comment was noted.

<sup>18</sup> The first right informs suspects that they can have someone informed of their arrest, while the second right advises them that they have access to free and independent legal advice. With the third right suspects are advised that they can consult with the PACE Codes of Practice, although very rarely is this right exercised.

solicitor he would have to wait in a cell. The suspect declined legal advice; he went straight into the interview where he admitted the offence and he was later charged.<sup>19</sup>

There was another case where a solicitor said that he had represented a defendant at court who was charged with an offence of rape (F/N 31.8.12). The defendant was of good character and when the solicitor asked him why he did not have legal advice at the police station his client said that the police told him it would be “a lot quicker” without a solicitor.

Research has identified how the police can sometimes use the threat of delays as a ploy to discourage a suspect from having legal advice.<sup>20</sup> With police custody now being monitored through CCTV cameras and microphones, it was rare to see custody sergeants actively seeking to discourage suspects from having legal advice. As explored in an earlier study, however, when required to be ‘impartial’, custody sergeants were seen to have discretion to be either ‘encouraging’ or ‘discouraging’ of legal advice, particularly when dealing with suspects who were confused or unsure about what to do.<sup>21</sup> Questions also arise about the requirement for custody sergeants to be ‘impartial’ when advising suspects of their legal rights when being dealt with for very serious offences. There were a number of cases observed where suspects were arrested for offences of rape and murder but legal advice was rejected. This was the situation in the following two cases:

- A 17-year-old had been arrested on suspicion of murder. He refused legal advice and when asked for the reason why he replied, “I just don’t want one.” Despite the young age of this suspect, and the seriousness of the offence for which he had been arrested, he did not have either a solicitor or an appropriate adult during the police investigations (F/N 26.7.12).<sup>22</sup>
- Also arrested for an offence of murder was an 18-year-old who initially declined legal advice. The suspect was interviewed by the police without a solicitor on three separate occasions. He subsequently agreed to have legal advice after a solicitor contacted the police with ‘third party’ instructions from the suspect’s mother (F/N 2.9.12).

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<sup>19</sup> In order to try to protect suspects from police pressure being used to discourage legal advice, PACE requires that an inspector has to get involved in cases where someone changes their mind about having a solicitor. This protection did not arise in this case because the suspect was not noted on the custody record as having refused legal advice when he was first brought into custody.

<sup>20</sup> See Sanders et al. (1989), Dixon et al. (1990), Brown et al. (1992) and Kemp (2013).

<sup>21</sup> See Kemp (2013).

<sup>22</sup> At the age of 17 years the suspect is considered to be a juvenile but the protection of an appropriate adult is only mandatory for those aged below 17 years, although access can be arranged at the discretion of the police. There is currently being heard a judicial review on the grounds that everyone under the age of 18 should be treated as a juvenile. See Bowcott (2013).

In a sample of 30,000 custody records, drawn from 44 police stations in four police force areas, we found that a quarter of suspects arrested for rape and homicide offences refused legal advice. Instead of custody sergeants remaining ‘impartial’ when dealing with the legal rights of a suspect arrested in relation to very serious offences, some said they would prefer to advise suspects about the benefits of having legal advice within an adversarial system of justice.

While the BLAST arrangements did not lead to custody sergeants generally becoming more encouraging of legal advice, examined next is the extent to which duty solicitors were seen to engage in the second phase of BLAST.

#### ***Duty solicitors’ engagement with custody sergeants***

It had been noted in Phase One of BLAST that the continued exclusion of duty solicitors from the ground-floor custody suite was a potential barrier to the new arrangements working effectively. With senior police officers having agreed that duty solicitors would be able to enter into the ground-floor custody suite in Phase Two, it was envisaged that more would take this opportunity to do so. Despite the enthusiasm of a small number of duty solicitors, who routinely went into both custody suites to introduce themselves when coming on duty, and to respond to requests for legal advice (prior to the increase in security), the majority seemed content to wait in the solicitors’ room and to deal with cases in the usual way.<sup>23</sup> One duty solicitor commented on what he considered to be negative attitudes coming from some of his colleagues when he said, “What’s up with them? They just sit there getting bored. That’s not what this is all about” (F/N 17.7.12). Such passivity was not what the BLAST Initiative was about and the following case was an example of good practice seen on the first day:

#### ***Case A.3 (F/N.1)***

A suspect had been arrested at 23:30 for an offence of indecent assault and at 11:30 the next day he requested the duty solicitor. Having taken instructions the duty solicitor made representations to the custody sergeant to the effect that there had been unduly long delays in this case due to the police awaiting CCTV evidence. The custody sergeant made enquiries of the police and ascertained that this evidence would not be available for some time. At the suggestion of the solicitor, and in order to avoid further delays, the custody sergeant agreed that the suspect would be bailed to return to the station the next day.

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<sup>23</sup> This meant that some duty solicitors would wait until the police were ready to conduct an interview before responding to a request for legal advice. They did not enter into the ground-floor custody suite either to discuss cases with custody sergeants or to make representations. Instead they would liaise with detention officers when first coming into custody and they would have access to the custody record.

As considered above, there were seen to be good working relations over the first couple of weeks, but only between a small number of custody sergeants and duty solicitors. The initial enthusiasm of a few was also to be challenged. By the third day, for example, there were noted to be tensions as some custody staff objected to duty solicitors coming into the ground-floor custody suite. A complaint was made to an inspector over one incident, where a duty solicitor had entered into a prohibited area within the custody suite (F/N 12.7.12). From enquiries made the inspector established that such access had been authorised by a custody sergeant. While this explanation helped to resolve the issue on this occasion, it was evident that the presence of legal advisers within the custody suite was resented by some custody staff. However, from an exchange observed between a solicitor and a detention officer, there seemed to be a misunderstanding about the role of legal advisers within police custody. When the duty solicitor asked to speak to his client, for example, the detention officer replied that it was not appropriate because the police were not ready to conduct the interview (F/N 9.8.12). To the detention officer's surprise, the solicitor explained that he had a right to see his client at any time following a request for legal advice (subject to certain restrictions). This exchange between practitioners also helps to illustrate that it is common practice among legal advisers to wait until the police interview before speaking to their client in person.

An important finding arising out of both phases of BLAST has been the passive and non-adversarial way in which the majority of legal advisers engaged in the pre-charge process. Such passivity on the part of legal advisers within an adversarial system of justice was seen to undermine clients' legal protections. It was of concern to some custody officers that legal advisers were not more challenging of police practices, particularly over unduly long delays and, in some cases, over the grounds on which their clients were detained. There had been similar findings of such passivity in earlier studies of police station legal advice.<sup>24</sup> In response an accreditation scheme for duty solicitors and legal representatives was set up and this was seen to help improve the quality of legal advice (see Bridges and Choongh, 1998).<sup>25</sup> However, it seems that since solicitors are now paid a fixed fee for police station work, instead of being paid for the time spent on cases, including waiting time, this has had a detrimental impact on the quality of legal advice.<sup>26</sup>

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<sup>24</sup> See McConville et al. (1994) pp. 83-90 and Choongh (1997) pp. 158-165.

<sup>25</sup> The Legal Services Commission also incorporated quality targets into the General Criminal Contract.

<sup>26</sup> See Kemp (2012) pp. 110-117.

While there were seen to be improvements in working relations between some custody sergeants and duty solicitors early on in BLAST II, this was to change following the escape of a prisoner and as security within the Bridewell was increased.

#### ***Increased security and implications for working relations within police custody***

Within both the police and the defence there were seen to be polarised attitudes; those who seemed to be supportive of reform and inter-agency cooperation and others who appeared to be resistant to change. Not surprisingly, physical improvements to security in the Bridewell, as noted above, were to have a detrimental impact on relations between custody sergeants and legal advisers. Indeed, it seemed that the escape of a detainee provided an opportunity for reactionary attitudes within the police to become dominant. This was not limited to the few custody sergeants who were seen to have negative attitudes towards legal advisers – on the contrary, the exclusion of solicitors seemed to be welcomed by other custody sergeants who had appeared to be more supportive of the new arrangements. When speaking to a custody sergeant who had made positive comments about the on-site duty solicitor scheme, for instance, when asked what he thought about solicitors being excluded from the first-floor custody suite he replied, “To be honest with you I welcome it. It could be a nuisance when they [legal advisers] were hanging around up here, particularly as they kept pestering us about what was happening in their cases” (F/N 23.11.12).

With the BLAST arrangements seeking to improve access to legal advice, these changes were seen to damage relations between the police and the defence. The changes also meant that legal advisers had limited access to custody sergeants, which restricted their ability to make representations in cases. Although in practice, custody sergeants complained that rarely were representations made by the defence in any event. While senior solicitors complained to me about the detrimental impact of the new arrangements on access to legal advice they did not seek to challenge the police over the effect of the changes in security on further marginalising their legal representatives within the police station.

#### **4.B Implications for the take-up of legal advice, duration and case outcomes**

A statistical analysis was undertaken of police electronic custody records for the period 9 July to 5 October 2012 and, for comparative purposes, over the same period of time in 2011. The information extracted includes details of the offence for which the suspect had been arrested, how long they were held in custody, whether or not legal advice was requested and the case

outcome. The data examined relates to the first period of detention for all new suspects arrested and brought into custody during this time: a total of 7,500 cases.

### ***The take-up of legal advice***

In order to test whether there had been a significant change in the request rates for legal advice due to the second phase of BLAST, a binary logistic regression model was fitted. This was to see whether request rates had changed during the pilot period and during the corresponding period in the previous year (2011).<sup>27</sup> Crucially, controlling for other variables included in the model, differences in the take-up of advice between the two periods were not statistically significant. In percentage terms, simulated from the model in Table A1 (i.e. keeping other variables in proportion relative to their representation in the dataset as a whole),<sup>28</sup> 42.3 per cent of detainees requested advice in 2012 compared to 40.5 per cent in 2011, suggesting that BLAST did not have a notable effect on the take-up of advice.

### ***Time spent in custody***

A statistical model was fitted to the data in order to model the length of time spent in police custody.<sup>29</sup> Controlling for other variables introduced into the model showed that the average length of time suspects were held in custody was just over nine minutes shorter during the pilot period, compared to the corresponding period in 2011; though this difference was not statistically significant. Using the raw data, overall custody duration was 10:00 hours during the 2012 period and 9:47 in 2011.

The model also reconfirms that requesting legal advice significantly increased the average custody duration. Controlling for other variables, requesting legal advice led to an increase of 3:54 hours in detention when compared with those who refused such advice. Set out in Table 1 is the mean custody duration derived from the raw data which shows that the average time taken in cases involving a solicitor has decreased.

*Table 1: Mean duration of detention (hours and minutes)*

| <b>Solicitor Requested</b> | <b>2011</b> | <b>2012</b> |
|----------------------------|-------------|-------------|
| No                         | 07:56       | 08:42       |
| Yes                        | 12:30       | 11:46       |

<sup>27</sup> Full details of the model fitted, its output and interpretation are set out in Table A1 of the statistical report included in Appendix B – p. 73.

<sup>28</sup> See the statistical report in Appendix B.

<sup>29</sup> A generalized linear model was fitted using STATA 11 to model duration. For more detail about the model fitted, its output and interpretation, see Table A2 in the statistical report in Appendix B – p. 76.

### **Case outcomes**

Changes in the outcomes of cases between the comparator periods are set out in Table 2 below.

*Table 2: Case outcomes by the two comparator periods*

| <b>Case Outcome</b>          | <b>2011</b> |          | <b>2012</b> |          |
|------------------------------|-------------|----------|-------------|----------|
|                              | <b>No.</b>  | <b>%</b> | <b>No.</b>  | <b>%</b> |
| Released / no further action | 1511        | 36.0     | 1187        | 35.8     |
| Out-of-court disposal        | 882         | 21.0     | 636         | 19.2     |
| Charge and bail              | 1308        | 31.2     | 1101        | 33.2     |
| Charge and remand            | 416         | 9.9      | 353         | 10.7     |
| Other                        | 77          | 1.8      | 35          | 1.1      |
| Total                        | 4194        | 100      | 3312        | 100      |

There was seen to be little difference in the outcome of cases during the two periods of time, although there was a decrease of 882 in the number of suspects dealt with between the two comparator periods.

Set out in Table 3 is the extent to which case outcomes changed during the two comparator years depending on whether or not legal advice was requested.

*Table 3: Case outcomes by legal advice over the two comparator periods*

| <b>Case Outcome</b>          | <b>2011</b>        |                 | <b>2012</b>        |                 |
|------------------------------|--------------------|-----------------|--------------------|-----------------|
|                              | <b>No Advice %</b> | <b>Advice %</b> | <b>No Advice %</b> | <b>Advice %</b> |
| Released / no further action | 57.3               | 42.7            | 59.6               | 40.4            |
| Out-of-court disposal        | 78.8               | 21.2            | 75.9               | 24.1            |
| Charge and bail              | 57.7               | 42.3            | 56.2               | 43.8            |
| Charge and remand            | 34.1               | 65.9            | 33.7               | 66.3            |
| Other                        | 48.1               | 51.9            | 54.3               | 45.7            |
| Total                        | 59.5               | 40.5            | 58.8               | 41.2            |

There was seen to be little difference in the proportion of suspects receiving advice in relation to the various outcome categories between the two comparator years, although there was a slight decrease in the proportion of suspects who had legal advice when no further action was taken and a slight increase in those receiving an out-of-court disposal.<sup>30</sup>

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<sup>30</sup> There was noted to be a change in the proportion of suspects dealt with by way of ‘other’ disposal, but there were just 35 suspects in this category in 2012.

When examining case outcomes during the first period of detention an important difference observed was in the number of cases where suspects were bailed to return to the station at a later date because the investigation was ongoing. In the comparator period in 2011, for example, there were 54 cases where suspects were bailed to return to the police station compared with 241 in 2012.

### ***Comparing findings between the two phases of BLAST***

When comparing findings between the two phases of BLAST there was noted to be a similar request rate for legal advice: 43.0 per cent in 2011 and 42.3 per cent in this study. Using the raw data, the overall average custody duration was seen to have increased from 8:45 hours in Phase One (from February to May 2011) to 10:00 hours in Phase Two (from July to October 2012). When compared with custody records for this station in 2009, it seems from the raw data that there was an increase of over two hours in the average length of time suspects were detained: 7:50 hours in 2009 rising to 10:00 in 2012.<sup>31</sup> However, there was a decrease in the average length of time suspects were held in custody depending on whether or not legal advice was requested. When controlling for other variables in the model, requesting a solicitor in the first phase of BLAST added on average five hours to the time spent in custody when compared with suspects who declined legal advice, and in Phase Two there was a difference of almost four hours.

So far as case outcomes were concerned, when comparing the findings over the two phases of BLAST there was noted to be an increase in the proportion of suspects released with no further action taken, rising from 26.9 per cent in 2011 (February to May) to 35.8 per cent in 2012 (July to October). There was also a slight decrease in the proportion of suspects charged and bailed to court – reducing from 38.7 per cent in 2011 to 33.2 per cent in 2012 – and also charged and remanded to court – a decrease from 13.2 per cent in 2011 to 10.7 per cent in 2012.

In relation to the proportion of suspects requesting legal advice, when compared with the case outcomes, the main difference was noted to be in relation to those charged. In the first phase of BLAST, for example, the request rate for those charged and bailed to court was 48.2 per cent in 2011 and this decreased to 43.8 per cent in 2012, but in relation to those charged and remanded in custody the proportion requesting legal advice increased from 56.7 per cent to 66.3 per cent.

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<sup>31</sup> This police station was included in a study of 30,000 police electronic custody records, which had been taken over a two-month period in 2009. See Kemp (2013) – the Bridewell is Police Station B.

Despite the problems encountered during the second phase of BLAST, there did seem to have been some improvements, particularly a reduction in the average length of time suspects spent in custody in cases involving a solicitor. There was also seen to an increase in the proportion of suspects requesting legal advice when being dealt with for serious offences, or at least those who had been remanded in police custody.

#### **4.C Police disclosure and the quality of pre-charge decision-making**

The intention in this second research phase had been to observe and examine cases dealt with by the on-site duty solicitors but this had not been feasible due to the low volume of cases referred during the first few weeks. Instead the supervisor of the Police Review Team (PRT) kindly allowed me to examine cases being dealt with by his team of police investigators. Issues arising are firstly examined in relation to the potential impact of disclosure on ‘no comment’ interviews, then on the extent to which CCTV evidence is disclosed, and finally on disclosure and police cautioning practices. Also explored are issues relating to the disclosure of evidence on relations between the police and the defence.

##### ***Police disclosure and ‘no comment’ interviews***

There were noted to be different approaches adopted by police investigators when deciding what evidence to disclose to legal advisers. Most investigators interviewed said they would disclose evidence, although only ‘within reason’, and that this could depend on the legal adviser involved. As this respondent put it, “I will reveal some things but not others” (VT) and another said, “I’ll open up more to some legal advisers than others” (CP). It was interesting to observe an informal conversation taking place between police investigators when they discussed their different approaches to providing disclosure (F/N 18.7.12). Some respondents said that they would provide ‘something’ to the defence by way of disclosure, because without this they would expect a ‘no comment’ interview. Others said they were would give only a ‘little’ by way of disclosure.

There was seen to be the potential for conflict in cases involving a legal adviser where a police investigator was not prepared to provide much by way of disclosure. As this police investigator put it:

“The legal advisers can sometimes be bloody minded because they want more disclosure and I think ‘You’re not having it, I’m not going to give you more’. The solicitors should speak to their client and if they’ve done it then they should tell them to say so. It’s better that they admit it rather than going ‘no comment’ and getting charged.” (UC)

This comment helps to highlight the ‘moral’ rather than ‘legal’ stance which some police investigators could adopt. Indeed, a couple of respondents felt that disclosure was not necessary in some cases because suspects should be required to say whether or not they had committed an offence without being shown any evidence. By being seen to routinely provide disclosure, a police investigator explained how this could also cause difficulties, “If we always told them what evidence we’d got then they would know every time we had nothing” (UC). If police investigators provided little by way of disclosure it is not surprising if they then got a high proportion of ‘no comment’ interviews.

While the practice of some police investigators was to provide disclosure to the defence, there were concerns raised that some legal advisers always told their clients to make ‘no comment’, irrespective of the strength of the evidence. This was the view of one respondent, “You know that from some legal advisers you will always get a ‘no comment’ interview. It can be down to the individuals involved and sometimes the firm. Some inexperienced reps [representatives] are told by their firm to go ‘no comment’” (LN). Another respondent said, “Some solicitors have a propensity to advise their client to make ‘no comment’ and you can predict it. There’s a lovely chap and his tactic is to tell his client to say nothing and to see what the police have got. You get so many guilty pleas from the solicitor at court but not at the station” (UC).

There can be a number of reasons why solicitors might advise their clients to make ‘no comment’ during the police interview. In the following two cases are highlighted different reasons why a ‘no comment’ interview might be forthcoming:

*Case C.1 (PRT.14).*

This case involved an offence of domestic violence. The solicitor was provided with written disclosure but he said this was inadequate because it did not state whether the victim had made a statement to the police, if there were any witnesses or medical evidence. The reason for a ‘no comment’ interview in this case, therefore, seems to have been due to this lack of disclosure.

### *Case C.2 (PRT.16)*

This suspect had been arrested for an offence of shoplifting and when searched he was found to have a number of jars of coffee hidden down his trousers. His solicitor was given detailed disclosure, which confirmed that the police had statements from witnesses and CCTV evidence. Despite the police evidence being ‘overwhelming’ in this case, the suspect had been held in custody for almost 20 hours prior to the police interview. Such long delays could have led the suspect to become uncooperative by making no comment.

The potential for clients to be bailed was another reason put forward by a police investigator for solicitors to advise a ‘no comment’ response. When considering the prospect for getting bail, for example, he said, “Some solicitors will tell their clients that if they made admissions then they will be remanded [in custody] but if they go ‘no comment’ then there’s more chance of getting them out on bail” (OC).

There is evidently a relationship between the extent to which the police are prepared to provide disclosure and whether or not there is a responsive interview. It is unhelpful for the police to interview suspects in cases where there is no evidence and, not surprisingly, if legal advisers were involved this generally led to a ‘no comment’ being made. It is similarly unhelpful if some legal advisers routinely advise their clients to make no comment, particularly if there is strong evidence against their client. There seems to be not only a lack of trust between practitioners, which can create problems, but also highlighted in this report is the lack of understanding, by both the police and legal advisers on occasions, of the evidential requirements within an adversarial system of justice. Such issues can result in poor-quality legal decision-making in the police station which can lead to inefficiencies and delays in cases charged to court.

### ***Disclosure and CCTV evidence***

All police investigators said they would not disclose CCTV evidence to the defence prior to the police interview. This was because, as one respondent explained, “I’ve shown the CCTV before the interview in the past but you then get some outlandish explanation from the suspect. This could only have been concocted from what the solicitor saw and then discussed with their client” (NQ). There was a difference of opinion expressed by police investigators about when the CCTV evidence should be shown. For some, they said they would note in the written disclosure that CCTV evidence was available and after getting the suspect’s account of events the CCTV would be shown during the interview.

Other respondents said that their approach was generally not to show the CCTV during the first period of detention. This was the comment from one police investigator: “I won’t

show the CCTV the first time they are here but if they come back on bail then I'll show it. They can then see our evidence and make a decision" (JG). The extent to which such evidence was shown could depend on its quality. As this respondent put it, "If the CCTV is crap then there's no point in showing it as you are revealing your hand" (JG). A similar sentiment was expressed by other police investigators when they said they would not show the CCTV evidence if it did not support their case.

The reluctance of some police investigators to show the CCTV evidence to suspects could bring them into conflict with the CPS. One respondent was critical of the CPS for requiring him to bail suspects back to the police station simply to view the CCTV. He said:

"You've got all the evidence together but the CCTV wasn't shown on the day because it wasn't in a viewable format. The CPS tells me I have to re-interview them and show them the CCTV to see what they have to say about it. They [the CPS] won't make a decision until the CCTV has been seen by the suspect but this can be a problem because you are then showing the defence what you've got and they can use it in court ... So you bail them back to view the CCTV, put them in a cell for a few hours – it's a waste of time." (NQ)

There were a number of cases where there were noted to be long delays before the CCTV could be shown. This could be due to the police having problems in obtaining the CCTV evidence and/or due to the CCTV discs having to be re-formatted so that they can be played from the DVD players in the police interview rooms.<sup>32</sup> This was the situation in the following case:

*Case C.3 (F/N.9).*

The suspect had been bailed to the police station after having been arrested for causing criminal damage to a police cell. He was responsive during the police interview but said he could not remember causing any damage. The police officer said that the damage was captured on CCTV and the suspect said that he would be willing to admit the offence subject to seeing the evidence. The disc was not in a viewable format and so the suspect had to be bailed to return to the station at a later date. For the police there was the time and expense of arranging another interview and for the suspect he had to make another round trip of 40 miles in order to view the CCTV.

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<sup>32</sup> The formatting of discs takes place in the Bridewell but this can sometimes take a long time, particularly if the unit has a number of CCTV's which require formatting.

There were complaints made by custody sergeants over long delays which could occur in cases due to awaiting the CCTV evidence. A suggestion put forward by one custody sergeant was for laptops to be available to investigating officers which could play different types of formatted CCTV discs (F/N 13.9.12).

### ***Disclosure and police cautions***

Police practices sometimes meant that, in cases where there was insufficient evidence to prosecute, suspects would be cautioned instead. This is not supposed to happen as legal criteria have to be met before a caution is imposed, which include the police having sufficient evidence to obtain a realistic prospect of a conviction.<sup>33</sup> Not surprisingly, such police practices were seen to cause difficulties in cases where legal advisers were involved.

Tensions were seen to arise in cases where police investigators considered a caution to be an appropriate outcome in a case but, on the advice of his solicitor, the suspect made ‘no comment’ in the interview. In some cases, however, the police had insufficient evidence to prosecute but this was not appreciated by the police investigator. This was seen to be the situation in the following case:

#### *Case C.4 (PRT.13).*

A police investigator commented on a case where he had just interviewed the suspect over an offence of theft of a mobile phone. He was annoyed that despite there being ‘overwhelming’ evidence the solicitor had advised his client to make ‘no comment’. The investigator said that he was going to impose a caution but this was no longer an option because the offence had not been admitted at the first opportunity. The investigator commented on the evidence saying that he had not yet received a statement from the victim and the CCTV evidence was very poor and further images were required. As the police effectively had no evidence to disclose at the time of the interview, the advice to make ‘no comment’ was appropriate. When the suspect returned back to the police station, this time without his solicitor, he was re-interviewed and after admitting the offence he was cautioned.<sup>34</sup>

There were a number of cases observed, and some commented on in this report, where solicitors had advised their clients to make ‘no comment’ in the police interview but the suspects were bailed to return to the station at a later date. With the payment of a single fixed fee it was common practice among solicitors not to attend on a second or subsequent visit to the police station. With an increase seen in the number of cases where suspects were bailed to return to the police station, this can put suspects at a disadvantage if they are re-

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<sup>33</sup> The legal criteria also require an admission and that it is in the public interest not to prosecute.

<sup>34</sup> It was not known whether the police investigator relented and decided to caution the suspect because the offence was admitted or if the caution was imposed because there was still insufficient evidence to prosecute.

interviewed without their legal adviser being present. Indeed, in a number of such cases observed suspects were likely to respond to police questions and to accept an out-of-court disposal, usually a caution.

It would be helpful if the police and the defence were to discuss cases prior to the police interview as this could help resolve issues more quickly and effectively. In particular, it would be helpful for the police to understand why a solicitor might advise a client to make ‘no comment’ in cases where they perceive the evidence to be overwhelming. The limitations of current practices were commented on by a police investigator when he said:

“If you want a caution, and they haven’t any previous, then it is better to discuss it with the defence – there’s no merit in taking it to court ... The problem is in cases where the evidence is overwhelming but they still make no comment. Some suspects might ask if a caution is possible and I’ll see what I can do. I can’t guarantee it but if they admit it we can generally get it sorted.” (JG)

For legal advisers it would be helpful if they could be told if the police were prepared to accept a caution in cases where there was disclosed sufficient evidence to prosecute. At present, if a legal adviser asks the police if their client could be cautioned the response would be for the police to say ‘all options are open’, if their client was eligible. This is unhelpful for the defence as it does not provide any guarantee that their client will be cautioned if the offence is admitted.<sup>35</sup> If the solicitor does receive such an assurance from a custody sergeant prior to the police interview, it will not necessarily be the same custody sergeant who decides on the outcome following the police interview. Indeed, a solicitor said that he had recently advised his client to make admissions after having received an assurance from a custody sergeant that he would be cautioned (F/N 20.8.12). It was another custody sergeant who subsequently dealt with the case and the suspect was charged. The conversation with the first custody sergeant had been captured on CCTV and when this evidence was produced the case was later discontinued at court.

There was a difference of opinion among police investigators about the extent to which they were prepared to accept a case back from court for a caution to be imposed instead. This was the view of one police investigator:

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<sup>35</sup> In the first phase of BLAST there were noted to be limitations for the police and the defence to discuss whether or not a suspect was eligible for a caution prior to the police interview. See Kemp (2012) pp. 56-57.

“I’ve had several cases in the last few months where the suspect has had the opportunity in the interview to admit the offence but they made ‘no comment’ so they could not be cautioned. When the case gets to court quite often the solicitors will ask if their client can be cautioned but that obviously isn’t going to happen. I won’t have the cases back because they didn’t make an admission in the interview.” (NQ)

Another investigator said he would be willing to accept cases back from court for a caution to be recorded. When commenting on one particular case he said:

“The guy was eligible for a caution but he told me that his legal rep [representative] wouldn’t let him admit it. He ended up getting charged and going to court. The legal rep later asked me why I didn’t caution him as this was the outcome for his co-accused. I told him that he had admitted it and the rep replied, ‘surely you don’t have to admit it to get a caution?’ Apparently the legal rep apologised to his client for giving him the wrong advice and I noted on the file that I was prepared to accept a caution if this was acceptable to the court. That was the outcome.” (LN)

There were concerns raised by a number of custody sergeants that some legal advisers did not seem to understand the cautioning legal criteria and some would advise their client to accept a caution in cases where there had been disclosed insufficient evidence to prosecute. This was seen to be the situation in the following case:

#### *Case C.5 (F/N.10)*

A female had been arrested by the police after her partner complained that he had been assaulted. It was noted in the written disclosure that the complainant had reported being hit in the mouth by his partner but it did not comment that he had refused to make a statement to the police. The legal adviser did not seek to clarify this issue and the caution was accepted.<sup>36</sup>

A number of custody sergeants commented on the lack of legal challenges coming from some legal advisers in cases where a caution was imposed but there was insufficient evidence to charge (F/N 19.9.12). One custody sergeant said that he tried to prompt solicitors to challenge him when saying that the disposal was to be a caution but only, ‘if your client is willing to accept it’. He said that the cautions were accepted and not one legal adviser had asked him what would happen if it was not accepted to which his reply would be ‘nothing’ as there was no evidence on which to charge.

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<sup>36</sup> In domestic violence cases, which are examined further below, the police were seen to impose a caution in cases where there was insufficient evidence to prosecute because the victims were not prepared to make a statement to the police and there was no corroborating evidence.

Concerns were raised by police investigators over financial incentives which they felt led to some legal advisers routinely advising their client to make ‘no comment’ so that instead of a caution they would be charged. This was the comment from one respondent:

“You have some detainees who have no knowledge of the legal system and they say they only went ‘no comment’ because they were advised to do so by their solicitor. If they are eligible for a caution you know it isn’t in their best interests to go to court and get a criminal record but it’s too late ... The solicitors know that when it gets to court and they plead guilty at the first hearing that they will get credit and they will also get another fixed fee.” (NQ)

A problem can arise in cases where the police investigators consider the evidence to be strong but the evidence disclosed to the defence is weak. In cases where the cautioning criteria have not been met it is appropriate for solicitors to advise their clients to make ‘no comment’ but such a stance does not always seem to be appreciated by police investigators. Examined next are implications arising out of the disclosure of evidence on relations between the police and the defence.

#### ***Police investigators and relations with the defence***

When police investigators were asked about their relationships with legal advisers, all but two said that they got on with them ‘fine’, although all pointed out that there were one or two solicitors they would not trust. It was based on this lack of trust that the two respondents said they had a problem with legal advisers. As this police investigator put it:

“I don’t like them. I think it’s built into my DNA now. The difference is that we are after the truth. Most of the time the truth is that their client is guilty and they are only interested in getting them off. As a consequence they can play dirty. That’s one of the reasons why I’m careful about disclosure.” (UC)

This was the comment made by another respondent: “I’ve had experiences with them [legal advisers] when they’ve not acted in their clients’ best interests. They purposely try and disrupt the investigation. I’ve had downright dishonesty from some of them” (NQ).

While most respondents said in interview that they got on ‘okay’ with solicitors, there were frequently negative comments made about legal advisers. They were often referred to as ‘money grabbing’ and being the ‘lowest of the low’, for instance. A problem for some practitioners seemed to be their lack of understanding of the defence role within an

adversarial system of justice. Such a misunderstanding was seen to arise in the following comment made by a police investigator:

“The judicial system should be left alone to the CPS and the police. The defence role is to advise their client and not to have any input into how the investigations take place. In my opinion their motives are completely different from the police and the CPS. We are there to bring offenders to justice but their motives are to ensure that their clients do not face any charges, and if they do that they are found not guilty. So we are working in a completely different way and it is not compatible for us to work together.” (NQ)

From the defence perspective, one of the difficulties which could lead to problems was due to the police sometimes investigating suspects for more serious offences than was supported by the evidence. It was the intention of BLAST that the new arrangements would help to improve relations so that such issues could be discussed prior to the police interview. If the police decided to conduct the interview based on a more serious offence than the defence considered was warranted by the evidence, then a ‘no comment’ interview would be expected. These issues had been discussed with duty solicitors at a meeting shortly before the commencement of the second phase of BLAST. In the following case a duty solicitor described how he tried to engage positively with the police but to no avail.

*Case C.6 (F/N.14).*

The duty solicitor said he was dealing with a suspect who had been arrested for an offence of burglary. When he examined the police disclosure he told the detectives dealing with the case that there was no evidence disclosed for the burglary but there was evidence for an offence of handling. The solicitor said that in the spirit of BLAST he told the police that if they interviewed his client for the offence of handling they would have a responsive interview. The police interviewed his client about the offence of burglary and, as he had stated to the police, ‘no comment’ was made. The suspect was bailed to return to the police station when no further action was taken in respect of either offence.

There was a similar situation observed in the following case:

*Case C.7 (F/N.20)*

The suspect was of previous good character and he had been arrested for an offence of burglary. The written disclosure had evidence for an offence of handling but not burglary. During the police interview the suspect made comments which implicated him for the offence of handling but not burglary. He was bailed to return to the police station and after taking CPS advice on the offence of burglary no further action was taken.

It is not an effective strategy for the police to pursue more serious charges than is supported by the evidence, particularly as this can lead to no action being taken in cases where there is sufficient evidence to prosecute an alternative offence. There were examples of the police ‘over charging’ in the study of Crown Court cases. In one case, for example, a suspect had been charged with an offence of aggravated burglary, which can only be heard in the Crown Court. He had pleaded ‘not guilty’ to aggravated burglary but guilty to an alternative offence of burglary. On the day of the trial, after the prosecutor had viewed the CCTV evidence in this case, he accepted the plea to burglary as there was no evidence of any aggravating factors. In another case a young defendant had been charged with robbery and this had been sent up to the Crown Court as a ‘grave’ crime. The case proceeded to trial as the defendant pleaded ‘not guilty’ to the robbery but accepted his guilt in relation to an offence of theft. This plea was eventually accepted by the prosecutor as the evidence showed the complainant using the threat of violence against the defendant after his mobile phone had been stolen.<sup>37</sup> Had the suspects been charged with the appropriate offences from the outset both these cases could have been dealt with in the Magistrates’ Court and a trial avoided.

This lack of cooperation between the police and the defence is not just a local issue because in the government’s White Paper, ‘Swift and Sure Justice’, there were concerns raised about ineffective working practices between criminal justice organisations. In particular, it states, “Too often, these organisations have worked in silos rather than working together: a fragmented system rather than a coherent service” (Ministry of Justice, 2012:11). While working in an adversarial system of justice, if practitioners were able to work together more effectively it is anticipated that not only would the quality of legal decision-making improve but that this would also help to avoid inefficiencies and delays.

#### **4.D Positive policing, police custody and social control**

From observations and interviews with custody sergeants and police investigators the police were evidently under pressure to take positive action when responding to complaints reported to the police. Custody sergeants also commented on how CCTV cameras had increased the workload of the police as potential incidents could be identified by those monitoring the cameras and officers would be dispatched to situations which would not otherwise have come to the attention of the police. Research has shown how police custody can be used as a form of social control and punishment (McConville et al., 1991; Choongh, 1997; 1998). In this

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<sup>37</sup> These cases are commented on in the Crown Court report which is included in Appendix A (cases D3.3 and D7.15 - p.58).

section of the report are explored three different ways in which police custody can be used as a form of social control. Firstly, the potential ‘net-widening’ effect of the police bringing suspects into custody for minor and trivial offences is examined. Secondly explored are police practices which involve ‘rounding up’ known offenders and bringing them into custody without any evidence. The third issue examines the police use of cautioning when dealing with cases involving domestic violence. Finally explored in this section are relations between the police and the CPS when making charging decisions.

### ***Police custody and minor and trivial offences***

With the police bringing suspects into custody for minor and trivial offences, this was seen to have a ‘net-widening’ effect with cautions being imposed in cases where either the legal criteria were not met or it was not in the public interest to take formal action. Despite police cautions being citable as a formal criminal sanction such decisions are made by the police without judicial scrutiny.<sup>38</sup> In the first phase of BLAST the police were criticised for bringing minor first-time offenders into custody unnecessarily. Subsequently changes have been made which have led to a significant reduction in the number of suspects brought into custody, particularly for minor matters.<sup>39</sup> Custody sergeants described two main changes which would have had an impact on reducing the number of cases brought into the Bridewell. The first change was said to be due to beat officers being encouraged to use restorative justice to help resolve minor offences in the community. Secondly, custody sergeants were required to be more challenging of the police when bringing suspects into custody.<sup>40</sup>

While these changes have had the desired effect of reducing the number of suspects brought into the Bridewell for minor offences, there were still cases observed where it seemed unnecessary for suspects to be detained in police cells. To some extent, this was said by some custody sergeants to be due to police officers preferring to bring suspects into custody because this meant they were relieved of carrying out certain tasks, such as the taking of fingerprints, for example. Once a suspect had been arrested and detained in police custody, however, the police were seen to be under pressure to impose a sanction detection. There was no such pressure on the police when dealing with minor offences at the time of

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<sup>38</sup> See Padfield et al. (2012).

<sup>39</sup> There was noted to be a reduction of almost 900 cases when comparing the volume of cases dealt with from July to October 2012 with the same period of time in 2011.

<sup>40</sup> This change was due to a revision of Code G of the PACE Codes of Practice and the ‘necessity test’. In anticipation of this change custody sergeants said that from July they were required to question the police about the ‘necessity’ of bringing suspects into custody. There had been set up ‘voluntary’ interview suites in other police stations so that there was an alternative to custody when dealing with compliant suspects.

Choongh's ethnographic study of police custody (1997; 1998). On the contrary, in the mid-1990s he identified a significant minority of cases where people were brought into custody, particularly for minor offences of disorder, where the police had no intention of invoking the criminal process. Subsequently, in 2002 the police were given a performance target to 'bring more offences to justice' by increasing the number of detections.<sup>41</sup> Nationally the target was seen to have a 'net-widening' effect as it led to the police concentrating their efforts on minor and trivial offences which would not previously have warranted formal police action.<sup>42</sup> The national target to increase detections was withdrawn in 2010 but this had remained a local policing target in some police force areas, including this one.

In interview police investigators were asked if they would refuse to deal with a case because it was too minor to warrant a formal police intervention. Not one respondent said that they would refuse – on the contrary, as this police investigator put it: "Drivel is our thing and nothing can be too minor. If it is really minor then we can always use RJ [restorative justice]" (JG). Another respondent said, "Cases can't be too cheap and cheerful for us, we are about as cheap as you can get", and commenting on the need to invoke the formal process he added, "There needs to be an end product now" (VT).

As in Choongh's study (1997) there were cases observed in this study where a number of suspects were brought into custody for minor disorder offences. Or as one respondent put it, "They are brought in here for 'failing the attitude test' and they get arrested for a breach of the peace" (VT).<sup>43</sup> In the following case it seems that three suspects had been arrested in the city centre having 'failed the attitude test' after ignoring a police notice to disperse.

#### *Case D.1 (F/N.25).*

The three suspects were of good character and they were arrested late on a Friday night for breaching a Section 27 'dispersal' notice.<sup>44</sup> They lived 300 miles away and had been visiting the area. The suspects were interviewed in the morning, one requesting a solicitor, and the breach of the dispersal notice was admitted. They were then bailed to return to the police station in order to attend an 'alcohol awareness' course. This was said by a custody sergeant to be a disproportionate response because not only did they have to pay £200 each for the course but they also had to fund the cost of a 600-mile round trip to attend the course.

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<sup>41</sup> See CPS (2002) 'Narrowing the Justice Gap'.

<sup>42</sup> From 2003 to 2008 this net-widening effect could be seen as the number of convictions remained stable while the use of out-of-court disposals increased by 135%. See Office for Criminal Justice Reform (2010) p. 2. Also accounting for some of this increase would be the introduction of new out-of-court disposals of cannabis warnings and penalty notices for disorder in 2004 which came to be used more widely (Sergeant, 2008). While the number of out-of-court disposals has subsequently decreased there are still more imposed than was the case prior to 2002. See further Padfield et al. (2012).

<sup>43</sup> It is only in relation to legal decisions made following the detention of those arrested for 'failing the attitude test' which are of interest in this study.

<sup>44</sup> This is a dispersal order under Section 27 of the Violent Crime Reduction Act 2006.

When later commenting on this case a custody sergeant said that the police should have arrested the suspects for being ‘drunk and disorderly’ as they could then have been released in the morning with an £80 fixed penalty notice and with no need for an interview (F/N 24.11.12).<sup>45</sup> A police investigator was also critical of police powers which could be misused when dealing with a breach of a dispersal notice. As he put it:

“We get some cases where I pick them up in the morning and think, ‘Why on earth have these people been here all night?’ ... We’ve had one or two Section 27 [dispersal] notices where people have been arrested for breaching a notice they were never given. There was one lad who was arrested on his doorstep for breaching a notice but he actually lived in the area from which he had been excluded.” (OC)

There were a number of cases observed involving minor offences where following the police interview the case outcome could have benefited from a conversation between the police investigator and the legal adviser. Indeed, such discussions in the following case could have helped to avoid prosecution.

*Case D.2 (PRT.12).*

The suspect was arrested and detained for theft of food items from a shop to a value of £1. He was noted on the custody record to have been intoxicated and having been brought into custody at 17:00 he was ‘bedded down’ for the night and interviewed at 11:00 the next day. The suspect requested legal advice and when interviewed he said that he had not been intoxicated when he came into custody but his ‘bizarre’ behaviour could be explained by a head injury. He also said that because of this injury he had no recollection of being in the shop and taking the items without making payment. Without the offence being admitted the police decision in this case was to charge. At court he pleaded ‘not guilty’ and after a couple of hearings the case was discontinued by the CPS.

While the solicitor managed to avoid a conviction for his client in this case, it does not seem to have been in his ‘best interests’ to have been charged. Indeed, with the low value of the goods, the mental health issues involved, and after the suspect had spent almost 20 hours in custody, taking no further action could have been considered a proportionate response.<sup>46</sup>

There has subsequently been a change to the Code for Crown Prosecutors, which requires

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<sup>45</sup> The custody sergeant said that for a breach of a dispersal notice the police could not impose a fixed penalty notice.

<sup>46</sup> A significant minority of people detained in the Bridewell experience mental health problems. This is an issue which requires further exploration, particularly as there were no arrangements with local services which could provide an early mental health assessment. There are two cases commented on in the Crown Court report where an early mental health intervention in the police station could have helped to divert the ‘suspects’ from the criminal process (see cases D3.14 and Case 32 in Appendix A – pp. 69-70).

prosecutors to apply a proportionality test when considering whether prosecution is proportionate to the likely outcome. This change is intended to stop such minor cases coming into court because prosecutors are now required when making charging decisions to take into account factors such as the cost to the CPS and the wider criminal justice system.<sup>47</sup>

While it would be helpful for the police to consider issues of proportionality when dealing with minor offences, it is also important to check that an offence has been committed before invoking the criminal process. This seemed not to be the situation in the following case:

*Case D.3 (PRT. 8)*

The suspect was arrested and detained for an offence of assault which took place in a public house. The police investigator dealing with this case said that witnesses described the incident as a ‘joke’ as the suspect went up to a customer at the bar, whose trousers were halfway down his bottom (which is the fashion), and he pulled them down. The investigator said that the suspect was of previous good character and he could not understand why he had been brought into custody. Nevertheless, he was detained overnight and then interviewed. He admitted pulling at the complainant’s trousers ‘for a laugh’ and agreed to pay him £50 by way of an apology.<sup>48</sup>

There were also observed cases involving children (aged between 10 and 13 years) who were being dealt with for serious offences but where the behaviour complained of seemed to be less serious, or even non-criminal. The following two cases help to illustrate this point:

*Case D.4 (F/N.6)*

This incident involved a 13-year-old who had not been in trouble before with the police. He was arrested for ‘indecent exposure’ after a complaint was made by a mother that her six-year-old son had seen his penis. The suspect declined legal advice and in the police interview he gave a reasonable explanation as to why his penis was exposed. His account was noted on the custody record and while there was no admission he received a reprimand.<sup>49</sup>

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<sup>47</sup> See CPS (2013) Code for Crown Prosecutors.

<sup>48</sup> As a restorative justice outcome the police could claim a sanction detection in this case but the suspect would not have a formal criminal record.

<sup>49</sup> The suspect said that he was in the toilet at home when he rushed out without pulling his trousers up properly. The complainant was at the door and saw his penis exposed. He said he was not sexually excited – on the contrary, he told the police, he was very embarrassed. When this case was brought to the attention of the police the reprimand was withdrawn and the suspect’s name was removed from the Sex Offender Register.

#### *Case D.5 (F/N.11)*

An 11-year-old, who had a previous reprimand, had been brought into custody for possessing an imitation firearm. The custody sergeant brought this case to my attention saying it was a ‘nothing job’, as it basically involved a child ‘playing’ with a ‘BB’ gun.<sup>50</sup> The suspect had legal advice and when interviewed he made ‘no comment’. He was bailed to return to the police station because the CPS wanted the police to obtain an ‘expert’s opinion’ on the imitation firearm. When the suspect returned, this time without his solicitor, he was re-interviewed and accepted that the BB gun could be perceived as a ‘firearm’, although he also stated that, “he did not use it to cause fear.” The suspect received a final warning for possessing an imitation firearm.<sup>51</sup>

A custody sergeant commented on how the involvement of parents could be helpful when dealing with juveniles because they often encouraged their children to be ‘open and honest’ with the police (F/N 28.8.12). This was seen to be the situation in this case.

#### *Case D.6 (F/N.7)*

The police had been called to an incident of disorder and, while they were arresting his brother, the 13-year-old suspect told a police officer to ‘fuck off’. He was also then arrested and brought into custody for committing a breach of the peace.<sup>52</sup> The suspect made ‘no comment’ in the police interview on the advice of his legal adviser. Also present in the interview was the suspect’s mother (acting as his appropriate adult) and she took exception to her son not answering any questions. She complained to the custody sergeant about the legal adviser and, on the authority of an inspector, it was agreed that her son could change his mind about having legal advice. He was then re-interviewed and after admitting the offence he received a reprimand (the equivalent of a police caution).

It seems that the solicitor’s advice to make ‘no comment’ was on the basis that he did not believe the police would prosecute the suspect for this incident and that without an admission he would not receive a criminal sanction. However, such an approach was clearly unsatisfactory to the suspect’s mother who wanted her son to take responsibility for his actions. Had the police investigator and legal adviser been able to discuss this issue, a suitable compromise could have been for the suspect to apologise to the officer concerned.<sup>53</sup>

While the intention of parents can be to encourage their children to take responsibility for their behaviour, within an adversarial system of justice this can lead them to accept a criminal sanction in cases where the legal criteria would not be met if they instead remained silent.

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<sup>50</sup> BB guns are a type of air gun which has become a popular ‘toy’ for children. The ‘toys’ are made to look realistic and this evidently causes problems for the police when responding to reports of a gun being used.

<sup>51</sup> A final warning is used in cases involving juveniles (aged 10 to 17 years), usually after a reprimand has been imposed. Normally a young offender can only receive one warning, although a second warning can be imposed if the previous warning was recorded over two years ago. The final warning is the equivalent of a ‘conditional caution’ as it requires an intervention to be carried out by the Youth Offending Team.

<sup>52</sup> This is contrary to Section 5 of the Offences Against the Person Act 1861.

<sup>53</sup> While a reprimand does not constitute a criminal record it will be kept on police records until the offender reaches the age of 18 years. A young suspect, aged from 10 to 17 years, is only allowed one reprimand.

Despite the vulnerability of the children in the criminal process it was noted from analysis of over 30,000 police custody records that 10- to 13-year-olds were the least likely age group to request a solicitor.<sup>54</sup>

In interview a number of police investigators expressed concern that suspects arrested for trivial offences could then be dealt with in the formal criminal process. When commenting on suspects being arrested for being intoxicated, for example, this respondent said:

“Being ‘drunk and disorderly’, that’s an interesting one. If due to their previous they aren’t eligible for a ticket and we are looking to charge them you go through their risk assessment. You see that they were booked in because they were affected by alcohol. If that’s the only reason they are here, why are we keeping them all night?” (OC)

Another respondent made an important point when he commented on the police bringing people into custody unnecessarily for minor matters when he said, “If we filtered out a lot of the drivel we could spend more time on the important things” (JG). In a similar vein this respondent said, “There’s no end of stuff which I think is far too trivial to be dealt with ... I should say about a third to a quarter of cases we shouldn’t even be bothering with. We wouldn’t have dealt with them ten years ago” (VT).

These interviews with police investigators were held in October 2012, when custody sergeants were required to be stricter with police officers over the ‘necessity test’ when bringing suspects into custody. There was also said to be less pressure on the police to impose a detection as Force priorities had changed,<sup>55</sup> although there seemed to be some confusion among the police over the policing priorities. When this issue was discussed between two police officers, for example, a front-line officer was asked how his policing priorities had changed now that he was no longer under pressure to increase detections. He replied, “You must be joking. That’s the biggest load of rubbish I have ever heard. I had a meeting with my Chief Inspector and all he was banging on about was detections, detections, detections” (F/N 10.9.12). A police investigator also commented on the police being under pressure to increase detections when he said:

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<sup>54</sup> While 45% of 10-to 17-year-olds on average requested legal advice this was just 39% of 10- to 13-year-olds. See Kemp et al. (2010:32).

<sup>55</sup> The police priorities instead were to reduce crime and improve the satisfaction of victims in the criminal process.

“They [the police] might claim that they are not under pressure but we have their sergeants ring us up and tell us they want to make sure that any detections go down with their officer’s number on it. They need to be able to show what they are doing out there. I don’t think it’s right. It shouldn’t be about the figures but each case should be dealt with on its merits.” (LN)

It seems from discussions with police investigators and custody sergeants that while local performance targets had changed police officers continued to be under pressure to increase the number of arrests and detections through operational policing targets. As found nationally, there are resource implications, not only for the police but also for the legal aid fund, when the criminal process is invoked for minor and trivial offences. Such pressure on the police to increase detections could also lead to some people being criminalised unnecessarily, particularly juveniles.

### ***Police custody and social control: managing prolific offenders***

Research has shown that detectives were under pressure to increase the detection rate in relation to serious offences and how this had led them to ‘round up’ and detain known offenders in order to question them (McConville et al., 1991). There were complaints made by custody sergeants in this study of similar practices where detectives would bring into custody ‘prolific’ offenders without having any evidence. When custody sergeants asked the arresting officers on what grounds these ‘suspects’ should be detained, they said the response was, somewhat cryptically, that it was based on ‘intelligence’. Not surprisingly, such practices were not discussed openly by police officers. To help protect the identity of those who discussed such issues with me, instead of using the date on which the observation and/or comment was noted in the fieldwork diary the page number on which it appears is shown.

In the first phase of BLAST there was seen to be a problem with some suspects being brought into custody without any evidence, but due to the reticence of custody officers it was difficult to explore this issue.<sup>56</sup> When returning to the Bridewell for the second phase there were some officers who were willing to comment on such practices. Early on, for example, a custody officer complained that the police were abusing the custody process by arresting ‘suspects’ and bailing them to return to the police station with bail conditions attached (F/N p.2). In relation to one suspect, for instance, the custody officer pointed out three different custody records relating to three different offences of burglary and conspiracy to commit burglary. He described these offences as ‘nothing jobs’ and said that the police had no

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<sup>56</sup> See Kemp (2012) p. 47.

evidence against the suspect. The suspect was bailed to return to the police station in respect of these offences and pre-charge bail conditions were imposed; after several months the custody officer said that no further action was taken in all three cases.

There were a number of occasions observed where custody staff were concerned that prolific offenders had been brought into custody inappropriately. On one occasion, for example, three suspects were arrested for an offence of ‘conspiracy to commit burglary’, which custody officers said was typical of the type of offence where suspects were detained without any evidence (F/N p.27). The suspects were bailed to return to the police station with bail conditions attached and three months later there was no further action taken in all three cases.

At a later date, during an informal discussion with a detective, I asked him what type of offences he would normally deal with (F/N p.31). He replied that he was involved in ‘high-volume crime’ and when asked what that meant he said that they would make arrests as a way of keeping persistent offenders off the streets. Described as a form of ‘crime prevention’, the detective said that in response to a house burglary, for example, they would ‘round up’ local burglars and while they were held in the police cells they were not able to offend.

It seems from various discussions with custody officers that while the police have no evidence in cases where prolific offenders are ‘rounded up’ in this way, their arrest and detention serves an effective form of social control and punishment. The punishment was not only being held for many hours in a police cell but, as a number of custody sergeants explained, the ‘suspects’ would also be bailed to return to the station with bail conditions imposed. Two bail conditions seen to be popular with the police were a condition of residence and a curfew, as these effectively kept known offenders off the streets at night-time. Another punishment, described by a custody sergeant, was for the prolific offenders to have their training shoes and mobile phones taken from them, which were then sent off for forensic examination (F/N p.29). This was said to “hit them where it hurts”, but with no evidence linking the suspect to an offence such a strategy is likely to overburden the forensic services. Nevertheless, for the police such long delays meant that prolific offenders could be kept on pre-charge bail conditions over a period of many months.<sup>57</sup>

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<sup>57</sup> By sending off items for forensic examination when there was no evidence linking the suspect to the offence, this is likely to contribute to long delays waiting for the forensic tests to be completed. This was seen to create problems in the Crown Court when the listing of trials was delayed while awaiting the forensic evidence.

In one case I observed an 18-year-old detainee at the front desk of the custody suite when a superintendent was authorising an extension of his detention beyond 24 hours (F/N p.35). The suspect had been arrested for an offence of ‘conspiracy to commit burglary’ and it was noted on the custody record that he had numerous previous convictions for offences of burglary and robbery. As the superintendent outlined why he was to be further detained the suspect complained that he was being harassed by the police. He told the superintendent that he had been arrested and brought into custody five times in the past three months. He also pointed out that he had already been ‘refused charge’ in relation to one offence and that this would be the outcome in relation to all outstanding matters.<sup>58</sup> Despite the suspect requesting legal advice each time he was arrested his solicitor did not make any representations prior to the superintendent extending his time in custody.

Interestingly, this suspect had previously come to my attention during Phase One of BLAST when he agreed to participate in a research interview. At that time, having been arrested for a dwelling house burglary, he complained that he had “once again” been held in custody without any evidence. He continued saying, “The police are taking the piss out of me because they managed to catch me. It’s a bit like a game. They are taking the piss because they have arrested me but they don’t have anything on me” (SD.11).<sup>59</sup> There seemed to be some merit in what the suspect had to say because later that evening he was charged with an offence under the 1824 Vagrancy Act and remanded in custody. For the burglary offence, for which he had been arrested, he was bailed to return to the police station at a later date. When the suspect was leaving court, after having been dealt with for the vagrancy offence the next day, he was once again arrested and detained for another offence of dwelling house burglary. From the custody records it was noted that he had been arrested and detained on four separate occasions for offences of burglary between April and July 2011, with no further action eventually being taken in all of those cases.<sup>60</sup>

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<sup>58</sup> This information concerning his previous arrests was later found to be correct when examining his custody records. In July 2012, for instance, he had been arrested for an offence of robbery and no further action had been taken. He was also arrested on three separate occasions for three different offences of robbery, possessing a bladed article and burglary in October 2012. He was on bail for these three offences when he was arrested for this offence of conspiracy to commit burglary.

<sup>59</sup> The initials of the suspects interviewed had been changed in this coded reference which was used in Phase One of BLAST.

<sup>60</sup> The suspect had been on police bail from April to December 2011, which included conditions of residence and a curfew. Despite the suspect complaining about the way in which he was being harassed by the police, there were no representations made by his solicitor concerning these complaints.

One consequence of the police arresting and then bailing prolific offenders was that this would increase the number of cases where suspects were returning to the police station. As commented on above, the number of new cases where suspects had been ‘bailed back’ to the police station had increased significantly, rising from 54 cases in 2011 to 241 in 2012. However, the custody records examined only include details of new cases brought into the Bridewell and from comments made by custody sergeants it seems that many more suspects were on police bail. Indeed, some custody sergeants estimated that around half of the cases dealt with each working day at the Bridewell involved suspects on police bail (F/N p.32). While the number of prolific offenders on police bail is likely to be only a small proportion of those overall who were bailed to return to the police station, custody sergeants complained that the number of ‘bail backs’ was becoming unmanageable.<sup>61</sup>

There are resource implications not only for the police when arresting and detaining suspects without having any evidence, but there can be other costs involved when caring for their welfare in custody. With prolific offenders being more likely to request legal advice, there are also implications for the legal aid fund as a fixed fee is payable each time a suspect is arrested and asks to speak to a solicitor. Interestingly, while some custody officers complained that it was unlawful of the police to arrest and detain suspects without any evidence, custody sergeants said that there were no challenges coming from the defence over their clients being detained unlawfully (F/N p.33).

#### ***Police custody: positive policing and domestic violence cases***

In the past the police attracted much criticism for their failure to treat domestic violence as a criminal problem, except in the most severe of cases (Edwards, 1989; Dobash and Dobash, 1992). The 1990 Circular (Home Office, 1990) was intended to change police attitudes towards domestic violence by requiring them to treat this offence as seriously as other violent offences. The Circular also required the police and the Crown Prosecution Service to pursue cases even if the victim was reluctant to do so. Research found that these policies did not translate directly into practice (Grace, 1995). In 2000 a revised circular (Home Office, 2000) required the police to adopt a ‘pro-arrest’ policy in relation to domestic violence cases and the 2004 Domestic Violence, Crime and Victims Act was designed to signal to the police that domestic violence should be taken more seriously. These measures were not to have the

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<sup>61</sup> Such concerns are supported when examining the bail diary. Over a period of five days, for example, there were noted to be 20, 26, 29, 37 and 28 cases respectively where suspects had been bailed to return to the police station. Over the three-month period in 2012 (from July to October) there were on average 36 cases dealt with each day in the Bridewell.

desired effect, mainly because the police were reluctant to arrest when there was insufficient evidence. However, with developments in the recording of crimes, which dictate how some offences should be recorded, and with computerised call-handling systems, police responses in relation to domestic violence incidents are now more accurately recorded.<sup>62</sup> It seems that these improvements in the monitoring of police activity have had a positive impact on improving police responses to reports of domestic violence (Rowe, 2007).

It was arising out of such positive policing policies that concerns were raised by custody sergeants and police investigators in this study of the police failing to use their discretion when responding to reports of domestic violence. In the following two comments, police investigators were critical of the police for sometimes overreacting to complaints of domestic violence:

“The majority of domestics are brought in for fear that something could go wrong. Talk about unnecessary arrests. There was a case a couple of weeks ago where someone was arrested for breaching his restraining order. The couple were walking down the street hand-in-hand and the cop recognised him and arrested him. He had breached the order but he was compliant – in the eyes of the law he had to be arrested.” (CP)

“Not every DV [domestic violence] is the same. There was recently a case with a young couple walking back from town who were drunk and pushing each other. It wouldn’t have come to our attention but someone called the police so they both got arrested. Neither of them had a record and it was no good criminalising them because they were both professional working people. It was an ideal situation where they got a good talking-to about when it was appropriate to argue and when not. I’m pretty sure they won’t come to our attention again so it was a proportionate response.” (NQ)

The following comment from another respondent highlights the pressure the police are under to take positive action in cases, but it also raises questions about the effectiveness of such a response:

“DV [domestic violence] is about covering our arses. I don’t want to be disrespectful to victims but we have specially trained officers paying lip service to it. I don’t think we are any better now on DV than we were before. We have more arrests but I don’t think we have any more convictions. If we haven’t got the evidence then that should be it.” (VT)

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<sup>62</sup> See Sanders et al. (2010) p. 173 for a brief discussion of the police response to domestic violence in relation to arrests.

The officer was also critical of some complainants for taking advantage of the police's proactive response to domestic violence when he said:

"You only have to get a victim phone in and say she wants her partner removed and the police go out to her. She might then start abusing them [the police] and decline to give a statement. We still have to bend over backwards to try and accommodate her. They should be told not to waste our time. There's quite a sizeable portion of people getting too much attention from us. We get other DV cases reported where the cops don't turn up because they are stuck dealing with the cretins. I would say over my working career that 60 to 70% of DV cases were a waste of time. One in 20 I'd get a good result but these are few and far between." (VT)

With the police being under pressure to take positive action in relation to domestic incidents a number of police investigators said how they considered a caution to be a good outcome in cases where the victim was not prepared to make a statement to the police. Not surprisingly, this could lead to disputes in cases where legal advisers were involved. As this respondent put it:

"There can be a lot of tension in DV cases. We can get them where neither party has been in trouble before and it would help him to have a caution. If the victim won't make a statement, though, the solicitor won't let him have a caution, even if it would be good for him." (UC)

With some police officers regarding a caution as being good for alleged perpetrators of domestic violence, it is not surprising that this could lead to tensions in cases where legal advisers were involved. As noted below, such tensions could also bring police investigators into conflict with the CPS, particularly if they were not willing to support the police in a case presented for prosecution.

When considering the pressure the police are under to respond proactively to domestic violence incidents this police investigator seemed to have a pragmatic attitude when he said, "If you look at domestics, you are never going to eradicate the one person who gets murdered. As long as you can justify your decision then everybody is happy. It's about managing the risks as best you can and not being able to get rid of it" (OC). While the police response in managing the risks seems to have been to impose cautions in cases where there was insufficient evidence to prosecute, a couple of respondents referred to having used restorative justice in cases of domestic violence, if appropriate. But police policy was to change, as this respondent explained, "I would use restorative justice for domestics when it first came in but it isn't an option any longer. There were some cases where it was ideal"

(NQ). It seems that restorative justice had been used in some cases but in trying to make sure that it was not used inappropriately Force policy requires a superintendent to authorise such an outcome. A police investigator was critical of this change of policy as he felt that a restorative justice outcome was appropriate in some cases. This was seen to be the situation in the following case where a restorative approach was eventually decided upon:

*Case D.7 (F/N.12).*

The suspect was a businessman of good character who was living at home with his estranged partner. He was arrested and brought into custody after his partner complained that he had damaged her laptop. The suspect declined legal advice and admitted to causing criminal damage in the police interview. The police officer and custody sergeant discussed what action to take in this case and while a restorative justice outcome seemed appropriate the officer said this was no longer allowed. Instead the suspect was asked if he would accept a police caution and at that time he asked to speak to a solicitor because neither he, nor the police officers, knew whether this could have a negative impact when travelling abroad. As some countries, such as the United States, will not allow entry to people with a criminal record, which includes a caution, the solicitor proposed a restorative justice outcome, with the suspect agreeing to pay for a new laptop. After speaking to the complainant the police officer agreed to this course of action.

It was interesting in this case that the officer felt restricted from imposing a restorative justice outcome when this was a ‘domestic incident’ which did not involve violence.

With the change in Force policy one police investigator described how his approach to some suspects arrested for domestic violence had changed when he said:

“Because we can’t use RJ for domestics any more, if I’m dealing with a case where the suspect’s job is at risk, and there is no independent evidence, then I’ll advise them not to accept a caution and we will then ‘refuse charge’ it.<sup>63</sup> I’m not going to tell someone to have a caution just to get a detection.” (OC)

Police responses to domestic violence over recent years have been subject to political influences through policies put forward in government Circulars, legislation and other initiatives. Indeed, the current government has stated unequivocally that ‘Domestic violence is unacceptable and tackling the issue is a priority for this government’ (Home Office, 2012). However, it seems from this study that cautions were being imposed inappropriately in cases because there was insufficient evidence to prosecute. It should also be noted that while cautions continue to be used in domestic violence cases where victims are reluctant to make a statement to the police, this is contrary to CPS advice which states, “Cautions are rarely

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<sup>63</sup> That is to take no further action.

appropriate in domestic violence cases ... Generally, the public interest will require the prosecution of the suspect where there is sufficient evidence for the charges to be brought" (CPS, 2011a). Not surprisingly, incidents involving domestic violence could lead to tensions between the police and the CPS.

### ***Police investigators and relations with the CPS***

It was the Statutory Charging Initiative, which was introduced in the mid-2000s, which brought Crown prosecutors into pre-charge decision-making. When it was first implemented, Crown prosecutors were based in large police stations and they were available to provide advice on 'disclosure' as well as on charging decisions.<sup>64</sup> Gradually prosecutors retreated from police stations and pre-charge advice came to be provided during office hours from the local CPS office and out-of-hours over a telephone-only advice line, CPS Direct. More recently almost all CPS advice is now provided over the telephone by CPS Direct.

When police investigators were interviewed, which was at the time CPS Direct were taking over most charging decisions, they were asked if they noticed a difference in decisions made by local prosecutors and CPS Direct. A couple of practitioners said it was better when they were able to work with local prosecutors based in the police station. As this respondent explained:

"I preferred it when we could deal with people I knew, the local ones. They used to be down here and we could build a relationship with them but that has been eroded. In the past I could go to them for some early advice, but you can't approach them now until you have finished building your case." (LN)

The advantage of obtaining early advice, as a couple of police investigators explained, was that they could be advised early on not to pursue cases where the evidence was weak.

Most respondents, however, said they preferred to deal with CPS Direct. Explaining his preference, this respondent said, "I find CPS decisions slightly easier at weekends [by CPS Direct]. They might be down in Cornwall or wherever. It just seems simpler as they don't ask for so much fiddly stuff. CPS locally can get us to do some silly things" (JG). This was the response from another practitioner, "I'm starting to think that our local CPS is dreadful. I have found night-time charging to be so much better. They don't really have ownership of the decision whereby CPS locally try and get this idea of owning a case from the cradle to the grave" (UC).

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<sup>64</sup> See Kemp (2010) p. 50.

It was this issue of case ‘ownership’ which could lead to tensions between police investigators and the local CPS, mainly because Crown prosecutors were aware that they would have to take over responsibility for the charging decisions when cases came through to court. There were criticisms made of the CPS by police investigators for either being ‘too demanding’ when requiring further investigations to be undertaken or, conversely, too risk-averse. In relation to the former complaint, for example, this police investigator said:

“The CPS will ask for further evidence in a DV [domestic violence] case as a way of delaying things. They don’t want to make a decision if the victim isn’t keen to prosecute. Well it isn’t as if they haven’t given us any evidence, they’ve said what happened but they aren’t keen to go to court. I think the CPS delay things as a way of having a cooling-off period. That would explain why they ask us for additional evidence but I think it is the wrong decision.” (UC)

Local Crown prosecutors were mainly criticised for being too ‘risk-averse’ in cases where they were not prepared to support the decisions of police investigators by authorising a charge. For some police investigators such tensions arose out of performance targets and the pressure the CPS were under to discontinue cases. This was what one respondent had to say about this issue:

“The CPS has various targets which includes discontinuing cases. They don’t want to see everyone charged as we do. They only want to charge where there is almost a guilty plea. Heaven forbid they have to have a trial and work for a conviction. I can spot crap cases as much as they can and I have no qualms about saying this is a load of rubbish and it should be dropped.” (VT)

While this practitioner acknowledged that it was inappropriate for the police to pursue weak cases, he seemed to recognise that the fault was not always with the CPS when he continued in the interview saying, “I suppose the cops should make the decision to drop cases. I don’t know who’s to blame but there are some right rubbish decisions being made” (VT). Another police investigator felt that the blame lay with the CPS when he said, “Generally I get on with the CPS very well. We know a lot of them and work closely with them. In terms of their decision-making they are disastrous. They are very risk-averse. Their first take on a case is, ‘Why should we bother prosecuting it?’” (OC).

As most charging decisions were now made remotely by CPS Direct it seems that the police can sometimes be partial about the evidence presented. As this investigating officer put it, “The anomaly is that we have to tell them little white lies on occasions because with some prosecutors everything is very black and white” (OC). As CPS Direct do not view the

CCTV evidence the police can tell ‘little white lies’ when summarising the evidence, which includes what is shown on the CCTV. This was seen to be the situation in a case observed in the Crown Court, commented on above, when the defendant had been charged with an offence of aggravated burglary. The decision to charge had been made by CPS Direct based on a written summary of the CCTV evidence provided by the police. It was only at the trial that a Crown prosecutor viewed the CCTV and found no aggravating factors and so a plea to burglary was accepted instead.

Good relations between the police and the CPS are likely to help improve the quality of legal decisions made in the criminal process. As the relationship was becoming more remote there were indications that this was having a negative impact on charging decisions. Commenting on the recent changes, with CPS Direct now making most of the charging decisions, for example, this police investigator said, “A supervisor was saying yesterday that local CPS were criticising a lot of the charging decisions made by CPS Direct. Apparently cases are being charged which CPS locally wouldn’t have agreed to” (OC). Another police investigator agreed with such sentiments when he said, “I’m aware that CPS locally are under pressure but everything is dummed down ... You know it’s because of their workload. You really have to argue and push with them to get a charge. It is obvious that the working relationship between the police and the CPS has gone down significantly” (NQ).

It is unfortunate that the involvement of the CPS in pre-charge decision-making could not be examined in this study as it would have been informative to have gained the perspective of Crown prosecutors on the quality of police charging decisions.<sup>65</sup>

## 5. Discussion

This second phase of BLAST was not effective in helping to increase the take-up of legal advice or to reduce the average length of time people are held in custody in the Bridewell. There were noted to be inefficiencies, particularly with unduly long delays being tolerated while suspects were detained in custody. There were also noted to be poor working relations between the police and the defence, as well as between the police and the CPS. This has led to lawyers having been sidelined within the pre-charge process. With no effective access to custody sergeants, for example, solicitors tend to challenge police decisions in court, or otherwise they can become accepting of police practices which can undermine the legal rights of their clients. In relation to the CPS, prosecutors have become more remote from the police

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<sup>65</sup> In particular, it would have been useful to have explored with Crown prosecutors implications for changes made in 2011, which led to the police taking over responsibility for more charging decisions (see CPS (2011b)).

in relation to pre-charge decision-making, which can lead to issues being addressed in court rather than resolved earlier on in the police station.

This study is intended to provide an evidence base for national and local policy makers when considering reform of the criminal justice system. It has helped to highlight some of the complexities involved when adopting a ‘whole-systems’ approach to evaluating the criminal process. The system requires agencies to be ‘independent’ but at the same time to be ‘interdependent’ when working together to achieve an efficient and effective system of justice. It also highlights the time and effort required in turning processes around. Indeed, while there had been no progress in helping to improve working relations between the police and the defence during the second phase of BLAST, subsequently some progress has been made. When recently visiting the Bridewell, for example, it was noted that legal advisers now have access to custody sergeants in the custody suite following a police interview. This means that after the investigating officer has updated the custody sergeant over issues arising in the police interview the legal adviser has the opportunity to make any comments and representations about the case.

The research findings have helped to identify a fragmented system which can lead to inefficient case management and poor legal decision-making. It is in the police station where the criminal process is invoked and what is said in the police interview at this early stage can determine whether cases later on are either won or lost. With problems having been identified in the Bridewell, and to see whether such issues were endemic within the wider criminal justice system, a small-scale study was undertaken of Crown Court cases.<sup>66</sup> This study highlights the fragmented way in which the criminal process operates, not just between practitioners but also between the different stages within the criminal process. The findings in both the police station and the Crown Court help to illustrate how performance targets set for individual organisations, as well as the structure of legal aid remuneration, can influence silo methods of working which lead to inefficiencies and delays. These are not local problems as similar issues have been raised in the White Paper, ‘Swift and Sure Justice’ (Ministry of Justice, 2012). In particular, there are criticisms of target-setting which has encouraged a fragmented rather than coherent service.

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<sup>66</sup> This included cases from the Bridewell and from other police stations in the county, as well as from a neighbouring county. The findings arising out of the Crown Court study are included in Appendix A.

When considering the potential for reform in this police force area, Chief Officers were presented with a proposal to consider developing a new performance measure which could be piloted as part of the government's reforms of the criminal justice system. The new measure would seek to encourage a 'systems-based' approach to performance management by measuring the performance of cases from arrest through to conviction. This could be piloted in relation to 'either way' offences being dealt with in the Crown Court and the potential impact on case management could then be evaluated at different stages of the criminal process. This could include measuring how long cases take from arrest through to charge, for example, which is an area where currently there can be significant delays. It could also include a measure of how many police decisions to charge later on lead to a conviction at court. In seeking to improve legal decision-making within the Crown Court, and in order to reduce delays and the number of cases proceeding unnecessarily to trial, there could be a requirement for an early joint review of new cases by the CPS and the defence.

There is willingness among Chief Officers in this county to address the problems raised in this study and to work together in seeking to improve the effectiveness and efficiency of the criminal process. However, in taking forward such change this requires the support and engagement of national policy makers and other stakeholders.

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## **Appendix A**

### **7. A small-scale study of Crown Court cases**

#### **Introduction**

It was arising out of the Bridewell Legal Advice Study that this small-scale study of Crown Court cases was undertaken. In particular, as noted in the main report, the research findings into police station legal advice have helped to identify a fragmented system which can lead to inefficient case management and poor legal decision-making. It is in the police station where the criminal process is invoked and what is said in the police interview at this early stage can determine whether cases later on are either won or lost. With problems having been identified in the Bridewell, and to see whether such issues were endemic within the wider criminal justice system, this small-scale study of Crown Court cases was undertaken.

This study involved observation of hearings conducted in a Crown Court over a period of nine days. During this time 101 hearings were observed, which predominantly involved ‘plea and case management hearings’ (PCMH), although there were also observed preliminary hearings, cases for review or mention, committals for sentence, and those listed for plea and for sentence.<sup>1</sup> Of the 101 cases observed, in just over half issues relating to inefficiencies and delays were identified. There was also undertaken a file review of 43 Crown Court cases, of defence case files only.<sup>2</sup> These findings have yet to be analysed but reference is made to some cases included in the case file review.

Set out in this report are some of the key issues arising out of the observations of court hearings. Where the issues discussed were also found in the review of Crown Court files, reference is also made to these cases. To aid clarity the findings arising out of these observations are explored through four key themes. Firstly examined is whether cases referred to the Crown Court could have been dealt with in the Magistrates’ Court. Secondly set out are factors which have implications for inefficiency and delay, and which can also lead to ineffective hearings. The potential for judicial intervention in the interests of effective

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<sup>1</sup> There were another 42 hearings observed but these dealt with specific issues, including bail applications, breach of court orders and hearings under the Proceeds of Crime Act 2002.

<sup>2</sup> These cases had been selected from a sample of ineffective and ‘cracked’ trials listed at the Crown Court during January and February 2011. There is recorded on a court form the reasons why a trial did not go ahead and, in all cases where this was reported to be due to problems with either the prosecution or the defence, the case file was requested from the solicitors’ firm dealing with the case.

case management is explored as the third key theme. Finally, it is important to consider within an adversarial system of justice that there may be some cases which require more time and resources to ensure that they are not only dealt with efficiently and effectively but also in the interests of justice. In each section there is set out an overview of the key issues arising which is then followed by details of cases which help to illustrate the points made. Reference is first made to hearings observed in open court and then to cases examined as part of the review of defence solicitors' case files.

## **1. Are some cases referred to the Crown Court inappropriately?**

There were a number of cases observed, and/or comments made by the judge, in which it seemed that the case could have been more appropriately dealt with in the Magistrates' Courts. There were similar concerns raised in the government's White Paper, 'Swift and Sure Justice'. In particular, there was noted to be an increase in the number of cases committed to the Crown Court for trial – rising by 14 per cent from 2003 to 20011.<sup>3</sup>

- A number of cases were sent up to the Crown Court where the magistrates would have had sufficient sentencing powers to deal with them in the Magistrates' Court.
- There were cases where there was mention of a knife being used but without any evidence supporting this allegation being produced. This led to cases being sent up to the Crown Court, some involving young defendants referred for a 'grave' crime.
- Some cases were sent up to the Crown Court because a more serious offence had been charged than was warranted by the evidence. This included 'indictable only' offences being dealt with at the Crown Court when a plea of guilty was entered to an alternative 'either way' offence.

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<sup>3</sup> Ministry of Justice (2012:40) *Swift and Sure Justice: The Government's Plans for Reform of the Criminal Justice System* (London: Ministry of Justice).

### ***Hearings observed***

D1.5<sup>4</sup> Three juveniles had been jointly charged with an offence of robbery, which was sent up to the Crown Court as a ‘grave’ crime. When the judge asked the prosecutor why the case had been brought up to the Crown Court, the prosecutor stated that this was because there was mention of a knife being used. The judge pointed out that no knife had been found and that the case should have been dealt with in the Youth Court.

D8.16 In this case the judge asked the prosecutor why the defendant had not been dealt with in the Magistrates’ Court. The prosecutor replied that this was probably because it involved a head-butt and the complainant had lost a lot of blood. After viewing the CCTV evidence the judge imposed a community order.

D7.15 The young defendant was charged with an offence of robbery and this was sent to the Crown Court as a ‘grave’ crime. The case was listed for trial but the CPS accepted a plea to an alternative offence of theft because it was accepted that the threat of violence was actually due to the victim chasing the defendant after his mobile phone had been stolen. The judge imposed a Youth Rehabilitation Order.

D3.3 The defendant had been charged with an offence of aggravated burglary, which is an ‘indictable only’ offence, which means it can only be heard in the Crown Court. It had been listed for trial but having viewed the CCTV evidence the prosecutor accepted that there were no aggravating factors and so a plea to burglary was accepted. If a burglary had been charged the case would not have been taken up to the Crown Court.

D5.8 Having been charged with an offence of racially aggravated assault the defendant elected for his case to be heard in the Crown Court and he pleaded ‘not guilty’. From the evidence the judge said that this case basically involved an argument between two neighbours. The black defendant was said to have pushed a female and called her a ‘white bitch’ and a ‘whore’. The judge said in his view this offence could more appropriately have been charged as a common assault and dealt with in the Magistrates’ Court. Instead, he commented on the high costs in this case as it was to involve a two-day trial, with an interpreter.

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<sup>4</sup> This code refers to the day the case was observed, D1 being ‘day one’, and the next number refers to where the case is listed in the fieldwork notes.

### ***Review of case files***

30.<sup>5</sup> The defendant had been charged with two offences of ‘witness intimidation’ and he had elected that his case be heard in the Crown Court. On the case file note it was stated that at the trial the judge had gone through the evidence with a ‘fine toothcomb’ and had pointed out to the prosecutor that there was insufficient evidence to convict on either count. After taking instructions the prosecutor offered no evidence in the case but on the file it was noted that ‘the CPS might want to run a Section 5 [breach of the peace] instead’.

34. The defendant had initially been charged with an offence of affray, which was admitted in the Magistrates’ Court. However, the defendant did not admit to having a knife, and this issue was to be subject to a trial, by way of a Newton hearing. Prior to the agreed Newton hearing the CPS charged the defendant with possessing an offensive weapon and asked that the case be referred to the Crown Court. On the defence case file the solicitor had noted that he was critical of the prosecutor for taking this course of action. This was because he felt the prosecutor had added the new charge in order to avoid a trial in the Magistrates’ Court. His view, noted on the file, was that the defendant would be dealt with for the affray only in the Crown Court, which was ultimately the case with the CPS offering no evidence in relation to the knife.<sup>6</sup> The defendant received a community penalty.

## **2. Potential causes of inefficiency and delay**

There were many cases observed where there were seen to be examples of inefficiency and delay within the Crown Court process. Late production of reports, statements and additional evidence required for effective hearing of a case was commonplace. The judge was frequently expected to receive and accept, on the morning of the hearing, additional evidence without which, on occasions, the prosecution could not effectively proceed. This suggests that some cases are not well prepared prior to a hearing. Indeed, the hearing itself seems to act as the stimulus for finalising evidence and preparation rather than listing being the trigger to prompt effective case review and final preparation. This has inevitable consequences for inefficiency and delay in dealing with the live Crown Court list which a judge is expected to dispose of. Explored are issues which were seen to contribute to inefficiencies and delay, firstly from the perspective of the prosecution and then the defence.

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<sup>5</sup> This is the number allocated to this case as part of the research study.

<sup>6</sup> References are made in this report to both male and female lawyers but for reasons of confidentiality all are referred to in the masculine.

### ***Inefficiencies, delays and police/CPS-related issues***

- Poor communication between the police and the CPS, and also between the CPS and the Crown advocate, could create inefficiencies and delays. There were also cases where the police failed to maintain contact with victims and/or witnesses which could have avoided unnecessary court hearings, including trials.
- Late service of evidence – particularly in relation to CCTV evidence, transcripts from 999 calls, forensic evidence and photographs. There were a number of cases adjourned because such evidence was missing, or where the intervention of the judge enabled the case to proceed.
- Late review of the evidence. It seems that, in cases where the evidence is in dispute, a detailed review by prosecutors of Crown Court cases sometimes does not take place until the trial.
- The prosecutor in court is not always empowered to make decisions, or there is insufficient information available on which to make a decision. This means that cases having the potential to be resolved at the PCMH are instead adjourned for trial.
- There were particular problems observed with cases committed from the Magistrates' Court for sentence with the evidence being described by the judge/prosecutor as 'woefully inadequate'.
- In a number of cases there were delays seen to be due to the drafting of the Indictment.

### ***Hearings observed***

D1.3 In this case the judge commented on long delays and pointed out that the evidence had been poor from the police station through to the PCMH. The prosecutor acknowledged the judge's comments and said that he had come to court ready to proceed. At this point defence counsel intervened and told the court that the CPS had discontinued proceedings in this case. Neither the court nor the prosecutor had been informed.

D1.5 This case involved three juveniles, commented on above; it had been listed for trial and the day before the CPS had put in an application for ‘special measures’.<sup>7</sup> It was because of this application that the police attempted to make contact with the young complainant. When calling at his home address the police were told by a relative that he had left the country over three months earlier and he would not be attending the trial. Accordingly, the prosecutor offered no evidence and the trial was vacated.

D5.7 The judge was to sentence a defendant for an offence of possessing a bladed article and causing an assault occasioning actual bodily harm. The defendant had pleaded guilty three weeks earlier but the judge did not have photographs of the knife, or of the injuries sustained. The case was adjourned for one week for these images to be made available.

D3.3 In this case, mentioned above, the defendant had been charged with an offence of aggravated burglary. The incident was captured on CCTV but instead of viewing this evidence when making the charging decision CPS Direct<sup>8</sup> had to rely on a summary of this evidence provided by the police. When the Crown prosecutor viewed the CCTV in preparation for the trial, the ‘weapon’ described was seen to be the defendant’s walking stick. If the offence had been charged as a burglary it would not have been taken up to the Crown Court.

D3.1 The defendant had been charged with wounding with intent to cause really serious bodily harm under Section 18 of the Offences Against the Person Act 1861. The case was listed for trial but it could not proceed. After examining the evidence the judge asked the prosecutor if a plea to wounding without intent, under Section 20, would be acceptable instead. The prosecutor said not but the judge pointed out that he had sufficient sentencing powers to deal with it as a Section 20 assault, and that he had dealt with similar cases in this way which involved more serious injuries. The case was stood down to enable the prosecutor to take instructions from the CPS. When the case was brought back, over three hours later, the prosecutor said he had not been able to contact a senior reviewing lawyer and so the case

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<sup>7</sup> The ‘special measures’ sought in this case would be for the young complainant to give his evidence from behind a screen in order to shield him from the defendants.

<sup>8</sup> CPS Direct is a telephone-advice service provided remotely by prosecutors.

was adjourned for trial. The judge asked that the CPS review this case and he advised the prosecutor that if the trial was listed before him he would stop it at half-time.<sup>9</sup>

D4.11 The defendant had pleaded guilty to an offence of aggravated ‘TWOC’ (taking a vehicle without the owner’s consent) and the case was committed to the Crown Court for sentence. At the PCMH the judge informed the prosecutor that his file included only even pages within the statements (with the odd pages missing) and that there were no photographs of the damaged car on the file.

D4.12 In this case the defendant had pleaded guilty to an offence of cultivating cannabis and he had been committed to the Crown Court for sentence. The judge said that he was unable to deal with the case because there were no photographs showing the extent of the cannabis grown. The defence barrister replied that he had chased the CPS eight times to try to get this evidence but he understood that the person dealing with committal for sentence files was ‘massively overburdened’. In relation to this, and other cases, the judge pointed out that, ‘the system does not save money if the papers before the court are inadequate.’

D6.7 This case involved historical allegations of sexual abuse made by a daughter against her father. The judge said at the previous hearing he had pointed out that new counts had to be added. This was due to the introduction of new legislation which required the counts to be drafted differently when the dates of the allegations made were both before and after the changes were made. The case had been re-listed but the judge noticed that the indictment had not been amended and so the case had to be adjourned once again for these changes to be made.

### ***Review of case files***

39/40. This case involved four co-defendants charged with an offence of house burglary. Two had pleaded guilty and the other two pleaded ‘not guilty’, and alibi evidence was produced. A few days before the trial the CPS served CCTV evidence on the two defendants showing them with their co-accused shortly after the burglary. This evidence undermined their alibis and they both pleaded guilty on the day of the trial. The CCTV evidence had been

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<sup>9</sup> This means that the judge would be likely to take the case out of the hands of the jury following presentation of the prosecution’s case because a case had not been made for an offence of wounding with intent to cause really serious harm.

available four months earlier but re-formatting of the discs led to the date and time counter being erased. This had not been picked up by either the police or the CPS until just before the trial.

8. The defendant had been charged with an offence of wounding with intent to cause serious harm. At the PCMH the defendant pleaded guilty to an offence of wounding under Section 20. Recorded on the advocate's notes of the hearing, was that the judge had asked the prosecutor to consider a plea to Section 20, but this was not accepted. On the strength of the evidence, the judge was noted as having discussed with the prosecutor how they would seek to prove the intention to cause really serious bodily harm. When the case was later listed for trial it could not proceed and it was put before the same judge for mention. Once again, it was noted on the file that the judge had tried to put the prosecutor under pressure to accept a plea to the lesser offence. The judge told the prosecutor that if he was dealing with the case he would stop the trial at half time. The prosecutor noted the judge's comment and the case was adjourned for trial. Prior to the trial the CPS did accept a plea to Section 20 wounding and, having been on remand, the defendant was given a suspended sentence.

### ***Inefficiencies, delays and defence-related issues***

There were limitations, when observing Crown Court cases, in identifying the extent to which inefficiencies and delays could be caused by the defence. At the PCMH, for example, there were a number of cases where the judge referred to the evidence as 'overwhelming'. It was apparent that he was endeavouring to encourage an early guilty plea due to the improbability, having regard to the weight of the evidence, of a not guilty verdict. If defence counsel had received instructions that the offence was denied, then apart from pointing out the loss of credit for pleading guilty earlier on, the judge had no further ability to manage events or seek defence representations on the weight of the evidence, with the effect that the case would inevitably proceed to trial. The following issues were seen to arise in relation to the defence causing inefficiencies and delays:

- There were comments made by the judge about the late service of defence statements. The judge was also critical, on occasions, of the defence for not always complying with the procedural rules for the service of defence statements, which included not commenting on key evidence.

- The defence were sometimes criticised for not taking timely instructions and/or for not contacting the CPS over key evidence which had not been served.
- There were cases delayed when solicitors were acting for two or more co-accused and a potential conflict was not noticed until late on in proceedings.

***Hearings observed***

D8.11 The judge asked defence counsel why there was no defence statement in this case and the reply was that the solicitors were waiting for the CPS to serve the unused material. The judge pointed out that this reason was not valid and that the defence statement should have been served.

D8.14 When asked by the judge why a defence statement had been served on the CPS but not the court, defence counsel explained that they were awaiting a response from the CPS about issues raised in the statement. The judge said that this approach was in breach of the procedural rules.

D1.10/1.11 In one case the defence were criticised for not commenting on the defendant's finances in the defence statement when he was being dealt with for a commercial supply of drugs. In another case the defence had not commented on the knife when the defendant was charged with possessing a bladed article.

D1.8 The defence counsel asked for an adjournment in this case because his solicitors had been unable to take instructions from their client. The judge pointed out that the case had last been in court eight weeks earlier and the solicitors should have made more effort to take instructions from their client during that time.

D4.2 In this case defence counsel had indicated at the PCMH that there would be a plea of guilty to an offence of affray, but to possessing a bladed article the defendant would plead not guilty, and he asked that the case be adjourned for trial. The judge noted that key evidence in this case was likely to be the 999 call where two independent witnesses phoned the police reporting the incident. When defence counsel was asked if he had a copy of the transcript of this call he said this had not been served and further implied that it was not a matter for the

defence to chase the CPS for evidence. The judge disagreed and said the defence had obligations under the Criminal Procedure Rules. The case was stood down for this evidence to be produced; when it was, the transcript of the 999 call included the witnesses referring to the defendant as ‘brandishing a knife’. The defendant changed his plea and a trial was avoided in this case.

D3.10 Three co-accused were represented by the same firm of solicitors when the case came to trial. At the trial, detailed instructions taken identified conflicting versions of events which meant the trial had to be adjourned to enable the defendants to be separately represented.

#### *Review of case files*

14. The case file was reviewed of a defendant who was jointly charged with four co-accused, all represented by the same firm of solicitors. As all defendants had made ‘no comment’ during the police interview, the potential for any conflict between them had not arisen. The five defendants pleaded not guilty but at the trial the CPS agreed to offer no evidence against two of the co-accused in exchange for guilty pleas from the other three. It seems that the evidence was not so strong against the two co-accused and if they had instructed a different solicitor a trial might have been avoided with earlier representations having been made to the CPS about the strength of the evidence against them.

### **3. The Judge’s role in managing cases effectively**

There have been a number of cases commented on above where the intervention of the judge has helped to progress matters and to avoid a trial. Indeed, it is the role of the judge at the PCMH to ensure that all necessary steps have been taken in preparation for trial and to exercise a managerial role with a view to progressing cases. There were a number of cases involving offences of possession of drugs with intent to supply, in which the judge was able to avoid a trial by pointing out to prosecutors the relevance of the case *Regina -v- Healey*.<sup>10</sup> Had the judge not intervened these cases would have proceeded unnecessarily to trial. In relation to the judge’s intervention the following issues were seen to arise.

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<sup>10</sup> See *Regina -v- Healey* [2012] EWCA Crim 1005.

- In order to encourage an early guilty plea the defence can ask the judge for an indication of the likely sentence, known as a ‘Goodyear’ indication.<sup>11</sup> There were no cases observed at the PCMH where the defence asked for such an indication, although there were cases where the judge would give an informal indication that a custodial sentence could be avoided following a guilty plea.
- The judge’s ability to manage cases effectively can be undermined if the prosecution and/or the defence are unwilling to engage.
- In the review of case files there were indications that, in cases where the evidence was ‘overwhelming’, the defence did not always seek to manage their clients robustly at the PCMH but would do so later at the trial. It seems that there are financial incentives for the defence which can effectively reward a delayed plea of guilty.
- There were cases observed where decisions made by the police, in relation to evidence-gathering and charging decisions, were seen to inhibit the judge’s ability to deal with cases efficiently.

### *Hearings observed*

D5.6 The defendant had been charged with an offence of wounding with intent under Section 18 and at the preliminary hearing the case had been adjourned for a psychiatric report to consider whether he was ‘fit to plead’. As the psychiatric report confirmed that he was ‘fit to plead’ the defence said that he would plead guilty to wounding under Section 20. The Crown prosecutor said this was not acceptable because the defendant had been assessed as being ‘fit to plead’. The judge said that the psychiatric assessment had no bearing on whether or not the defendant had intended really serious harm when committing the offence. Instead he pointed out that the defendant had been held on remand and that it was inappropriate for the mental health issues in this case to prolong his time in custody. The case was stood down while the prosecutor took instructions from the reviewing lawyer. A plea under Section 20 was later accepted.

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<sup>11</sup> A request can be made by the defence at any stage of the criminal proceedings.

D5.5 The defendant pleaded not guilty to possessing cannabis with intent to supply and the case was to be adjourned for trial. When examining the evidence the judge noted the relatively ‘low-level’ amount of drugs to be supplied and he said that an immediate sentence of imprisonment could be avoided if a guilty plea was entered. After taking advice the defendant pleaded guilty and he received a suspended prison sentence.

D3.4 In this case the defendant pleaded not guilty to an offence of burglary and in trying to avoid a trial the judge pointed out to the defence that the evidence in the case was ‘overwhelming’. The judge asked defence counsel to indicate, on the basis of the available evidence, the issues in dispute. Counsel replied that he would rather not say, but he did indicate that there was likely to be a guilty plea in due course. While the judge pointed out that the defendant would lose credit for the delay in entering a guilty plea the offence remained denied and the case was adjourned for trial.

D5.10 This case involved a domestic incident and the defendant had been charged with a Section 18 offence of wounding with intent. The police had been called to an incident; after they broke down a door they saw the defendant assaulting the victim, who had lost consciousness. With two witnesses later refusing to give evidence in this case, the judge criticised the police for not taking photographs of the damage caused to the door and of the victim. Without having photographic evidence the judge said that the police officers were likely to be called as witnesses in this case.

D9.9 In this case the defendant had been charged with an offence of producing cannabis. This was seen to be a commercial grow with the electricity meter having been by-passed. The judge asked why the defendant had not also been charged with ‘abstracting electricity’ and the prosecutor replied that he had been cautioned for this offence. The judge said this was not appropriate as this was an aggravating feature of the main offence.

D9.11 The defendant had been charged with sexually abusing his stepson and he had previously been dealt with for similar offences against his own children. The details of this offence had been passed on by the police to the defendant’s new partner whose son was then abused. The judge enquired as to whether the mother had been charged with child neglect and the prosecutor confirmed that she had been cautioned for this offence. The judge was critical of this decision as he said the court should have dealt with all these matters together.

In a similar case the judge explained that a mother had been cautioned for child neglect but when she subsequently entered into a relationship with a sex offender, and her children were again abused, they were taken away from her and placed into care.

D4.12 In this case the defendant had been committed for sentence for an offence of handling stolen goods. The judge noted from the papers that the defendant should have been jointly charged with his co-accused, who was pleading not guilty to an offence of burglary. The judge pointed out that if the co-accused was found guilty of that offence then this would incriminate the defendant. This was because he had been in the presence of his co-accused shortly after the offence was committed and he was in possession of the stolen goods. In seeking to bring these two cases together the judge adjourned the defendant's case to tie in with the next hearing of his co-accused.

### ***Review of case files***

35. The defendant had been charged with possessing a knife as an offensive weapon. While the case against the defendant was noted by the judge to be strong, it was stated on the file that he was reluctant to plead guilty at the PCMH. However, it was also noted that the defendant had asked his barrister to obtain an indication from the judge as to the likely sentence. There was no mention on the file of such a request having been made to the judge, and on the letter to the client the solicitor had written, 'On the advice of counsel you pleaded not guilty.' When the case was listed for trial the defendant accepted counsel's advice that the evidence was overwhelming and he pleaded guilty. It seems that the judge assumed the delay was due to the intransigence of the client to accept his guilt and a deterrent sentence was imposed.

19. The potential influence of financial incentives on the timing of a plea of guilty was demonstrable in one case file where a defendant had been charged with an offence of 'going equipped', which was denied up until trial. Written on a file note prepared at the time the case was committed to the Crown Court, the solicitor had written, 'Fingers crossed he will maintain his NG [not guilty] plea before the judge and we will be paid far more handsomely than if he doesn't!'

#### **4. Case management within an adversarial system of justice**

With organisations under increased financial pressure it is important to consider ways in which cases can be managed more efficiently within the criminal process. However, in an adversarial system of justice managing cases effectively might require more time and resources to be expended on some cases to ensure they are dealt with ‘justly’.<sup>12</sup> There were also cases where important details had been overlooked, which could have implications not only for inefficiencies and delays but also for issues of justice. The following three issues are examined as follows:

- The mental health needs of defendants could sometimes require more time and effort to be expended on cases. There were also cases where the defence would seek a psychiatric report inappropriately.
- More time can sometimes be required in cases in order to ensure that the needs and/or views of victims are taken into account.
- The intransigence of some defendants can lead to long delays, which can be stressful and upsetting for victims. Such delays, however, can be to the advantage of defendants, particularly if witnesses become worn down and do not attend court to give evidence.

##### *Hearings observed*

D3.14 The defendant was of previous good character and she had been charged with four minor offences of shoplifting. Because she was experiencing severe mental health problems the defendant had been remanded in custody and her case transferred to the Crown Court. At the PCMH the judge asked what action was being taken in this case and the defence replied that they had instructed two psychiatrists to assess whether she was fit to plead. The judge criticised this approach saying that her mental health needs should have been prioritised. He was also critical of the CPS for continuing with the prosecution, particularly as the defendant had been remanded in custody for four and a half months. The case was adjourned for two weeks to give the CPS the opportunity to reconsider the prosecution and to enable the defence to arrange for a mental health assessment.

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<sup>12</sup> See the Criminal Procedure Rules – Rule 1.1.(2).

D3.18 The defendant pleaded guilty to an assault occasioning actual bodily harm at the PCMH. The defence advocate then asked for the case to be adjourned for a pre-sentence report and also for a psychiatric report to be prepared. The judge queried the need for a full psychiatric report and the advocate explained that the defendant had a history of psychiatric problems. The judge's view was that a detailed report was not required as he felt this was unlikely to affect the sentence. With the defence continuing to push for a full psychiatric report the judge said that enquiries should first be made of his GP. The case was adjourned for a pre-sentence report and a report from the defendant's GP.

D2.7 In this case the defendant had been charged with an offence of burglary. At the trial the elderly victim could not give evidence because she was profoundly deaf. The CPS was then prepared to accept alternative pleas from the defendant to offences of fraud and handling. When this case came before the judge for sentence he was critical of the police for not making a note of the complainant's disability. Indeed, he remarked that the evidence in relation to the offence of burglary was overwhelming and the defendant had previous convictions for similar offences. Instead of an immediate sentence of imprisonment, which the judge said would have followed a conviction for the offence of burglary, a suspended prison sentence was imposed.

D2.6 As discussed above, there were a number of cases involving an offence of wounding with intent where the judge would discuss with the Crown prosecutor the potential for accepting a plea of guilty to wounding under Section 20. This was not the situation in this case when the judge was critical of the CPS for accepting a plea to the lesser offence without reviewing the case thoroughly, including discussing this with the victim. The judge refused to allow the defendant to be arraigned for the Section 20 offence. Adjourning the case he requested that the file be reviewed by a prosecuting lawyer and asked for the views of the victim to be obtained on the question of intent.

#### *Review of case files*

32. The defendant had been charged with causing an affray. The circumstances of this case were that the defendant was seen at home in the early hours of the morning trying to harm herself with a knife. The police were called and they had to break in to the house in order to try to take the knife away from her. Not surprisingly these actions agitated the defendant and

she tried to cut herself, so an officer ‘tasered’ her for her own safety. The case had been in for trial but it could not proceed and instead it was listed for mention. From a note on the file the judge was evidently concerned about the defendant’s mental well-being and he ascertained from the defence that she was in regular contact with a psychiatrist. Instead of adjourning the case for trial the judge suggested that it could be dealt with by way of a bind over, which was acceptable to the Crown and the defence.

5. The defendant had pleaded not guilty to possessing a bladed article. He provided a rational explanation to his solicitors as to why he was in possession of the knife but it was also noted on the file that he suffered from ‘attention deficit hyperactivity disorder’ (ADHD) and depression. The solicitors obtained a report from his medical practitioner which was equivocal, stating that there was no definite diagnosis of either problem. Prior to the trial the defendant’s solicitor had successfully applied to the Legal Services Commission for prior authority to spend £1,250 on a report. It seems that this report was not obtained, because it was not needed, but this raises questions about the basis on which the costs were authorised.

6. The defendant had been charged with racially aggravated assault and criminal damage. He was not prepared to accept the strength of the evidence against him, which his solicitors described as ‘overwhelming’ and instead he wanted to put the prosecution to proof. A conflict arose with his first firm of solicitors and the case was adjourned for a new legal team to be appointed. There were further delays as the defendant was charged with an additional offence of ‘witness intimidation’. There were long delays in this case with the incident occurring in December 2010 and the trial being listed in February 2012. At the trial the main witness failed to attend at court and so the CPS were prepared to accept pleas to alternative offences. The defendant received a sentence of just over two years, which he considered to be a ‘good result’ because he had been advised by his solicitors to expect six years after a trial and four years if he had pleaded guilty.

## **5. Discussion**

This review of Crown Court cases highlights inefficiencies and delays in the criminal process due to the fragmented way in which organisations operate within the criminal justice system. It suggests the need for improved working practices between criminal justice practitioners, to include earlier and more robust reviews of the evidence. A more effective filter on cases in

the Magistrates' Court would help to reduce the number of cases sent up to the Crown Court. This would assist the Crown Court by providing more effective management of cases. To add to this research study the views of circuit judges will be sought from different Crown Courts on the issues raised in this report. The findings will be published in due course.

## Appendix B

### 8. Statistical outputs from analysis of police custody records

From the statistical analysis of custody records Table A1 shows a binary logistic regression model which was fitted to test the influence of the BLAST pilot, social and demographic characteristics, and offence on whether solicitor advice was requested. Social and demographic characteristics included gender, age group, and ethnicity. Predictors were entered simultaneously in the model as main effects only. Each explanatory variable has a reference category, with which other categories are compared. For example, in the case of ‘ethnicity’, each ethnic group is compared with ‘White British’ (the reference category). Reference categories can be identified by the fact that they have an estimate of zero and no standard error in the output tables. Positive estimates indicate an increase in the likelihood of requesting advice compared with the reference category, while negative estimates indicate a decrease.

The p-value can be used to determine whether any indicated increase/decrease in duration is statistically significant (i.e. is likely / not likely to be the product of chance). P-values less than 0.05 are typically considered to indicate statistically significant findings. So, looking again at Broad Ethnicity, compared with the reference category (White British) Asian detainees are more likely to request solicitor advice; this finding is statistically significant.

*Table A1: Binary logistic regression model of social and demographic characteristics, offence and whether a solicitor was requested*

| Covariate       | Level         | Coef. | Std. Err. | Z     | P>z    |
|-----------------|---------------|-------|-----------|-------|--------|
| Constant        |               | -0.61 | 0.07      | -8.34 | <0.001 |
| Year            | 2011          | 0     | 1.000     | -     | -      |
|                 | 2012          | 0.08  | 0.05      | 1.54  | 0.124  |
| Gender          | Male          | 0     | 1.000     | -     | -      |
|                 | Female        | -0.26 | 0.07      | -3.78 | <0.001 |
| Broad Ethnicity | White British | 0     | 1.000     | -     | -      |
|                 | White Other   | 0.17  | 0.10      | 1.71  | 0.087  |
|                 | Asian         | 0.31  | 0.10      | 3.04  | 0.002  |
|                 | Black         | 0.37  | 0.08      | 4.38  | <0.001 |
|                 | Mixed         | 0.45  | 0.10      | 4.41  | <0.001 |
|                 | Other/Chinese | -0.10 | 0.23      | -0.43 | 0.664  |
|                 | Not Stated    | 0.20  | 0.25      | 0.79  | 0.427  |

|                      |  |       |       |       |         |
|----------------------|--|-------|-------|-------|---------|
| Age Group            | Under 14                               | -0.17 | 0.25  | -0.7  | 0.482   |
|                      | 14-16                                  | 0.23  | 0.11  | 2.14  | 0.033   |
|                      | 17-19                                  | -0.30 | 0.09  | -3.46 | 0.001   |
|                      | 20-24                                  | -0.06 | 0.07  | -0.82 | 0.414   |
|                      | 25-34                                  | 0     | 1.000 | -     | -       |
|                      | 35-44                                  | 0.03  | 0.07  | 0.34  | 0.732   |
|                      | 45-54                                  | 0.09  | 0.09  | 1.01  | 0.312   |
|                      | 55+                                    | 0.39  | 0.16  | 2.51  | 0.012   |
|                      |  |       |       |       |         |
| First Arrest Offence | Affray                                 | 0.16  | 0.12  | 1.31  | 0.191   |
|                      | Aggravated U/T of Motor Vehicle        |       |       |       | (empty) |
|                      | Arson                                  | 0.59  | 0.42  | 1.43  | 0.154   |
|                      | Assault - Common Assault               | -0.06 | 0.09  | -0.73 | 0.464   |
|                      | Assault ABH                            | 0.33  | 0.09  | 3.85  | <0.001  |
|                      | Assault GBH                            | 1.32  | 0.23  | 5.62  | <0.001  |
|                      | Assault GBH With Intent                | 2.19  | 0.35  | 6.26  | <0.001  |
|                      | Assault Police                         | 0.20  | 0.31  | 0.66  | 0.511   |
|                      | Begging                                | -0.63 | 0.65  | -0.97 | 0.333   |
|                      | Breach Of The Peace                    | -1.55 | 0.22  | -7.08 | <0.001  |
|                      | Burglary                               | 1.18  | 0.10  | 11.68 | <0.001  |
|                      | Criminal Damage                        | -0.15 | 0.11  | -1.35 | 0.177   |
|                      | Deception                              |       |       |       | (empty) |
|                      | Disqualified Driving                   | -0.79 | 0.35  | -2.27 | 0.023   |
|                      | Drive Whilst Unfit Through Drink/Drugs | 0.30  | 0.30  | 0.99  | 0.321   |
|                      | Drugs Cultivation                      | 0.13  | 0.50  | 0.27  | 0.789   |
|                      | Drunk & Disorderly                     | -0.40 | 0.14  | -2.89 | 0.004   |
|                      | Drunk & Incapable                      |       |       |       | (empty) |
|                      | Firearms Offence                       | 2.84  | 0.74  | 3.83  | <0.001  |
|                      | Fraud                                  | 0.71  | 0.22  | 3.17  | 0.002   |
|                      | Going Equipped                         | 0.18  | 0.29  | 0.64  | 0.524   |
|                      | Handling                               | 0.00  | 0.32  | -0.01 | 0.992   |
|                      | Harassment                             | 0.39  | 0.20  | 1.92  | 0.055   |
|                      | Indecent Assault                       | 0.94  | 0.70  | 1.34  | 0.18    |
|                      | Making Off Without Payment             | 0.72  | 0.50  | 1.43  | 0.153   |
|                      | Murder                                 | 1.87  | 0.68  | 2.76  | 0.006   |
|                      | Offensive Weapon                       | 0.06  | 0.24  | 0.26  | 0.792   |
|                      | Pervert The Course Of Justice          | 0.58  | 0.42  | 1.38  | 0.169   |
|                      | Positive Breath Test                   | -0.60 | 0.16  | -3.81 | <0.001  |
|                      | Possession Of Controlled Drug          | -0.66 | 0.16  | -3.99 | <0.001  |

|                                  |       |       |       |        |
|----------------------------------|-------|-------|-------|--------|
| Possession With Intent To Supply | 0.59  | 0.18  | 3.35  | 0.001  |
| Prevent a Breach of the Peace    | -1.30 | 1.06  | -1.23 | 0.218  |
| Production Of Cannabis           | 0.13  | 0.24  | 0.53  | 0.595  |
| Rape                             | 1.72  | 0.29  | 5.87  | <0.001 |
| Refused Breath Test              | 0.84  | 0.81  | 1.04  | 0.298  |
| Robbery                          | 1.25  | 0.16  | 7.95  | <0.001 |
| S.4 Public Order Act 1986        | -0.13 | 0.22  | -0.58 | 0.565  |
| S.5 Public Order Act 1986        | -0.16 | 0.18  | -0.89 | 0.372  |
| Sexual Touching                  | 0.67  | 0.42  | 1.58  | 0.114  |
| Theft                            | 0     | 1.000 | -     | -      |
| Threats To Kill                  | 0.71  | 0.29  | 2.5   | 0.012  |
| Unlawful Taking Of Motor Vehicle | 0.47  | 0.40  | 1.17  | 0.243  |
| Unlawfully At Large              | 0.58  | 1.39  | 0.41  | 0.679  |
| Violent Disorder                 | 0.42  | 0.27  | 1.56  | 0.12   |
| Witness Intimidation             | 1.20  | 0.43  | 2.8   | 0.005  |

Table A2 shows statistical output from the generalized linear model undertaken as part of this study. The generalized linear model (McCullagh & Nelder, 1989) is a generalization of ordinary least squared regression. It consists of three elements: a probability distribution from the exponential family, a linear predictor and a link function. The model used was a log-gamma model. The gamma distribution function was chosen since duration (as with cost data, e.g. Barber & Thompson, 1998; Montez-Rath et al., 2006) can only take positive values and is highly skewed and this is reflected by the gamma distribution (e.g. see Hardin & Hilbe, 2007). The linear predictor incorporates information about the independent variables into the model (i.e. see the variables presented in A2). The link function provides the relationship between the linear predictor and the mean of the distribution function. The identity link was used which usefully shows the coefficient in minutes.

Each explanatory variable has a reference category, with which other categories are compared. For example, in the case of ‘Age Group’, each age group is compared with the ‘25-34’ group (the reference category). Reference categories can be identified by the fact that they have an estimate of zero and no standard error in the output tables. Positive coefficients (Coef.) indicate an increase in duration of custody, compared with the reference category, while negative estimates indicate a decrease. So, for example, within the Age Group variable, the duration of detention for 14- to 16-year-olds is 109.49 minutes shorter than for the 25- to 34-year-olds reference category.

The p-value can be used to determine whether any indicated increase/decrease in duration is statistically significant (i.e. is likely / not likely to be the product of chance). P-values less than 0.05 are typically considered to indicate statistically significant findings. So, for example, the decrease in duration associated with ‘14-16’ when compared with ‘25-34’ would be considered highly significant.

*Table A2. Generalized linear model (identity-gamma model) of duration (hours) in custody*

| Covariate            | Level                           | Coef.   | Std. Err. | Z     | P>z    |
|----------------------|---------------------------------|---------|-----------|-------|--------|
| Constant             |                                 | 411.79  | 21.98     | 18.74 | <0.001 |
| Year                 | 2011                            | 0       | 1.000     | -     | -      |
|                      | 2012                            | -9.12   | 14.94     | -0.61 | 0.542  |
| Solicitor requested  | No                              | 0       | 1.000     | -     | -      |
|                      | Yes                             | 234.19  | 19.71     | 11.88 | <0.001 |
| Gender               | Male                            | 0       | 1.000     | -     | -      |
|                      | Female                          | -75.02  | 17.36     | -4.32 | <0.001 |
| Broad ethnicity      | White British                   | 0       | 1.000     | -     | -      |
|                      | White Other                     | 90.65   | 34.88     | 2.6   | 0.009  |
|                      | Asian                           | -54.86  | 27.29     | -2.01 | 0.044  |
|                      | Black                           | -40.29  | 24.42     | -1.65 | 0.099  |
|                      | Mixed                           | 24.44   | 37.66     | 0.65  | 0.516  |
|                      | Other/Chinese                   | 113.28  | 89.27     | 1.27  | 0.204  |
|                      | Not Stated                      | 102.68  | 98.80     | 1.04  | 0.299  |
| Age group            | Under 14                        | -204.45 | 43.35     | -4.72 | <0.001 |
|                      | 14-16                           | -109.49 | 29.34     | -3.73 | <0.001 |
|                      | 17-19                           | -48.23  | 26.37     | -1.83 | 0.067  |
|                      | 20-24                           | -31.41  | 21.45     | -1.46 | 0.143  |
|                      | 25-34                           | 0       | 1.000     | -     | -      |
|                      | 35-44                           | 4.47    | 23.74     | 0.19  | 0.851  |
|                      | 45-54                           | -3.67   | 28.83     | -0.13 | 0.899  |
|                      | 55+                             | -86.71  | 37.82     | -2.29 | 0.022  |
| First arrest offence | Affray                          | 177.33  | 47.96     | 3.7   | <0.001 |
|                      | Aggravated U/T of Motor Vehicle | 154.73  | 436.80    | 0.35  | 0.723  |
|                      | Arson                           | 178.12  | 189.83    | 0.94  | 0.348  |
|                      | Assault - Common Assault        | 35.37   | 25.75     | 1.37  | 0.169  |
|                      | Assault ABH                     | 154.89  | 31.98     | 4.84  | <0.001 |
|                      | Assault GBH                     | 380.10  | 132.06    | 2.88  | 0.004  |
|                      | Assault GBH With Intent         | 290.62  | 144.78    | 2.01  | 0.045  |

|  |  |         |        |       |        |
|--|--|---------|--------|-------|--------|
|  | Assault Police                         | 194.51  | 135.01 | 1.44  | 0.15   |
|  | Begging                                | -241.95 | 52.46  | -4.61 | <0.001 |
|  | Breach Of The Peace                    | 50.06   | 43.17  | 1.16  | 0.246  |
|  | Burglary                               | 277.69  | 47.00  | 5.91  | <0.001 |
|  | Criminal Damage                        | 49.19   | 32.01  | 1.54  | 0.124  |
|  | Deception                              | 234.64  | 656.23 | 0.36  | 0.721  |
|  | Disqualified Driving                   | -247.38 | 36.05  | -6.86 | <0.001 |
|  | Drive Whilst Unfit Through Drink/Drugs | -52.53  | 81.34  | -0.65 | 0.518  |
|  | Drugs Cultivation                      | -156.74 | 74.77  | -2.1  | 0.036  |
|  | Drunk & Disorderly                     | 125.17  | 45.28  | 2.76  | 0.006  |
|  | Drunk & Incapable                      | 131.28  | 761.68 | 0.17  | 0.863  |
|  | Firearms Offence                       | 61.89   | 198.88 | 0.31  | 0.756  |
|  | Fraud                                  | -84.55  | 45.92  | -1.84 | 0.066  |
|  | Going Equipped                         | 234.68  | 136.60 | 1.72  | 0.086  |
|  | Handling                               | -35.70  | 78.49  | -0.45 | 0.649  |
|  | Harassment                             | 86.78   | 75.84  | 1.14  | 0.253  |
|  | Indecent Assault                       | 102.61  | 277.63 | 0.37  | 0.712  |
|  | Making Off Without Payment             | -138.61 | 109.94 | -1.26 | 0.207  |
|  | Murder                                 | 1203.74 | 630.60 | 1.91  | 0.056  |
|  | Offensive Weapon                       | 62.48   | 78.91  | 0.79  | 0.428  |
|  | Pervert The Course Of Justice          | -124.38 | 71.74  | -1.73 | 0.083  |
|  | Positive Breath Test                   | -81.50  | 31.77  | -2.57 | 0.01   |
|  | Possession Of Controlled Drug          | -112.60 | 31.53  | -3.57 | <0.001 |
|  | Possession With Intent To Supply       | 687.46  | 138.83 | 4.95  | <0.001 |
|  | Prevent a Breach of the Peace          | -23.80  | 215.27 | -0.11 | 0.912  |
|  | Production Of Cannabis                 | -160.27 | 39.03  | -4.11 | <0.001 |
|  | Rape                                   | 171.91  | 119.42 | 1.44  | 0.15   |
|  | Refused Breath Test                    | -69.50  | 242.00 | -0.29 | 0.774  |
|  | Robbery                                | 426.65  | 86.82  | 4.91  | <0.001 |
|  | S.4 Public Order Act 1986              | 415.79  | 116.53 | 3.57  | <0.001 |
|  | S.5 Public Order Act 1986              | 55.41   | 53.25  | 1.04  | 0.298  |
|  | Sexual Touching                        | 131.33  | 164.48 | 0.8   | 0.425  |
|  | Theft                                  | 0       | 1.000  | -     | -      |
|  | Threats To Kill                        | 299.90  | 158.54 | 1.89  | 0.059  |
|  | Unlawful Taking Of Motor Vehicle       | 10.43   | 105.02 | 0.1   | 0.921  |
|  | Unlawfully At Large                    | 79.81   | 606.21 | 0.13  | 0.895  |

|  |                      |         |        |       |        |
|--|----------------------|---------|--------|-------|--------|
|  | Violent Disorder     | 2851.27 | 603.80 | 4.72  | <0.001 |
|  | Witness Intimidation | -10.03  | 112.45 | -0.09 | 0.929  |

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