



**EFFECTIVE POLICE STATION LEGAL ADVICE**  
**COUNTRY REPORT 5: NORTHERN IRELAND**

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## **1. INTRODUCTION**

Criminal procedure in Northern Ireland is similar to England and Wales in that there is an adversarial party-based tradition in which the police enjoy a high level of investigative autonomy and there is no pre-trial supervisory role of the prosecutor or other judicial officer. The Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) sets out the statutory rules which the police must operate when arresting, questioning and detaining a suspect, which includes access to free legal advice. Accompanying PACE are detailed Codes of Practice, with Code C setting out requirements for the detention, treatment and questioning of suspects in custody. While PACE was intended to improve the legal rights of suspects at the police station, the Order was implemented during the conflict in Northern Ireland - euphemistically referred to as 'The Troubles', which took place from 1968 to 1998 - and emergency legislation was in place which undermined such procedural safeguards.

A fundamental element of the peace process in 1998 was a review of the criminal justice system in Northern Ireland. This was a major factor leading to "a new beginning to policing in Northern Ireland with a police service capable of attracting and sustaining support from the community as a whole" (Independent Commission on Policing in Northern Ireland, 1998). The opportunity was taken by the Commission (1998. p. 4) to adopt an approach which is "restorative, not retributive - restorative of the values of liberty, the rule of law and mutual respect, values that have sometimes been casualties of the years of violence." Restorative justice measures have been introduced and brought under the ambit of the state and such measures have now become the main disposal for children and young people in conflict with the law (Carr and McAlister, 2014).

The Police Service of Northern Ireland (PSNI) is responsible for investigating crimes and the file is then sent to the Public Prosecution Service (PPS) to decide who is to be prosecuted and for what offences. The most serious offences are heard before a judge and jury in the Crown Court and the less serious cases are heard in magistrates' courts, with youth courts dealing with children and young people. The judicial system is headed by the Lord Chief Justice of Northern Ireland and the Department of Justice has responsibility for policy and legislation about criminal law, legal aid policy and the police. The Legal Services Agency Northern Ireland (LSANI) is an agency of the Department operating under a framework document which sets out arrangements for the effective governance, financing and operation of the Agency, including criminal legal aid. It is the Access to Justice (Northern Ireland) Order 2003 that provides access to free legal advice for suspects being dealt with by the police.

Reform of the legal aid scheme was intended by the Access to Justice (Northern Ireland) Order 2003, but this has not been fully implemented and the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 still determines criminal legal aid

representation. The Law Society of Northern Ireland is the regulatory authority in relation to the qualification, education, professional practice, conduct and discipline of solicitors to maintain the independence, ethical standards, professional competence and quality of services provided to the public.

As noted in the Country Report for England and Wales, while the European Court of Human Rights (ECtHR)'s decision in *Salduz v Turkey (Salduz)*<sup>1</sup> has encouraged changes in many European jurisdictions in relation to access to a lawyer for suspects in police custody, there has been little impact in this jurisdiction. Indeed, as part of the United Kingdom, Northern Ireland has opted into EU Directives on the right to interpretation and translation [2010/64] and on the right to information in criminal proceedings [2012/13], but opted out of the Directives on the right to a lawyer [2013/48], improving procedural rights for young suspects [2016/800] and the right to legal aid for suspects and accused persons in criminal proceedings [2016/1919]. Interestingly, while similar PACE provisions have been implemented in both jurisdictions, in England and Wales both solicitors and non-solicitors can provide police station legal advice, whereas in Northern Ireland only qualified solicitors may do so.

This study examines police station legal advice from the perspective of defence solicitors and policy officers based in government and in the Law Society of Northern Ireland. There are proposed changes to be made to the criminal legal aid scheme in Northern Ireland and so it is timely to consider the organisation of police station legal advice and how remuneration and other factors can impact on the delivery of a quality service.

## **2. METHOD**

Five semi-structured interviews were undertaken with defence lawyers and policy officers responsible for criminal legal aid. There were three interviews conducted with criminal defence practitioners based in three different firms in Belfast – all male.<sup>2</sup> Also interviewed together were two policy advisers from the Department of Justice, one male and one female, and also a male policy officer from the Law Society of Northern Ireland (the Law Society). A generic topic list was used for all interviews – one for defence practitioners and the other for legal aid policy makers. The interviews were transcribed and analysed using NVivo, which assists in the identification of key themes.

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<sup>1</sup> (2009) 49 EHRR 421.

<sup>2</sup> References are made in this report to both male and female research participants, but for reasons of confidentiality, they are referred to in the masculine and a coded reference is used instead of their initials.

### **3. ORGANISATION OF POLICE STATION LEGAL ADVICE IN NORTHERN IRELAND**

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

Police station legal advice in Northern Ireland is available to all suspects free of charge. Criminal legal aid is based on a 'judicare' model, which means that legal advice is provided by solicitors in private practice.

**Notification system.** The police will notify a solicitor over the telephone of a referral for legal advice. A solicitor commented on how much information they were given depended on the timing of the call. As he put it:

"If you take a call during office hours and it's the police saying they have someone in custody, then we can ask them questions and get information about the client. If it's out-of-office hours, we get a message left on our phone saying our client has been arrested and to contact the relevant extension number. We're never given enough information and we have to phone back to find out what's happening" (NE.5).

When receiving a referral, a solicitor said that he has a checklist of questions including, "The client's personal details, how well they are, what's happening with the investigation and who's involved in it." In addition, he remarked, "You try to work out timeframes for the interview and, if you can, you try and speak to your client. I only give limited advice over the telephone, because it's a rare case where I don't end up at the police station" (KP.5). Another solicitor said that he will try to talk to his client when the police call through with the referral. Commenting on his success rate, he said:

"I probably get to speak to clients in about half of all calls. If the custody sergeant rings when he's booking my client into custody, then I nearly always get to talk to him immediately, but, if they call once my client is down the cell block, then it's often too late and I have to ring the police a number of times before I can get to speak to my client" (DN.5).

A solicitor said how frustrating it is to receive a call from the police in the early hours of the morning saying that his client has been arrested, but he is not allowed to speak to him. He explained why in saying:

"The police will ring for somebody who's drunk and they're not going to be fit for the interview until the morning. They just ring you, wake you up and, apart from discharging their obligation to inform us of the referral, there's absolutely no purpose in it" (NE.5).

It was pointed out by the solicitors that they are also contacted by their clients direct and also by relatives of someone who has been arrested and they want the solicitor to intervene and find out what is happening in the case.

**Availability of lawyers.** It is only in Belfast where the Law Society has set up a city-wide duty solicitor scheme, with only solicitors who have a specialist knowledge of criminal law being allowed onto the rota (DN.5). A policy officer commented on there being competition between duty solicitors for slots on the rota, saying, "A firm doing any kind of criminal work, and however little, would want to be on the rota because there's always the potential to pick up a new client" (BV.5). Such competition was highlighted by a solicitor when he remarked, "We've got six solicitors in our firm who could provide cover, but the rota only allows up to two slots for each firm" (NE.5)

Outside of Belfast, a policy officer commented on the police having informal arrangements with local solicitors who are willing to attend the police station, particularly out-of-office hours, to provide advice to suspects who do not have their own solicitor, or those who do not want to wait for the solicitor to arrive (TL.5). A couple of solicitors were critical of the police in some areas for providing a list of local solicitors which could favour certain firms (KP.5). One said, "A few country-based firms have the duty work all wrapped up. They seem to have a closer relationship with the police than you find in the big cities" (KP.5). An independent Access to Justice Review report commissioned by the Department of Justice (2011, p. 41) was critical of the police using a list of solicitors because this put custody sergeants in a position of assisting suspects in their choice of a solicitor. It was recommended instead that duty solicitor rotas should be drawn up of suitably experienced solicitors across Northern Ireland. Delays in setting up such arrangements are considered below when examining the organisation of criminal legal aid.

**Telephone contact.** All the solicitors in this study commented on the importance of speaking to their clients over the telephone, but this was often in addition to their subsequently providing face-to-face advice at the police station. Accordingly, as this solicitor acknowledged, "There's lots of telephone advice, but it's just the initial contact when you tell your client that you're on your way down. You reassure them that you've spoken to their family and tell them not to say anything until they've spoken to me" (KP.5). While the solicitors can have difficulties when trying to get through to their client over the phone in custody, it was acknowledged that this was not due to the police trying to discourage such calls. As this solicitor put it, "To be fair, if we want to speak to our client, I've never known the police refuse a request, unless they're being held incommunicado for some reason" (NE.5).

The solicitors said that they would generally attend the police interview, although there could be exceptions. One solicitor, for example, said:

"We don't get involved in minor matters, such as disorderly behaviour or a common assault, or whatever it may be. There are some cases where the police don't need an interview and your client is to be charged or reported and in those cases telephone advice is sufficient" (NE.5).

Another solicitor remarked, "You will often not go to the station for driving offences, particularly if your client is unfit to be interviewed or if there's a need for speed in allowing the police to take samples of breath or blood" (DN.5).

When making a decision about whether or not to go down to the police station, this solicitor said:

"You speak to your client over the phone to judge whether you need to go down there or not. If it's an absolute offence, like drunk behaviour and three officers have observed him shouting and screaming in the street, then there should be no need for an interview. I'm happy to speak to him over the phone and find out what the situation is" (KP.5).

Another solicitor commented on the type of cases where he might provide telephone-only advice in saying:

"If I have someone who's fit to be interviewed and it could be dealt with in 10 minutes, then I may well provide telephone advice only. That'll be for a drink driving offence or for a common assault. Having said that, if I feel it's in my client's interest to attend, then I'll do so. I've gone out for a 55-year-old man who has never been arrested before for possession of a joint of cannabis" (NE.5).

A policy officer said that some solicitors will try to avoid having to go to the police station, particularly when dealing with a straightforward case. On the other hand, he did acknowledge that "Some of the larger criminal firms will always send somebody to the police station as a PR exercise as this helps them to retain the client" (TL.5).

The solicitors said that a major limitation in providing telephone-only advice was due to the lack of privacy when talking to their client. For instance, this solicitor said, "I'm aware that having handed the phone over to my client that there's the detention officer or police officer standing close by watching the call and so I have to be careful over what's said" (DN.5).

A couple of solicitors commented on there being particular difficulties when trying to get through to their clients at Musgrave police station, which is a large custody suite (with 50 cells) in Belfast. In relation to this station, one solicitor said, "It's really difficult to get through to the custody sergeants over the phone. The problem is under-resourcing of the police and there's not enough custody staff available to answer the phone. You can have three or four custody sergeants on duty, but they're just swamped with work" (KP.5).

**Potential obstacles to legal advice.** The solicitors commented on a number of potential obstacles to suspects accessing legal advice. For a couple of solicitors, it was the lack of awareness among suspects that they are entitled to free legal advice. As this solicitor put it, "People don't know that legal advice is free in the police station and there's not enough

advertising of this fact in police custody" (DN.5). This solicitor agreed with this point-of-view in saying:

"I don't think people know they're entitled to free legal advice. A custody sergeant was telling me that the detention officers have to tell suspects that it's free to talk to a solicitor because they think they're going to be hit with a bill for hundreds of pounds" (KP.5).

A second main reason for suspects declining legal advice, put forward by all the solicitors, was because they were worried that waiting for their solicitor to arrive would cause a delay. One solicitor said, "The detainee can be concerned that there'll be a delay if they ask for legal advice and this view can be encouraged by the police, although someone detained will be wary about delays" (DN.5). Similarly, another solicitor said, "When I ask my clients why they didn't ask for legal advice at the police station, some say that it was because the police tell them that they'll be hanging around for ages waiting for us to turn up. That's the biggest obstacle for me" (NE.5).

A couple of solicitors complained about particularly long delays experienced by solicitors at Musgrave police station, which they felt could deter suspects from having legal advice. One solicitor said, "People can be sitting in the police car for hours before they're even booked into custody. There are huge delays and the police need to deal with this" (KP.5).<sup>3</sup>

The way in which the police go through suspects' legal rights was raised by a couple of solicitors as a third potential obstacle to people gaining access to legal advice. They commented as follows:

"The police can rattle through the legal rights and at a pace that people don't really understand what their rights are. They tell someone that they're entitled to apply for legal aid, but I don't think people understand that this means they can have free legal advice" (KP.5).

"You can find the police rambling through the caution at lightning speed and with no emphasis being placed on what it actually means. This is the most important legal

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<sup>3</sup> The problem over long delays at Musgrave police station has been raised by the Belfast Solicitors' Association (2016). However, these research interviews took place in June 2017 and, since then, the solicitors report some changes having been made which have led to some improvements. However, in seeking further improvement, the Law Society has established a liaison group with criminal defence practitioners and senior police officers from Musgrave Custody to meet regularly to try and raise and thereby resolve issues as experienced by solicitors in that custody suite (personal email communication sent from the Law Society of Northern Ireland's policy officer to Dr Vicky Kemp dated 1 June 2018).

protection and exposition of a suspect's rights, and the police treat it as if it's some form of spiel they have to go through" (NE.5).

In recognising that there are potential obstacles to legal advice, a solicitor said that he always tells his clients to ask for him when they are arrested. When commenting on the importance of legal advice, however, he remarked:

"I think it should be mandatory for people to have legal advice when being interviewed by the police and that they would have to physically sign a form if they want to decline it. I often tell my clients that, if they had a solicitor in the police station, they wouldn't end up in court, particularly if they are being dealt with for an assault and other cases where the prosecution often has to rely heavily on the interview" (KP.5).

However, when dealing with more serious offences, the solicitor commented: "The prosecution tends to have other evidence and, in those cases, I think it's rare for someone not to have a solicitor in the police station" (KP.5).

**Voluntary interviews.** In Northern Ireland, a voluntary interview is referred to as a PACE 10 interview. The police have to complete a PACE 10 voluntary declaration form and this acts as a prompt for the police to advise suspects of their legal rights. Commenting positively on the form, a solicitor said:

"The form requires the police to remind suspects of their right to legal advice, to have someone informed that they're being interviewed and ask if they need to see a doctor or if they're under any medication which could impact on what they say in the interview. Both the officer and the suspect have to sign the form, the officer calls in and gets a reference number and there's a copy of the sheet for the client" (KP.5).

One solicitor was of the view that people understand their legal rights better in the voluntary interview than when they are detained. He explained why, saying:

"There isn't the same pressure when someone isn't in custody. The police have to use the PACE 10 form and, when going through this, suspects' legal rights are broken down. They're told clearly that they are not under arrest, they can leave at any time and also that they have a right to legal advice" (NE.5).

Solicitors said that a recent reorganisation and centralisation of custody facilities had led to the closure of some police stations and, consequently, this had led to an increase in the number of voluntary interviews. This change was welcomed by one solicitor who said, "I'll try and encourage the police to hold a voluntary interview; including trying to get someone de-arrested. If things can be done by PACE 10, it is less intrusive for the client" (KP.5). A second solicitor expressed a different point-of-view when raising concerns over access to legal advice due to the police waiting until the interview starts before going through the PACE 10 form. He said:



“The position isn’t ideal as most police stations now don’t have a custody suite and the interviewing officers aren’t familiar with how to get a solicitor involved. It’s only when the recording machine is switched on that the issue of legal advice is raised and that’s too late. They should have to deal with legal advice before the interview starts so that arrangements can be made for us to be present” (DN.5).

Nevertheless, it is helpful that there is a PACE 10 form that provides a record of key information, including when and where the interview was conducted, who was involved and whether or not legal advice was requested. With an increase in the use of voluntary interviews, it would be helpful if such information was published, as this would help to highlight if there are geographical variations in the take-up of legal advice, both within and between different police force areas. Such differences could help to identify areas where there needs to be improvements in arranging for solicitors to attend at the police station or other venues where the interview takes place.

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

Solicitors generally commented on the unwillingness of the police to provide effective disclosure, particularly when dealing with ‘run-of-the mill-cases’. A solicitor remarked on the poor quality of disclosure provided by the police in saying:

“The police tend to use formulaic template-type documents to provide disclosure and these are quite restrictive. They might tell you that your client went into a shop and took items without paying and this has been caught on CCTV. You can sometimes get more disclosure when you ask the officer what the case is about, particularly in the less formal cases” (NE.5).

Another solicitor said that the problem was not only due to there being “A natural and longstanding reluctance of the police to provide effective disclosure”, but that part of the problem was due to the way in which the investigation is conducted. He explained why, saying:

“You find that cases tend to be passed on to process teams to conduct the interview and sometimes it’s only mid-way through the interview that they grasp what’s actually happened. It’s not surprising that we don’t get much success out of these officers when we ask for disclosure” (DN.5).

Another solicitor said that, while the police are reluctant to provide written disclosure, he tends to get more information out of officers he knows. As he put it, “I’m always wary that the officer is holding something back, but I don’t expect this from the officers I know quite well because they tend to give me more disclosure. I can use familiarity with the police to my client’s advantage” (KP.5). In seeking additional information, the solicitor also

said that he would try to speak to detention officers before the interview because they can sometimes provide useful information that he would not otherwise receive.

When providing disclosure, a solicitor remarked that, "The police can take a very literal interpretation of what their disclosure obligations are and it's very much up to them what they are prepared to tell us. They sometimes tell me that the custody record is my disclosure and that they'll tell me more during the interview. They sometimes won't even give me the date of the offence" (NE.5). While the solicitors said that they needed more information than what was contained in the custody record, this was recognised as a useful source of information. As one solicitor put it:

"The custody record holds valuable information because there are details of searches and authorisations given by inspectors. There's information about your client's mental health, what medication he's on, any contact he's had with his family. It was drilled into me early on in my career that I needed to take my time when reading the custody record" (KP.5).

When dealing with more serious and 'dramatic' offences, this solicitor commented, "We're given extremely limited pre-interview disclosure and this information is regurgitated at each stage of the interview plan. If there are multiple interviews, we'll be drip fed piecemeal information in advance of each interview and you meet great resistance from the police if we seek anything further" (DN.5). Another solicitor said that disclosure is a 'bugbear' when dealing with serious offences, explaining that "We do get a physical document, but it's invariably worth less than the paper it's written on. Almost as a matter of course we get given a copy of the custody record, but I've rarely found a disclosure document to expand much beyond that" (NE.5). The solicitor also noted that, when dealing with serious offences which attracted the attention of the media, he could sometimes get more information on what was happening from the news. In one case, for example, he said:

"I was dealing with a client for an offence of murder and there was more information being broadcast on the news because the police were issuing press releases. I wasn't given any disclosure and that caused quite a kerfuffle at the time" (NE.5).

From a police perspective, a solicitor pointed out that, in some cases, all the police might have before the interview is a verbal complaint and before taking a written statement from the victim they want to interview the suspect and get their 'first account' of what happened. The solicitor pointed out that this approach was unhelpful because, "Without any other disclosure it's going to be a 'no comment' interview because the police haven't got a statement from the complainant. There will then be a delay and my client will be bailed to come back to the station in three or four months' time" (NE.5).

So far as the type of evidence provided as disclosure is concerned, a solicitor said that, while the police used to let him see copies of the witness statements, this was no longer the case. As he put it:

“I can count on one hand the number of times I’ve been handed a statement in the last 10 years. They used to throw the statement across the table so you could read it, but not now” (NE.5).

When having to rely on what they are told by the police, a couple of solicitors said that there had been occasions when they had been misled over the disclosure. This solicitor remarked:

“I’ve been caught out a couple of times when the officer told me there’s a statement, but it’s turned out not to be the case. If I’ve been told by the police that there’s a statement or CCTV images, then I record this information on the interview tape because it’s helpful later on if this transpires not to be the case” (NE.5).

Similarly, another solicitor remarked, “If the disclosure is inadequate, I’ll state this on the tape at the start of the interview. I’ll say that I’ve had to advise my client that no disclosure has been forthcoming, or that it’s inadequate and why. It doesn’t protect my client absolutely from inferences later being drawn at court, but it can help to explain why the advice was given to my client” (KP.5).

The solicitors accepted that part of the problem in relation to disclosure is due to the adversarial system within which the criminal process operates. As this solicitor remarked:

“There’s an inbuilt adversarial approach adopted by the police. You find that information is power and it’s controlled by the investigating officers. Not only aren’t we given any information, but you often encounter a bland response from the officer when he says that he doesn’t know what the key issues are in a case, even though he’s ready for the interview” (DN.5).

In seeking to challenge such an approach, a solicitor said that, “Sometimes I’ll have a bit of a hissy fit if I’m given inadequate disclosure. We’re entitled to it and so I’ll invariably think that if that’s the way the police want to play it, then two can play at this game. There’s a bit of ‘bat and ball’ going on with the police” (NE.5). In playing such a ‘game’ in relation to disclosure, however, the solicitors pointed out that inefficiencies can arise. In particular, as this solicitor stated, “We’re under pressure to be more efficient in progressing cases at court. While having swift disclosure in the police station could help us in increasing the number of cases where we could go for an early guilty plea, it just doesn’t happen” (DN.5).

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

#### **3.3.1. Consultation**

The pre-interview consultation is important for solicitors in supporting and advising their clients. As this solicitor explained, "I value this time to engage with my client at the earliest opportunity. I can see him face-to-face and this contributes to my providing effective advice" (DN.5). Another solicitor said that there was generally no time limit on the length of the consultation, although he did say, "I've been put under pressure over time in murder cases because the PACE clock has been running down" (KP.5).

When commenting on what factors influence the advice they give to their clients, the solicitors said that not only does this depend on the disclosure received from the police, but also on what their client has to say about the alleged offence. Without being provided with sufficient disclosure, this solicitor said:

"It's a balance for me between trying to protect my client from adverse inferences later being drawn at court and, at the same time, fulfilling my role to advise my client properly. You can retreat to advising them to make 'no comment', but you have to balance the various risks involved. Sometimes, even without disclosure, a 'no comment' approach can go against you. There's a tactical approach you can adopt by using a prepared statement to try and mitigate the dangers around adverse inferences" (DN.5).

Nevertheless, without having adequate disclosure, the solicitor acknowledged that his advice to clients would generally be to make 'no comment' in response to police questions.

Another solicitor commented on needing to encourage a client to respond to police questions if it was in his best interests to do so. He explained why in saying:

"If I have a client who tells me that the offence is absolutely nothing to do with him and there's nothing to worry about, then I'm not going to prevent him from giving an account to the police. This will even be if the disclosure from the police is grossly inadequate. I'm not really a fan of the 'no comment interview' as a matter of course. Many a client will tell me that they intend to make 'no comment' and I'll advise them of the pitfalls of adopting that approach and then it's a matter for them" (NE.5).

The solicitor was critical of other solicitors for adopting what he considered to be inappropriate practices when he said, "I've seen it, and I could name firms, where their starting point is a 'no comment' interview or it's providing a written statement instead of letting their client answer any questions. There's case law on this issue and the courts view is that if there's an answer to give, then it should be given" (NE.5).

When going into a consultation with his client, a solicitor said that it is important for him to know whether his client is likely to be detained after the police interview. Accordingly, he said:

“If I’m dealing with a client who’s been arrested on numerous occasions for domestic violence, then I know there are going to be problems in getting him bail. I’ll speak to the police about this before I see my client so I can give him an indication of whether or not he’s going to be released. If I’m dealing with someone who hasn’t been in trouble before for an offence of wounding, and there isn’t a statement from the victim, then it will be a short ‘no comment’ interview and I’ll tell my client he’ll be released on bail to come back another day. It’s reassuring for my client to know that the police won’t have enough to charge and detain him” (KP.5).<sup>4</sup>

At the end of the consultation, the solicitor said that he would stress to his clients, “It’s important to remember that if you aren’t sure of anything during the interview, you can stop it and ask to speak to me in private” (KP.5).

The solicitors said that they would generally speak to the custody sergeant when arriving at the police station and they would then be taken through to their client, although they complained that this was different at the Musgrave police station. Explaining why, this solicitor said:

“We have to wait outside the custody suite until the police are ready for the interview. There’s no point going down early to talk to your client because you can’t even get through to the custody sergeants. You can be left waiting for an hour-and-a-half or more. Things just slow down so much at Musgrave” (NE.5).<sup>5</sup>

Encapsulating the difficulties felt by solicitors at Musgrave, the solicitor remarked, “It’s frustrating because solicitors are no longer part of the process” (NE.5).

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

When asked what their role was in the police interview, the solicitors said this was to protect their clients, to assess their welfare and ensure fairness during the interview. This meant that the solicitors saw their role as being interventionist. A solicitor explained why in stating:

“The interview is an uneven playing field and the solicitor is there to try and provide an element of fairness that sometimes doesn’t exist. You’ve got the police holding all

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<sup>4</sup> There is a statutory assumption in favour of bail and so the solicitors said they will challenge the police in cases where they feel that remanding suspects in police custody is not appropriate.

<sup>5</sup> As noted above, there have subsequently been changes which have led to improvements being made at Musgrave police station and a forum for solicitors and the police to raise issues of concern.

the cards and they play them very close to their chest. They sometimes don't put the cards on the table at all and so it's my job to try and make the interview as fair for the detained person as I can" (NE.5).

In a similar vein, this solicitor said:

"I'm there to protect my client and to ensure he understands what's happening. I'll intervene if the police start putting my client under pressure because that's not allowed. If they start using rapid fire questioning, for instance, I'll tell the police that PACE says they aren't allowed to say things again and again to try and get to the answer they want. The response I get from the police is that they are asking the questions and not me, but I'll tell them that they aren't doing it properly and there'll be repercussions if they persist, of which they are well aware" (KP.5).

When commenting on the police putting pressure on his clients to answer their questions, the third solicitor remarked:

"You'll find that the police will use inappropriate questions if they can get away with it, but, if that happens, I'll intervene. The main reason I tend to intervene is due to the lack of disclosure. The police don't encourage me to engage proactively or intervene to help my client, but I'll do so if I need to" (DN.5).

**Relationships with the police.** The solicitors said that they often have a tense relationship with the police and that they will intervene if necessary to protect their clients. A solicitor commented on some of the difficulties which can arise with the police when he remarked:

"The police see their role as preserving and obtaining evidence by questioning, but sometimes they take the stance that what the suspect says isn't true and this means the police start from a position of disbelief. I have to try and counter that and remind the police that people have the presumption of innocence and it's my job to defend it" (NE.5).

Another solicitor said that he would have arguments with the police if this was necessary. As he put it:

"If they are underhand with me, then their card would be marked. I've had run-ins with officers and there are cases where they can be obtuse and I've had a row with them. In the majority of cases, though, I have a professional relationship with the police" (KP.5).

A solicitor acknowledged that the adversarial criminal justice system influences his relationship with the police, saying:

"I have a very tempestuous relationship with the police, but I think they respect me for it. They have a job to do and we'll end up shaking hands afterwards, but when the tape is on we're in two very different corners. I'm there to defend and represent my client to the best of my ability. There's no walking on egg shells or being afraid of treading on their toes. I'll never be on the police list of 'favourite solicitors' because I'll be robust and very adversarial if I need to be" (NE.5).

While, increasingly, it seems that solicitors feel marginalised from the criminal process, particularly when dealing with clients at Musgrave police station, their approach is to challenge the police in order to protect their clients.

**After the police interview.** The solicitors said that they would speak to their client after the police interview, but they would not wait around for the police to make a decision in all cases. As this solicitor stated:

"I would like to wait, but it depends on the seriousness and complexity of the case, because officers won't be able to make a decision if it isn't straightforward. This all adds a layer of delay and something that should take 20 minutes can take an hour-and-a-half. I need to move on to the next case, particularly if I'm the duty solicitor. You can have 12 cases or more to deal with in a 24-hour slot and you haven't got time to wait around" (KP.5).

When asked what happened at the end of the police solicitor, another solicitor said:

"I don't leave until I know what's happening. It isn't right to leave and say you'll phone in a couple of hours to check on your client. It's different at Musgrave because you can be kept waiting for a long time. If I'm told that my client's going to be bailed, or he's going to be charged and detained overnight, I'll talk to my client and then leave. I usually wait at the smaller stations until the police have dealt with the case and often I'll leave at the same time as my client" (NE.5).

The third solicitor pointed out that it was better to make representations to the police directly when he said, "If you wait around, you can try and influence the outcome decision by encouraging the police to impose a fixed penalty or another alternative to taking the case to court. Talking to the police over the telephone just doesn't have the same effect as being with them" (DN.5).

### **3.3.3. Diversion procedures**

As noted above, the review of the criminal justice system in Northern Ireland in 1998, following the peace process, has led to an official emphasis being placed on prevention, diversion, restoration and participation, particularly when dealing with young offenders. The police are encouraged to divert young offenders from court by using a series of

informal warnings and to adopt restorative justice approaches (Criminal Justice Inspection NI, 2011). A solicitor described the significance of diversion procedures in Northern Ireland in saying:

“We have a different system here and diversion is great for young people. There’s restorative cautioning and conferencing which can take place instead of prosecuting them. The disposal will also get wiped from their record and it won’t have an impact on their lives in the future” (KP.5).

However, the solicitor gave a note of caution when commenting on the need to protect young people, saying:

“We have to be careful not to do trade-offs with the police. The offence has to be admitted, but if I get instructions from my client to make diversion an option, then I’d be pushing for that with the police. I’ll sometimes ask the officer whether diversion is a possibility before I see my client, as it’s something I could then advise them about. There’s a police youth diversion officer that the investigating officer has to contact to run things by him to see if the case can be diverted” (KP.5).

A solicitor said that the police tend not to consider the potential for a case to be diverted until after the interview. He said, “There’s no difficulty in talking to the police about diversion, but they don’t give much away before the interview. They have to speak to the diversion officer and rarely do we get an opportunity to feed into that wider debate” (NE.5). After the interview, however, another solicitor said that, “You can sometimes get the case resolved without it being referred to the prosecution by way of a diversionary method” (DN.5). The solicitor was critical of other defence practitioners for not trying to influence the outcome decision in favour of diversion. As he put it, “Disposal options are rarely engaged with by some solicitors, which is very disappointing because that’s an important element of our role in trying to get the best outcome for our client” (DN.5).

While diversion is promoted strongly within the youth justice system, it is also available for adults. One of the solicitors commented on this in saying, “There’s a sheet the officers read off at the start of the interview. This includes the caution, but there’s also outlined the disposals available and how the case can be disposed of. It’s a long generalised statement which any lay person would struggle to understand” (KP.5).<sup>6</sup>

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<sup>6</sup> For further details of restorative justice practices in the criminal process more generally in Northern Ireland see Payne et al. (2010) and Carr and McAlister (2014) when such practices relate to children and young people.



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

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

Police station legal advice is free to all suspects and requests for legal advice have increased over recent years from 44 per cent in 2009/2010 to 61 per cent in 2016/17 (PSNI, 2010 and 2017).<sup>7</sup> Only qualified solicitors in private practice can provide advice to suspects and most solicitors also deal with cases at court. Commenting on the organisation of criminal legal aid, one solicitor said:

“We enjoy the cut and thrust of this work. People can get arrested or you’re called to court at short notice and so you don’t know from one evening to the next morning where you’re going to be needed. You can plan ahead as best you can, but it has to be a very fluid situation” (KP.5).

It is only in Belfast that a duty solicitor rota operates and, as noted above, the report of the independent Access to Justice Review commissioned by the Department of Justice (2011, p. 41) was critical of arrangements because it meant that the police were effectively assisting suspects in their choice of a solicitor. Accordingly, the Law Society (2011, p. 28) agreed with the Department that duty solicitor arrangements needed to be formalised across Northern Ireland to ensure a fair distribution of work amongst criminal legal aid solicitors, but there have been delays in setting up such schemes. In 2015, the Law Society (2016, p. 49) reported that such delays were due to changes to police divisions, the closure of a number of police stations and the relocation of the Serious Crime Unit, which would have an impact on the rotas. As time moves on, however, the policy officers said that no progress was being made on setting up new duty solicitor rotas. One reason for this lack of progress, as commented on by research respondents, is due to most suspects having their own solicitor, or those without a solicitor using one recommended by someone they trust. In addition, if someone has their own solicitor, but decides for some reason to use the duty solicitor at the police station, a policy officer pointed out that they would tend to revert back to their own solicitor after the police interview. As he put it, “The duty solicitor literally just does the PACE and that’s it” (TL.5).

In the Belfast duty solicitor scheme, the lawyers raised concerns over the police not always using the rota when identifying the solicitor on duty, particularly at the Musgrave police station. This problem had also been identified by the Belfast Solicitors’ Association (2016) and it was recommended that custody inspectors need to ensure that all custody staff have a copy of the rota and that a reminder is sent out to encourage them to use it.

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<sup>7</sup> It is helpful that PSNI publish annual statistics on the request rate for legal advice. In addition, PSNI was able to confirm in an email communication with the researcher (dated 2 March, 2018) that, while 61 per cent of adults on average request legal advice, the request rate for 10 to 17 year olds is higher at 67 per cent. There is no requirement on the police in England and Wales to publish such statistics and there is no data on the take-up of legal advice available nationally.

It was also recommended that the name of the duty solicitor for each 24-hour period should be written on the white board in the Custody Hub so that all custody staff knew which solicitor was on duty.

#### 4.2 Remuneration

The availability of criminal legal aid in Northern Ireland is governed by Articles 28 to 31 of the Legal Aid, Advice and Assistance (NI) Order 1981 and the Access to Justice (NI) Order 2003. A policy officer explained that part of the 2003 Order came into force in 2015, but these provisions focus mainly on civil matters. In relation to criminal legal aid he said, "We haven't had full implementation of criminal defence services as envisaged by the 2003 Order and so criminal legal aid still works effectively under the 1981 legislation and various regulations made under that" (BV.5). Accordingly, the policy officer said that remuneration for police station work continues to fall under the legal aid 'green form' scheme, which operates under the Civil Legal Services (Remuneration) Order (NI) 2015. This sets out the hourly rate, with solicitors being paid £51.90 an hour for providing legal advice, £23.70 for telephone advice and £29.10 per hour for travel and waiting. For unsocial hours, the rates are increased to £69.20, £31.60 and £38.80, respectively.<sup>8</sup> In total, around £3.4 million pounds is paid annually for police station legal advice and set out in the Table below are the average costs of cases based on the gross total divided by the number of cases dealt with over the past few years.<sup>9</sup>

**Table: PACE work payments in Northern Ireland 2011/12 – 2016/17**

Year	Volume of Cases	Gross Total	Average Costs
<b>2011/12</b>	20,827	£2,816,621	£135
<b>2012/13</b>	15,848	£2,284,778	£144
<b>2013/14</b>	22,104	£3,015,810	£136
<b>2014/15</b>	22,650	£3,610,514	£159
<b>2015/16</b>	27,246	£4,361,549	£160
<b>2016/17</b>	21,720	£3,406,366	£157

<sup>8</sup> Unsocial hours are between 7pm and 9am on any weekday, or any time on a Saturday, Sunday or public holiday.

<sup>9</sup> Compiled using LSANI's Annual Reports.

When commenting on the fees, a policy officer explained that a proposal had been put forward by the Department of Justice in 2012 to introduce a fixed fee for police station work, but this had been successfully resisted. He said this was because:

“It was a bizarre arrangement in that you got paid less the longer you were involved in the case. It started off paying the equivalent of something like £50 an hour, but the more time spent on cases meant the rate went down to £30 an hour. If you were involved in a murder case, or something of a complex nature, and involved in excess of eight hours, then the fee was ridiculously low. We lobbied hard with the Department to say this was totally unfair and we managed to secure a 20 per cent increase in the hourly rate” (BV.5).

The solicitors in this study said that remuneration for police station legal advice was insufficient to compensate them for the work involved. Commenting on the recent increase, for example, one solicitor said:

“The fees are still too low and no law firm in private practice would charge such low fees because we have to run a practice and pay the salaries of the solicitors, support staff and the cleaners. I think a lot of solicitors take on cases in the police station in anticipation of the better paid court work that can follow” (KP.5).

Another solicitor was critical of the fees paid in saying:

“You can’t compare what we get paid with a plumber as he gets a lot more for mending the washing machine or fixing a leak. The fee we get is a pittance in terms of the job that’s done, but the service we provide is gold plated regardless of the fee. I have a reputation to protect and I’ll work hard for my client” (NE.5).

While being critical of the hourly rate paid for police station legal advice, the solicitors accepted that it was better to be paid for the time spent on cases rather than receiving a fixed fee. This was the view of one solicitor:

“The resourcing issue here has not been as strained as it has been in England and Wales where solicitors get one fee per case. It helps that we get paid for time spent outside of the interview, albeit at relatively uneconomic rates. We always attend for identification procedures and we’ll try to attend if there’s going to be a charging process, particularly if there are issues around bail. If you just get a fixed fee, it influences behaviour, so that the time spent on cases is kept to a bare minimum” (DN.5).

The solicitors also pointed out they needed to be paid sufficient to provide a high quality service, particularly when dealing with serious offences. As this solicitor remarked:

"There should be a recognition that, for a murder investigation, a complicated sexual offence or financial crime, there needs to be a higher fee paid. The police investigators have months to prepare and we have a very limited time to consult with our client and to obtain information. We just don't have the resources for the job that we do" (NE.5).

The solicitor acknowledged that there was little public support for criminal legal aid work when he said, "It isn't popular for legal aid to be spent on people who get arrested for shoplifting and the usual stuff that goes through the system. There's no public appetite for squandering scarce resources on this type of thing" (NE.5). In a similar vein, taking into account current constraints on public funding, a policy officer commented, "Legal aid doesn't have the best PR with the general population. Nobody sees any value in legal aid unless they need to avail themselves of it and, up until that point, people don't want to have to pay for it (TL.5). Public opinion can also be influenced due to negative reports in the press. In response to the Public Accounts Committee (PAC, 2017) report on managing legal aid, for example, a headline in the digital media read, 'Watchdog slams failure to rein in £100m legal aid bill in Northern Ireland.' It is stated in the article that, "Little progress has been made in reducing Northern Ireland's sky-high legal aid bill, a spending watchdog has said" (Rutherford, 2017).

In these times of austerity, solicitors in this study said that they have had to absorb cuts to criminal legal aid for court-based work. As this solicitor explained:

"Regardless of what we're paid for police station cases, there have been significant cuts in magistrates' court fees and massive cuts for Crown Court work. Such cuts undermine the ability of a solicitor, or a firm, to provide a holistic service" (DN.5).

Another solicitor commented on the impact of the cuts in saying:

"The Legal Services Agency tell us it's a swings and roundabouts approach, but I think it needs to be time-based and we should be paid at a rate which reflects the level of skills required for this job. Experience is the key, but we've had a lot of young solicitors and barristers move out of criminal work because the fees are so low" (KP.5).

The financial crisis has led to dramatic cuts in public spending in Northern Ireland and, having responsibility for public spending, PAC has been highly critical of long delays in reforming the legal aid system. In particular, when commenting on the need for effective financial controls of legal aid spending, it is stated that, "Reforms have not been implemented effectively and at an average annual cost of £102 million since 2011, the costs of legal aid remain unacceptably high" (PAC, 2017: 5). The Committee was also critical of the Department for agreeing an increase in legal aid fees paid to the profession, stating:

“The Committee does not accept the Department’s assertion that this reduction of 35 per cent in planned savings was a ‘*small compromise*’ necessary to defend the more important principle of standard fees ... In the Committee’s view, the Department must test fully the scope for generating savings from contracting [with publicly funded providers] while taking account of access to justice considerations and the impact on the network of small solicitors” (PAC, 2017, pp. 10-11 – emphasis in the original).

While such comments suggest the need for radically reforming the structure of criminal legal aid, it is not possible to pursue such changes while the Northern Ireland Assembly is suspended.<sup>10</sup>

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

An important measure of quality in Northern Ireland is that only qualified solicitors can provide police station legal advice. Commenting on the importance of this restriction, a solicitor remarked:

“It’s great that they’ve kept the solicitor qualification here because at least you’re guaranteed a legal adviser who has completed five years of study and legal practice through the training contract. In England and Wales, you have junior solicitors and paralegals being sent off to cover serious offences, but here you still get senior solicitors involved in this work. My boss is down at the station multiple times a week, but he’s being paid such a low fee” (KP.5).

Another solicitor commented on senior criminal solicitors being routinely involved in providing police station legal advice when he said, “Whether they’re on duty or not, you’ll have senior criminal practitioners doing police station work because it’s important to appreciate the significance of the police interview on what happens later on at trial” (NE.5).

When reflecting on the practicalities of paying a higher fee to ensure the involvement of experienced solicitors when dealing with very serious offences, a solicitor recognised the difficulties of using ‘seniority’ as a measure of quality. As he put it:

“There’s specialist training and professional accreditation which are useful badges to build a quality system around and there are legal aid schemes that have different rates for a senior or junior solicitors, but it’s not ideal in some ways. It should be based on the quality of the service provided and that’s crucial when looking at police station work. We’re involved from the outset in a trial process that can go right through to the appeal courts and what happens in the police station can massively influence what later happens in court” (DN.5).

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<sup>10</sup> The Northern Ireland Assembly, the devolved legislature for the country, was dissolved on 26 January, 2017 due to a breakdown of trust between the political parties.

In a similar vein, this solicitor remarked on the high quality of police station legal advice in Northern Ireland, saying:

“The cadre of defence solicitors in this jurisdiction is relatively small, so we all know each other. The quality of legal advice has improved over the years. I don’t mean any disrespect to paralegals in England and Wales, but solicitors here have grown up in a very different environment. We’ve had longer to become familiar with the right of silence provisions and the quality of our work reflects that important difference” (NE.5).

As noted above, it was during the political conflict in Northern Ireland that emergency legislation was used to abrogate numerous procedural rights, including an extension of police powers of detention and restricting suspects’ access to legal advice. Changes were also made to suspects’ right of silence under the Criminal Evidence (Northern Ireland) Order 1988, which means that a court can draw adverse inferences against a suspect for having remained silent during police questioning.<sup>11</sup> The strident role adopted by defence practitioners at that time was said to be crucial in upholding suspects’ legal rights, which has led to a strong legal defence tradition in Northern Ireland (Livingstone, 2001). A policy officer referred to this important difference when saying, “I think defence practitioners in Northern Ireland are sometimes more interventionist than they are in other jurisdictions” (TL.5).

While police station legal advice has to be provided by a qualified solicitor in Northern Ireland, there is no requirement for solicitors to have specialist training in criminal legal services, apart from when acting as the police station duty solicitor. When asked if this meant that a conveyancing solicitor could provide police station legal advice, the policy officer accepted that this was the case, but he noted:

“We haven’t embraced the idea of requiring separate accreditations in the same way as they do in England and Wales. What we’re saying is that the badge of being a solicitor, and the requirements under your professional obligations not to undertake work that you feel unable to do competently, should be the guiding stone for solicitors” (TL.5).

This situation is to change with a statutory registration scheme being set up to begin the process of developing quality assurance measures for legal aid services. The Department of Justice (2011) proposed the scheme seven years ago and the Law Society (2011) accepted that this is an appropriate mechanism for quality assurance in Northern Ireland. However, there have been long delays in implementing the new scheme, which

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<sup>11</sup> This change in Northern Ireland was to pave the way for adverse inferences to be drawn at court in England and Wales under the Criminal Justice and Public Order Act 1994.

have been strongly criticised by PAC (2017, p. 5), stating that “The absence of a scheme means that the legal aid system lacks a basic mechanism to ensure quality of service and to deliver accountability and transparency in the use of public money.” Subsequently, the Department of Justice (2017a) launched a consultation on the scheme, which included a proposed Code of Practice (at Annex E). Proposed changes made to the statutory scheme, however, have led to differences of opinion between the Department and the Law Society over the operation of the scheme and it is useful to see where such tensions lie.

There are requirements included in the Code of Practice which require firms to provide evidence of compliance with the basic entry requirements for registration.<sup>12</sup> Solicitors are also required to attend courses relevant to the provision of publicly-funded legal services in each current year – amounting to three or more hours’ duration in total (Department of Justice, 2017b, p. 10). It is also intended that, in monitoring performance, solicitors will be required to hand to assisted parties copies of a questionnaire, issued by the LSANI, for the purpose of measuring client satisfaction (2017b, p. 17). Responding to the consultation, the Law Society (2017, p. 5) has raised a number of concerns and criticised what is considered to be a “shift from a phased approach to one punctuated by haste.” One reason for delaying the statutory scheme, pointed out by the Law Society (2017, p. 10) is because it is “inextricably linked to digital improvements in the LSANI’s management information systems,”<sup>13</sup> although a policy officer said that the new digital management information system was beginning to take shape (BV.5).

The Law Society (2017, p. 23) points to other quality requirements that solicitors have to adhere to, including requirements for continuing professional development (CPD) and with the proposal that additional courses should relate to criminal and civil legal aid services. The Society also comments on additional quality assurance measures, such as Lexcel and ISO accreditation, which it promotes among its membership. Accordingly, in its response, the Law Society (2017, p. 12) states:

“The Department has proposed one option, whereby it operates the registration scheme and receives the charges for it but does not appear to have considered the option of recognising the quality assurance aspects of these as alternative schemes, as operates in England and Wales.”

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<sup>12</sup> These include policies and procedures that deal with standards for professional conduct, personal work and time recording, case recording, system of financial recording, training and supervising staff and for document control (Department of Justice, 2017b, p. 6).

<sup>13</sup> This comment references the PAC (2017, p. 10) report which states, “The Agency’s management information systems are archaic and not fit for purpose. This is an inadequate basis for running the service and has an adverse impact on every aspect of the Agency’s work.”

It is also of concern to the Law Society (2017, p. 31) that the intention is for the profession to bear the full costs of the statutory registration scheme, particularly as some firms will already be paying for Lexcel or ISO accreditation.

The solicitors in this study said that they would welcome the imposition of quality measures that help to improve the quality of legal services. Indeed, when commenting on the proposed registration scheme, this solicitor said, "Anything that heightens standards is to be welcomed." (DN.5). Another solicitor said, "As a general principle we should not be afraid of anything that makes us better at what we do" (NE.5). The solicitor, however, expressed concerns whether quality measures imposed were bureaucratic rather than beneficial in helping to improve practice. As he remarked:

"We've got nothing to fear from the concept of quality assurance, but some things you are made to do can be ridiculous. It can start with good intentions, but you can end up with a box ticking exercise and the practical application ends up not being so good. We need highly qualified specialists and well experienced practitioners doing this work. There's room for improvement, but we don't want to waste our time by being required to undertake unnecessary tasks" (NE.5).

At the present time, the quality requirements proposed are dealing with legal aid work more generally, but, in the future, a policy officer said he thought this would change. In particular, he said, "There'll be two phases to the registration scheme and later on we will be looking at accreditation for various strands of legal aid work, which could include introducing a peer review scheme" (TL.5).

**Training and quality requirements.** It is only in relation to duty solicitor work that there are currently quality requirements. The general requirements were set out in the Department's (2011, p. 41) Access to Justice Review when stating: "We recommend that a demonstrable record of criminal work and commitment to ongoing training and development in that field should be a pre-condition of membership of an official duty solicitor rota." A policy officer said that such requirements were adhered to, saying:

"We've made the application process for duty solicitors more demanding than it was previously. Solicitors have to be at least three years qualified and an application covers duty work in both the police station and the magistrates' court in Belfast. Duty solicitors also need to have experience of a certain number of high cost cases and other types of criminal work that they've undertaken in the past 12 months as this allows a committee to make an assessment of the applicant having the requisite experience" (TL.5).

Commenting on these requirements, a solicitor remarked, "It's only solicitors with specialist criminal knowledge who can get on the rota and you then get the calls when you're on duty" (KP.5).



There is currently a requirement for solicitors in Northern Ireland to undertake 10 hours of CPD training in group study each year and three out of the ten hours have to be spent on client care and practice. As noted above, it is proposed in the statutory registration scheme that legal aid lawyers will have to spend three hours on legal aid issues.<sup>14</sup>

When considering the quality of police station legal advice, a couple of solicitors commented on the importance of providing supervision and training within law firms. One solicitor, for example, said that, while his firm was 'Lexcel Accredited', it was senior members of staff providing supervision that was important in relation to providing a quality service. Commenting on this, he said:

"I have a close working relationship with two senior solicitors in my firm and they're excellent lawyers. They have years of experience of defence work in Northern Ireland and the way I've learned is through my bosses. It's the quality of instruction and the supervision which is important for junior solicitors to do a good job" (KP.5).

With sole practitioners comprising the majority of firms in Northern Ireland, however, such in-house supervision is not always possible.<sup>15</sup>

For solicitors in this study, the high quality of police station legal advice is due to solicitors also dealing with cases at court. In particular, a solicitor commented on how what was said at the police station could be examined later on in a trial:

"You'll get barristers and QCs at trial who'll revert to what was said in the police interview. They can criticise the legal advice, or the answers given by the suspect, but it's too late to put the genie back in the bottle. It's the start of the process that's so important. You can amend a defence statement, make a second witness statement, but very rarely do you get an opportunity to request a second interview so you can put across a different account. What happens in the interview is underestimated until it's too late" (NE.5).

It is in the second phase of the statutory registration scheme that a policy officer indicated that quality requirements are likely to focus on accreditation of specialist areas of law, including police station legal advice (TL.5).

## **5. Technology**

It is only in relation to a video link used between courts and prisons that technology was said to be used in the criminal process in Northern Ireland. When commenting on

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<sup>14</sup> The Law Society arranges a number of CPD events – see <https://www.lawsoc-ni.org/cpd-training>

<sup>15</sup> In 2014, for example, there were noted to be 531 solicitors' firms in total, 271 being sole practitioners, 225 being between two and four partner firms and with 35 firms having more than five partners (Law Society, 2014).

limitations of using a video link, a policy officer said, "It is not normally used for sentencing hearings or where there are contentious issues that need to be discussed" (TL.5). However, while recognising that the use of technology was changing the relationship between solicitors and their clients, a solicitor stressed that it had to be different in the police station, stating:

"There are advances in artificial intelligence and so many elements of legal practice are moving away from face-to-face legal advice in that many clients don't get to see their lawyer. It has to be different in the police station because it's an oppressive environment. Sometimes the solicitor is the only friendly face that the suspect gets to see" (NE.5).

In a similar vein, this solicitor said:

"Communicating virtually is all well and good, but when somebody's in the police station it's a privilege to be able to visit them in their cell. It's about the client being able to trust you and it helps if he's able to see you and shake your hand. That, for me, is a necessary element in the relationship between solicitors and their clients" (KP.5).

The solicitor is also of the opinion that technology could be used more in the police station, although he also pointed out its limitations when commenting, "If you have a tablet you can access the PACE codes, the relevant law, Blackstone's or whatever - all at just one touch. I just wish we had access to WiFi in police stations so we could use it there too" (KP.5).

As noted above, LSANI will be using a digital management information system and it is anticipated that further changes, using technology, will arise out of this development.

**Police Station App.** The research participants were positive about suspects using a Police Station App to inform them about their legal rights. This solicitor, for example, remarked:

"It sounds great. Anything that increases people's awareness of the availability of legal advice has to be encouraged, particularly if it can be in as user-friendly a format as possible. For young people, technology is an effective means of communication" (DN.5).

When commenting on the App, another solicitor said, "I think there's a place for technology, particularly in helping to inform people about their legal rights." However, the solicitors also had reservations over the extent to which the App could be used to provide information to suspects. This was the view of one solicitor: "It certainly can't be used in the police interview as nothing can replace the importance of solicitors physically being present with their client. You also need a physical presence in the police station so you can stand up for your client" (NE.5). Making a similar point, a policy officer said:

“If the purpose of technology is to replace the face-to-face interaction between lawyers and their clients, then it isn’t going to be supported. There’s a limit to what can be said over the telephone, or Skype, and you get so much more when you see someone face-to-face. You can pick up on their demeanour and whether there are any vulnerabilities” (BV.5).

It is evident that, while the research respondents feel that the App has the potential to increase procedural safeguards for suspects, they also highlighted some of its limitations.

## **6. Conclusion**

Suspects in Northern Ireland have had access to free and independent legal advice for almost 30 years. Interestingly, while in England and Wales numerous studies were conducted both prior to and following implementation of PACE, there has been little academic interest shown in this topic in Northern Ireland. This was due to the political conflict taking place when the PACE Order was implemented in 1989 and researchers were more interested in emergency legislation which was undermining suspects’ legal rights. It was also extremely difficult for solicitors to provide advice and support to people suspected of terrorism offences at that time, particularly as they regularly received threats of violence, many were injured in violent attacks and others tragically lost their lives (Flaherty, 1994).

With the political conflict in Northern Ireland, and for many years with solicitors being able to sit in on the police interview, there is seen to be an active role for solicitors in the pre-charge process. However, solicitors in this study commented on the lack of disclosure from the police as presenting an obstacle to their involvement helping to deal with cases more quickly and effectively.

Publicly-funded police station legal advice in Northern Ireland is provided by solicitors in private practice, the majority being sole practitioners or based in small firms with between two to four partners. It is only in Belfast that there is a duty solicitor scheme set up for police station work and this requires duty solicitors to have experience of criminal defence work. Otherwise, solicitors undertaking criminal legal aid work do not have to be specialised, although this is due to change. It was in 2011 that the Department of Justice first proposed a number of measures to reform the criminal legal aid scheme and some of the key proposals remain outstanding. These include setting up a statutory registration scheme for publicly-funded solicitors and requiring duty solicitor rotas for police station work to operate throughout Northern Ireland. With the continued suspension of the Northern Ireland Assembly, however, it is not known when the proposed legal aid reforms will be implemented.

Solicitors in this study welcome proposals to impose quality requirements for those providing police station legal advice. While the solicitors are committed to providing high

quality legal advice, they complain about the low hourly rate paid for this work. The solicitors do appreciate being paid for the time spent on cases, but it seems unlikely that the hourly rate will increase, particularly as the Public Accounts Committee in Northern Ireland (2017, p. 9) has noted that legal aid spending exceeds £100 million per annum and concerns are raised over the 'spiraling' costs of criminal legal aid.<sup>16</sup> In an attempt to achieve savings, the Department of Justice has been asked to fully test the scope for generating savings from contracting legal aid services. With changes in remuneration being found to have a negative impact on the quality of police station legal advice in England and Wales, it would be helpful to policy makers if a comparative research study were undertaken which could examine the potential for solicitors to achieve efficiencies and cost savings when providing a more active role for defence solicitors. As noted in the Country Report for England and Wales, for example, cost savings could be achieved if the active involvement of defence solicitors helps to reduce the number of prosecutions, increases the number of early guilty pleas and helps to avoid lengthy and costly trials.

So far as technology is concerned in the criminal justice system in Northern Ireland, tentative steps have been taken with video-conferencing being used to provide a link between courts and defendants held in custody when dealing with remand decisions. Technology is also influencing legal aid changes with LSANI incorporating a digital management information system. So far as the Police Station App is concerned, respondents in this study are supportive of using digital technology to inform suspects of their legal rights. However, it was also stressed that technology should not be used instead of face-to-face advice, particularly when dealing with vulnerable clients, or to be used as a substitute for solicitors being present in the police interview.

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<sup>16</sup> Subsequently, and following reforms, LSANI (2018) reported that the legal aid spend has fallen and the total gross expenditure by the legal aid schemes in 2016/17 was £82.3 million.

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