



# BLAST INTERIM REPORT

Dr Vicky Kemp

**Bridewell Legal Advice Study – BLAST:  
An innovation in police station legal advice**

**INTERIM REPORT**

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**Legal Services Research Centre**

**Report completed: September 2011**

**Report published: December 2012**

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London

## **Acknowledgements**

This study would not have been possible without the support and co-operation of all those who agreed to participate. The setting up of the BLAST Initiative required the police to accommodate duty solicitors on-site by making available a room and with defence practitioners agreeing to provide cover at the Bridewell police station when on duty. In supporting the BLAST Initiative, the police provided me with an opportunity to go ‘behind the scenes’ in order to see what was actually happening in police custody and I would like to thank senior officers responsible for custody for allowing me such access. What was observed was a busy and pressurised environment in which I was given free rein to note interactions between the police, the defence and people held in custody. I also had access to police electronic custody records and was allowed to discuss sensitive issues with custody staff. Defence practitioners also took the brave step of allowing a researcher to critically examine their practices. While the research findings are critical of some police and defence practices, their co-operation has helped to highlight the complex and bureaucratic system operating within police custody, a site in which they are required to operate.

Grateful thanks are due to custody sergeants and defence practitioners who agreed to be interviewed; I appreciate the pressures on them and am pleased that so many found the time to participate. Custody sergeants, and other custody staff, were also kind enough to tolerate the intrusion of a researcher and to patiently answer my questions. Thanks are also due to those detained who agreed to be interviewed at such a stressful time.

I would like to thank Ash Patel who carried out the statistical analysis of the police electronic custody records and Marisol Smith and Catrina Denvir for assisting in the final preparation of this report. Many thanks are also due to Professor Michael Zander who kindly peer-reviewed the report. Any remaining errors and omissions are, of course, mine alone.

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## EXECUTIVE SUMMARY

### 1. Introduction

The Bridewell Legal Advice Study (BLAST) was intended to help improve access to legal advice by involving solicitors early on in the custody process. It was also intended to increase efficiencies and achieve cost-savings. The need for improvements arose out of research carried out by the Legal Services Research Centre (LSRC) into police station legal advice.<sup>1</sup> From analysis of police electronic custody records, drawn from four police force areas, there were found to be wide variations in the take-up of legal advice and also identified were potential barriers to accessing such advice. This county was one of the areas identified with a relatively low take-up of legal advice and in seeking to improve access both the local police and defence practitioners agreed to support an on-site duty solicitor scheme in a busy city centre police station.<sup>2</sup> The Initiative was operational during weekdays, 9 am to 6 pm, over a three-month period from 14 February to 13 May 2011.

The BLAST Initiative was owned by the local practitioners who agreed that the LSRC should carry out a review of the new arrangements. It was also important to the local practitioners that both the Ministry of Justice and the Legal Services Commission were to give their support to this Initiative. From the outset, it was a small-scale project with referrals to the on-site duty solicitors being those who had refused legal advice but then changed their mind when told about the Initiative. The intention was to expand the new arrangements to include all duty solicitor referrals once it was operating effectively. However, this expansion could not be justified because the arrangements did not lead to the changes expected.

### *Findings*

The take-up of legal advice was seen to increase during the three-month period of the Initiative, from 39.3 per cent in 2010 to 43.0 per cent in 2011. However, increases in request rates did not correspond to the times when the new arrangements were operational. This suggests that the rise in request rates was due to the Initiative helping to promote interest in legal advice generally rather than more specifically due to the on-site arrangements. This finding is not surprising when considering some of the obstacles which prevented the Initiative from working effectively. The key issues arising are as follows:

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<sup>1</sup> The LSRC is the independent research division of the Legal Services Commission (LSC).

<sup>2</sup> The police station involved has not been named and instead the colloquial term the 'Bridewell' has been used.

- Having made an arrest it seems that the practice of the police more generally was to book suspects into police custody and to then carry out their investigations. Accordingly, they tended not to have any evidence when bringing suspects into custody and this meant that requests for the on-site duty solicitor were unable to help expedite matters. Instead, while a suspect could speak to the duty solicitor quite quickly, there continued to be long delays before the police were ready to conduct an interview.
- The Initiative did not help to reduce delays. With the police continuing to gather evidence following the making of an arrest the Initiative had no impact on case duration. Solicitors did not challenge the police over the time taken to investigate cases and by going along with the police timetable there continued to be long delays. Indeed, in cases involving a solicitor it was found that these were taking on average five hours longer than those without legal advice. This highlights the need for the defence to engage early on with the police in seeking to reduce the time suspects are held in custody.
- Pressure on the police to increase detections can have adverse consequences on the take-up of legal advice and also on custody decisions. There had been a national target to increase detections but this was abandoned in 2010 when it was found to encourage police attention on minor matters and ‘easy targets’, particularly children. Nevertheless, it is a popular target which has been adopted locally by some police forces, including this area. The target encourages the police to focus on the quantity rather than quality of the arrests, which has the effect of bringing minor matters into custody. It also seems to have encouraged a more hard-line approach to policing with complaints made by practitioners that it could sometimes lead to the custody process being used as a punishment.
- The new arrangements were initially to be focused on dealing efficiently with both high volume and low level offences. However, from observing the pre-charge process questions arise about the extent to which minor offences are brought into custody unnecessarily. The experience of custody for those detained for minor matters can be extremely stressful and traumatic, particularly for children and the elderly when coming into custody for the first time, and also for people with mental health problems. It is also highly resource intensive for the police to manage cases in custody, particularly as this is a pressurised environment which often deals with a high volume of cases. The routine use of custody for minor



offences is also likely to increase legal aid costs as it is anticipated that those detained are more apt to have a solicitor than those dealt with by alternative means.

- There is a lack of engagement by the defence more generally at the pre-charge stage. While duty solicitors engaged in the BLAST Initiative, and took their turn on the on-site rota, recent changes seem to have led to their increased marginalisation from the pre-charge process. The effect seems to have encouraged solicitors to concentrate more specifically on the offence rather than on wider issues concerning their clients' detention.

The BLAST Initiative did have the potential to improve access to legal advice and achieve efficiencies and cost savings but this was not possible due to the problems outlined above. As the Initiative progressed it seemed disingenuous to try and encourage suspects to have legal advice through the availability of the on-site duty solicitors but for them then to have to wait for many hours before being interviewed by the police. Arising out of this research study are set out below suggestions for how some of the obstacles identified could be removed or the problems mitigated if there is to be a second phase of BLAST.

- The police could consider restricting the use of custody, particularly when responding to minor offences. A suggestion arising in this study is for custody sergeants to apply a 'threshold test' based on criteria concerning the 'necessity' and 'proportionality' of detaining suspects in custody.
- When bringing suspects into custody it would be helpful if the police were required to have undertaken initial enquiries and have available some evidence, such as a statement from the complainant and/or CCTV evidence if this is relied upon. While it is not always feasible for the police to have such evidence following an arrest, it is proposed that failing to do so should be the exception rather than the rule.
- In order to avoid the problems relating to the Defence Solicitor Call-Centre (DSCC), it would be helpful if all requests for the duty solicitor were referred by custody sergeants to the solicitors' room direct during the operational hours of the Initiative.
- There could be an expectation of an early police interview in most cases. This would help to expedite cases where the police have sufficient evidence for a conviction and the offence is

admitted. Alternatively, in weak and ill-considered cases, representations from the defence could lead the police to dismiss such cases early on in the prosecution process.

- A requirement for an early interview should help to reduce the amount of evidence the police require in cases. Where there are issues in dispute an early interview could also help to focus the police investigation rather than evidence being gathered to cover all possible angles. For example, it would assist the police if details of a possible defence or alibi evidence were raised early on. By providing a ‘first account’ shortly after their arrest, this could also lead to some suspects being bailed to return back to the police station rather than have to wait many hours in a cell while further investigations are carried out.
- Improving access to legal advice is intended to help expedite cases. It is anticipated that if suspects were to associate the involvement of defence solicitors with having a positive effect on reducing the time they spend in custody that request rates for legal advice would increase.
- In appropriate cases it could help to improve pre-charge decision-making if the police and legal advisers were able to discuss the potential for a caution, or other out-of-court disposal, instead of cases proceeding unnecessarily to court. Such discussions could also usefully include adopting a restorative justice approach in appropriate cases.
- The target for the police to increase detections should be withdrawn. This proposal is likely to be contentious as the target seems to be popular with police managers and senior officers. If the target is removed it is important for the police to address their performance in relation to detections in other ways. One suggestion would be to improve the crime recording practices so that only incidents identified as a ‘crime’ are recorded as such and passed on for a police intervention. At present incidents are reported to the police which are not a ‘crime’ but the recording of the complaint means that there is then pressure on the police to take positive action, leading to the recording of a detection.<sup>3</sup>

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<sup>3</sup> Reported to the police can be trivial matters which do not warrant a formal police intervention as well as incidents which could more appropriately be dealt with as a civil action.

- Both the police and legal advisers need to work together constructively in the pre-charge process in order to better deal with cases more effectively and efficiently.<sup>4</sup> To this end, it is important that custody sergeants are prepared to give ground by allowing legal advisers to enter into the main custody suite, particularly when a quick response to a request for legal advice is required and also when solicitors want to make representations. For the defence, having effectively been sidelined in relation to the pre-charge process it is important that they are proactive in seeking to challenge unnecessary delays and to deal with cases more effectively.

### ***Proposals for a second phase of BLAST***

A second phase of BLAST will only be successful if there are improved relations between the police and the defence. Such relationships have been very poor over recent years, particularly with solicitors having been excluded from the main custody suite. There were tensions observed during BLAST with some custody sergeants resisting attempts to improve access to legal advice and also by not allowing duty solicitors to enter into the ground floor custody suite. With legal advisers having been sidelined from the pre-charge process over a number of years, it also seems that the commercial approach of some has been to adopt a minimum response in relation to police station legal advice. Nevertheless, there were positive comments made by both the police and solicitors over the potential for the new arrangements to help build relations and all practitioner respondents expressed the view that they should work together more constructively. It is anticipated that if the new arrangements are to be effective in helping to expedite cases, and reduce the amount of evidence the police require in some cases, that practitioners will see the benefits of working together more closely. Such co-operation between practitioners will be important when seeking to identify new ways of delivering a high standard of access to justice but at a lower cost.

It would also be helpful within a second phase of BLAST to explore the extent to which there are sufficient legal safeguards for those held in police custody. In particular, the findings from this study suggest that it would be useful to examine further the ‘impartial’ role of custody sergeants, who are required to be independent of the police investigation when making custody decisions, and their relationship with legal advisers. While PACE seems generally to have been

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<sup>4</sup> It is not the role of defence solicitors to assist the prosecution in achieving efficiencies but this is likely to be the effect of working together in seeking to expedite cases and thereby reduce the time their clients spend in custody.

effective in providing such protections over the past 25 years, questions are raised in this study about whether such legal safeguards are now being eroded.<sup>5</sup> Within the first phase of BLAST this research study has examined the processing of cases in the police station. In a second phase it would also be helpful for the research to focus more specifically on individual cases and to examine the quality of legal decision-making within the pre-charge process. In such a complex and bureaucratic process it is anticipated that the new arrangements could help to improve the effectiveness of the pre-charge process as well as lead to significant cost savings. By focusing more specifically on pre-charge decision-making the research study during a second phase of BLAST would require the support and involvement of not only the police and defence practitioners but also the CPS.

In summary, the BLAST Initiative did not achieve the objectives of improving access to legal advice and increasing efficiencies and cost savings. However, it is anticipated that the new arrangements have the potential to do so. In responding to the issues raised in this report, the local practitioners have agreed to address the obstacles identified and to support a second phase of BLAST, which commenced in July 2012. If progress is made during this second phase it is proposed that in addition to a local steering group, which can provide guidance and oversee this work, that there is also set up a national advisory group. This group would comprise representatives from the Ministry of Justice, the Home Office, the Crown Prosecution Service, the Law Society, Criminal Law Solicitors' Association, the Legal Services Commission and the Association of Chief Police Officers as well as senior academics.

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<sup>5</sup> There were both similar and also different concerns raised in a study of four large police stations, which included this police station (see Kemp, 2013).

## **1. Introduction**

BLAST was an initiative which used duty solicitors based on-site in a busy city centre police station over a three-month period.<sup>6</sup> The need for improving access to legal advice arose out of the findings from recent research studies carried out by the LSRC into police station legal advice. The research findings highlight variations in the take-up of legal advice, both between police stations and police force areas, and also identify potential barriers to accessing such advice. When sharing the research findings with the local police and local defence solicitors, interest was shown in taking part in a small-scale exploratory study aimed at improving access to legal advice.

The new arrangements, set up under the BLAST Initiative, were in place from 14 February to 13 May 2011. They involved duty solicitors being based at the Bridewell police station during weekdays 9 am to 6 pm.<sup>7</sup> As part of the Initiative, the local practitioners also agreed to the new arrangements being the subject of research by the LSRC. I have been centrally involved in setting up the project and carrying out the research. In order to distinguish between the two, this Interim Report first deals with the ‘BLAST Initiative’ and then the ‘BLAST Research’. The fieldwork for this study was completed in June 2011 and a draft report was submitted to the local practitioners, the Ministry of Justice and the Legal Services Commission in September 2011. Publication of the report had been delayed while local practitioners decided whether to support a second phase of BLAST. In the meantime the draft report was circulated on a restricted basis to relevant Government departments and other interested stakeholders. It was agreed locally to support a second phase and this commenced in July 2012.

By way of background, this report first examines some of the LSRC’s research findings into police station legal advice and details of the BLAST Initiative are outlined, including the aims and objectives, how it was set up and then operated in practice. Following a brief summary of the methods involved, set out are the main findings arising out of the BLAST Research.

## **2. Variations and potential barriers to legal advice**

The LSRC has conducted a number of research studies into police station legal advice over recent years. One study involved a survey of over 1,000 users in the criminal justice system which examined people’s choices in relation to the take-up of legal advice, it also included in-depth

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<sup>6</sup> The police station involved has not been named and instead the colloquial term the ‘Bridewell’ has been used.

<sup>7</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.

interviews with 24 defence solicitors.<sup>8</sup> This study helped to highlight potential barriers to legal advice from the perspective of those drawn into the criminal justice system. In another study, the LSRC obtained details of over 30,000 electronic custody records drawn from 44 police stations in four police force areas during 2009. This statistical analysis of custody records provides an important update on request rates for legal advice, with very little research having been undertaken into this important subject over the past 15 years.<sup>9</sup>

Analysis of electronic custody records suggests that take up of legal advice has generally increased over time. For example, the LSRC found that overall 45 per cent of detainees requested legal advice and 35 per cent received such advice,<sup>10</sup> which compares to the last large-scale study, based on 12,500 custody records in 1995/96, where 40 per cent of detainees were found to have requested legal advice and 34 per cent received such advice.<sup>11</sup> Consistent with earlier research findings the LSRC also found variations in request rates, ranging from 32 per cent in one police station to 62 per cent in another.<sup>12</sup> Shown in Table 1 are the request rates for legal advice identified by police force area and also the main police station in each of those areas. It is in area B and police station B.1 where the BLAST study took place.

*Table 1: Request rates for legal advice based on police force areas and the main police station in each of those areas*

<b>Police force area</b>	<b>Request rate %</b>	<b>Main police station</b>	<b>Request rate %</b>
<b>A</b>	41.3	<b>A.1</b>	48.8
<b>B</b>	40.1	<b>B.1</b>	41.4
<b>C</b>	49.2	<b>C.1</b>	51.4
<b>D</b>	52.5	<b>D.1</b>	62.4

As found in previous research, a wide range of factors were seen to influence variations in request rates. In addition to demographic characteristics, such as the age, ethnicity, and gender of detainees, factors such as the type and seriousness of the offence and whether or not legal advice was requested also have an impact.<sup>13</sup>

<sup>8</sup> See Kemp and Balmer (2008) and Kemp (2010).

<sup>9</sup> See Pleasence et al. (2011) and Kemp et al. (2012).

<sup>10</sup> Pleasence et al. (2011).

<sup>11</sup> Bucke and Brown (1997).

<sup>12</sup> Pleasence et al. (2011).

<sup>13</sup> Kemp et al. (2012). In relation to the age of detainees impacting on request rates for legal advice see Kemp et al. (2011).

In order to further explore unobserved factors found to influence variations in request rates for legal advice, I carried out a qualitative study of the main police station in the four police force areas from which the electronic custody records were extracted. This included interviews with 50 custody sergeants and observation of custody suites. Preliminary analysis of the interview data and fieldwork notes made while carrying out observations of police custody areas indicated that there were a number of issues which influenced the take-up of legal advice. Set out below are some of the key findings which were seen to influence variations in request rates at the four police stations.

- *Delays*

There were observed to be long delays in the pre-charge process. This was also the main reason given by all but two of the 50 custody sergeants interviewed when asked why suspects refused legal advice. While the police investigation is the main cause of delay, it seemed from comments made by some detainees that they perceive legal advisers to be responsible for delays.<sup>14</sup>

- *Custody sergeants' attitudes towards legal advice*

When observing custody sergeants reading people their legal rights there seemed to be occasions where they were 'encouraging' and at other times 'discouraging' of legal advice. When asked about the effect they could have on the take-up of legal advice in interview, a number of custody sergeants pointed out that they needed to be 'impartial', although some did express the view that there were occasions when they were more 'encouraging' of legal advice, particularly with suspects who were not sure of what to do.<sup>15</sup>

- *Local performance targets to increase detections*

There were concerns raised by custody sergeants in all four police stations over the pressure the police were under to increase detections, although in one station it was said that such pressure was diminishing. There were also criticisms made by custody sergeants that the targets were encouraging the police to pursue minor matters which would not previously have had formal action taken and to also impose out-of-court disposals in cases where there was insufficient evidence to prosecute. While custody sergeants are not under pressure to increase detections there were complaints made in two police stations that pressure on the police was bringing them into conflict with senior investigating police officers. Such conflict was said to arise when senior

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<sup>14</sup> See Kemp (2013).

<sup>15</sup> See further Kemp (2013).

officers tried to influence decisions which custody sergeants felt were theirs to make, such as whether or not to detain a suspect, what bail conditions might be imposed and if suspects were to be remanded following a charge.

- *Access to criminal defence services*

A critical factor found to influence requests for legal advice was the extent to which legal advisers were accessible in police stations. In two of the four police stations legal advisers had been excluded from the custody suites and this was seen to have implications for the take-up of legal advice. Also highlighted were problems for solicitors when seeking to contact custody suites over the telephone as the calls sometimes went unanswered.<sup>16</sup> More generally, long delays in the criminal investigation were also seen to discourage some suspects from having legal advice.<sup>17</sup>

### **3. The BLAST Initiative**

It was when reporting the findings from the police electronic records to the local agencies, which identified this county as an area with a relatively low take-up of legal advice, that interest in the BLAST Initiative arose. From the outset the police had been supportive of wanting to improve access to legal advice, and of further research being undertaken. Local defence practitioners were also keen to take part in a study aimed at addressing potential barriers to legal advice.<sup>18</sup> While this was to be a local initiative, practitioners wanted to ensure that the new arrangements had the support of the Ministry of Justice and the Legal Services Commission; such support was forthcoming.

#### *3.a) Aims and objectives*

The local practitioners agreed that the aim of the BLAST Initiative was to improve access to legal advice and to engender closer working relations between custody sergeants and legal advisers, with a view to increasing the efficient processing of cases and improving pre-charge decision-making. The following objectives were agreed by the local agencies:

- To encourage an increase in the take-up of legal advice.
- To facilitate early access to legal advice.

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<sup>16</sup> This problem was also highlighted in an earlier study (see Kemp, 2010:47-50).

<sup>17</sup> See Kemp (2013).

<sup>18</sup> As noted below, there were particular difficulties identified in this area, mainly due to the design of the police station, which had led to legal advisers being excluded from the custody suite.



- Help to expedite cases, particularly those described as ‘high volume’ and ‘low level’ offences, such as shoplifting and minor criminal damage.
- Reduce the time spent by detainees in custody by:
  - Encouraging early ‘guilty pleas’ in cases receiving legal advice.
  - Early identification of weak and ill-considered cases.
- Reduce the amount of evidence required, particularly in high volume/low level cases.
- Encourage improved relations between the police and defence practitioners.
- Improve prosecution decision-making in relation to case outcomes, i.e. divert appropriate cases from court.

Before examining the new arrangements in detail it is important to consider some of the peculiarities at the Bridewell which were seen to create potential obstacles to legal advice.

### *3.b) The Bridewell: setting the scene*

The police station was built some 20 years ago and while it has the capacity for 78 operational cells, it was not originally designed as a custody suite but instead was used as a resource to take overflow prisoners from the local Prison.<sup>19</sup> The design of the building has limitations for the way in which the police can manage detainees. When first bringing people into the station, for instance, there is no organised waiting area outside the station and the police have to form a queue inside the custody suite.<sup>20</sup> With little depth to the waiting area, the custody suite can become unwieldy once four or more detainees are waiting in the queue, especially as they are usually accompanied by one or two police officers. Because of this lack of space in the custody area, and the risk of harm from potentially violent prisoners, a decision was taken by the local police in 2005 to exclude non-police personnel, including legal advisers, from the custody area.

There was another major change at the Bridewell in October 2010 when two custody suites in the county were closed and the cases transferred to the Bridewell. This was to increase by almost 3,000 the number of cases dealt with at the Bridewell from 14 February to 13 May 2010 compared to the same period in 2011. Because of this increase in cases a second custody suite

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<sup>19</sup> During the study the volume of cases being dealt with during weekdays (9 am to 6 pm) tended to fluctuate from between 20 to 40 detainees. There were 23 cells available on the ground floor and 20 on the first floor. Additional cells on the second floor could be utilised if required.

<sup>20</sup> This queue can become quite long as it can also include those suspects who have been brought back from interview, those who have answered police bail and/or are ready to be released.

was opened on the first floor of the Bridewell at the end of 2010.<sup>21</sup> Solicitors were allowed to enter into the first floor custody suite.

During the BLAST Initiative there were generally between four to six custody sergeants on duty during the day and most were based on the ground floor custody suite, with one or two being located on the first floor.<sup>22</sup> After solicitors had been barred from entering into the ground floor custody suite - in 2005 - a wall was erected with a door on which a notice states that solicitors are not allowed to pass. This wall had become a strong psychological barrier through which few legal advisers would cross in order to enter the ground floor custody suite. Local defence practitioners report that they had strongly objected to their exclusion from the custody suite but without success. They also acknowledged that this custody space is 'police territory' and they have become resigned to the fact that there is little they can do to challenge their exclusion. In seeking to attract the attention of the police, legal advisers had been able to go to the back of the custody suite, but with an increasing volume of cases another door was erected which blocked this access to custody sergeants. With solicitors effectively barred from the ground floor custody suite, a desk station staffed by detention officers was set up just off the custody area. It is this desk station to which solicitors are required to report when first coming into custody.<sup>23</sup>

It seems that recent measures taken to keep legal advisers out of the ground floor custody area are intended to help shield custody sergeants from interruptions when working in an extremely busy and pressurised environment. However, such steps also disadvantage legal advisers as they do not have easy access to custody sergeants through whom they obtain information and make representations on behalf of their client.

### *3.c) The new arrangements*

One of the main aims of the scheme was to enable early access to legal advice. However, beyond allowing duty solicitors to be based on-site in the Bridewell, there were no other changes made as part of this Initiative, either to the police station duty solicitor rota or to the fixed fees paid for legal advice. In order not to deviate too far from existing arrangements, the police also requested that custody sergeants would continue to call through requests for legal advice to the Defence

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<sup>21</sup> For further details of the layout at the Bridewell see the Research Specification in the Appendix (page 5).

<sup>22</sup> If there were only three or four custody sergeants on duty they would tend to use the ground floor custody suite and close the one on the first floor.

<sup>23</sup> In addition to dealing with queries from legal advisers, detention officers are required to carry out other tasks relating to the safeguarding of those detained, including conducting regular visits and dealing with their welfare and other issues. Such tasks tend to take priority to dealing with requests from solicitors.

Solicitor Call-Centre (DSCC).<sup>24</sup> The DSCC agreed that when the ‘pilot duty solicitor’ was requested that those cases would be referred to the on-site duty solicitors’ room to ensure a quick response. All other referrals, for either a nominated or duty solicitor, would be dealt with in the usual way.

When booking detainees into custody under the new arrangements, custody sergeants were asked to mention to those who had refused legal advice that a duty solicitor was available on-site in the police station. This was intended to address concerns held by some detainees that having legal advice would lead to delays. For those detainees who still could not make up their mind about having legal advice, custody sergeants were to offer them a meeting with one of the on-site duty solicitors to help them come to a decision.

The Vice President of the local Law Society volunteered to help co-ordinate the involvement of legal advisers and it was through local discussions that the BLAST Initiative was to receive unanimous support from criminal practitioners in the city. It was agreed between the police and duty solicitors that the Initiative would operate during weekdays between the hours of 9 am and 6 pm; the duty rota having two duty solicitors on-call during that time. It was further agreed with senior police officers that, for the purpose of the Initiative, on-site duty solicitors would be able to enter the ground floor custody suite, wearing a yellow lanyard to make them easily identifiable to the police.

#### **4. BLAST in Action**

A small-scale approach was adopted so that only those cases where a suspect had refused legal advice, but subsequently changed their mind when told about the on-site scheme, were referred to the duty solicitors’ room.<sup>25</sup> During the initial stages, I combined my role as a researcher with that of a facilitator. As such I informed practitioners about the new arrangements, sought to address any queries which arose and tried to ensure that the new arrangements were working effectively. In effect, I was acting as a ‘go-between’ for custody sergeants and legal advisers, trying to sort out problems, particularly referrals called through to the DSCC. In this role I was also able to examine how the new arrangements were working in practice, which helped to inform the research study.

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<sup>24</sup> The DSCC receives all requests for legal advice from the police and these are then passed on to the relevant solicitors’ firm.

<sup>25</sup> It was anticipated that if the new arrangements were effective that the Initiative could have been expanded to include all duty cases.

During the first week the new arrangements seemed to work well, although there were some teething problems. From the outset it was experienced duty solicitors who attended at the Bridewell; they seemed to be well known to most custody sergeants and on friendly terms with them.<sup>26</sup> Covering a nine hour shift, most firms chose to deploy one legal adviser in the morning and another in the afternoon.<sup>27</sup> Duty solicitors were supportive of this Initiative and it is to the credit of all solicitors' firms, and particularly the smaller practices which had to make a concerted effort to provide cover, that there was an on-site duty solicitor always available during the three-month period, with the exception of a couple of days.

Throughout the first month I had a strong presence in both custody suites and attended most days for between six and eight hours. Much of this time was devoted to observation, sitting quietly behind custody sergeants watching the booking in process. As intended, it seems that this presence was to have a Hawthorne effect<sup>28</sup> by encouraging custody sergeants to refer to the on-site scheme when booking suspects into custody.<sup>29</sup>

Custody sergeants too seemed to embrace the Initiative, at least in the early stages, but as time went by it became apparent that some custody sergeants were more supportive than others. The fact that the initial enthusiasm shown by custody sergeants was seen to wane over time is explained by two factors. First, there was confusion and delays when referring 'pilot' cases through to the DSCC. Secondly, the Initiative appeared to be failing to meet the objective of dealing with cases more efficiently, mainly because in many cases the police did not have any evidence when booking suspects into custody. Before turning our attention to the research findings, it is helpful to explore these two issues in a little more detail.

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<sup>26</sup> While firms generally used duty solicitors when based on-site, as the study progressed some firms chose to send experienced accredited police station representatives.

<sup>27</sup> The duty solicitors tended to act as a facilitator for their firm, which meant they were mainly based in the solicitors' room waiting for the telephone to ring. While they would initially speak to suspects who had requested the on-site duty solicitor, they would usually arrange for a colleague to come down to the station in order to deal with the police interview.

<sup>28</sup> The Hawthorne effect refers to the influence of the researcher as people improve or modify their behaviour because they are being observed.

<sup>29</sup> It had been intended that the need for my presence to stimulate referrals would decline as it was anticipated that custody sergeants would engage more with legal advisers as the benefits of the new arrangements became evident. As explored below, however, this was not the case.

#### *4.a) The involvement of the DSCC*

The requirement to route all duty calls through to the DSCC proved to be an enduring difficulty throughout the BLAST Initiative. Although the LSC and DSCC had agreed how the new arrangements would operate prior to the Initiative commencing, relevant call centre staff were not briefed on these details because of the unexpected absence of the relevant manager on long-term sick leave. In consequence, custody sergeants complained that when referring a 'pilot duty solicitor' case, they would often be put them on hold. At busy times, they said they could not tolerate such delays and instead they would end the call and refer it to the DSCC as a normal duty solicitor case. It is unfortunate that this problem with the DSCC seemed to reduce the initial enthusiasm shown by some custody sergeants to the Initiative. While the DSCC tried to address these issues, there continued to be problems, perhaps not surprisingly when a national organisation was trying to respond differently to a relatively small number of cases.<sup>30</sup>

#### *4.b) Detaining suspects without evidence*

It had been intended that with duty solicitors based on-site, access to early legal advice would help to deal with appropriate cases more quickly.<sup>31</sup> However, solicitors complained that the police tended not to have any evidence to share with them at this early stage.<sup>32</sup> This was not only in relation to offences where there had been an immediate arrest, which was understandable, but also in cases where a complaint had been made some days earlier but the police had not carried out any investigations prior to making an arrest. In cases where there has been a delay a requirement for the police to carry out pre-arrest investigations could sometimes avoid the need for an arrest. The tendency of the police not to have any evidence when booking suspects into custody is not only an inefficient way of investigating cases but it could also result in unlawful detentions if there is no evidence on which to justify the making of an arrest.

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<sup>30</sup> For further details see the Research Specification included in the Appendix (pages 7 and 8).

<sup>31</sup> It is not all cases which can benefit from being expedited. However, in appropriate cases it can be to the benefit of all involved, including the suspect if this means they spend less time in custody.

<sup>32</sup> This was not always so, as there were cases where legal advice was not requested and the police were ready to go straight into interview. However, this does not necessarily mean that they had any evidence and, as noted below, there were cases observed where the police seemed to discourage suspects from having legal advice, possibly because they did not have any evidence.

## 5. The BLAST Research

It was agreed by the local agencies that the BLAST Initiative would be subject to research undertaken by the Legal Services Research Centre, the independent research division of the Legal Services Commission. It had been intended that the research questions would focus on the aims and objectives of the Initiative. However, from early observations and informal discussions held with practitioners it was evident that the new arrangements were not working as intended. Accordingly, the following research questions were devised in order to explore potential barriers to legal advice as well as to examine the effect of the new arrangements in the pre-charge process and on changing relationships between the police and the defence:

- Why do suspects decline legal advice?
- What impact did the Initiative have on the take-up of legal advice, duration and case outcomes?
- Has the Initiative changed the way custody sergeants read suspects their legal rights?
- Has the Initiative led to changes in communications between custody sergeants and duty solicitors?
- Did the Initiative increase efficiencies and cost savings?
- Are there alternative ways to achieving efficiencies and cost savings by improving access to legal advice?

### *Methods*

Multiple methods have been adopted in this study in order to examine these research questions from different perspectives. First, quantitative analysis of 11,550 police electronic custody records was undertaken. The second element involved observation of the custody process and informal discussions held with practitioners over a four-month period.<sup>33</sup> This included observing suspects being booked into custody and interactions taking place between custody staff, police officers and legal advisers, details of which were recorded in a fieldwork diary. Third, structured research interviews have been carried out with 40 detainees who had refused legal advice when being booked into custody. This included interviews with 27 suspects who had previous experience of custody and 13 who had not previously been arrested by the police.<sup>34</sup>

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<sup>33</sup> This included the three-months during which the Initiative was operational and a further month spent at the Bridewell while undertaking the research interviews.

<sup>34</sup> There were 27 white and 9 black and ethnic minority (BME) males interviewed and three BME and one white female.

There were semi-structured interviews undertaken with twelve custody sergeants and twelve defence practitioners. Prior to conducting the interviews with custody sergeants the topic guide was tested out on two PACE inspectors, whose responses have been included in this analysis.<sup>35</sup> This study was also able to draw on thirteen semi-structured interviews conducted with custody sergeants in this police station in October 2010, as part of an earlier study into police station legal advice.<sup>36</sup> There were five custody sergeants interviewed as part of the BLAST study who had also been interviewed in 2010. In order to help distinguish between the comments made by these custody sergeants a number has been added to the coded initials of the respondents.<sup>37</sup> For example, for those respondents cited in interviews conducted in this study the number 1 has been added to the coded reference while the number 2 is used for comments drawn from the earlier 2010 interviews.

So far as the interviews with twelve defence practitioners are concerned, eight were conducted with legal advisers from one of the four large criminal firms in the city, one with a solicitor from a medium-sized firm and three interviews with practitioners based in three small firms.<sup>38</sup> Of the twelve respondents, nine were duty solicitors and three were accredited police station legal advisers. A more detailed description of the methods involved is set out in the Research Specification, which is included in the Appendix to this report.<sup>39</sup>

## **6. BLAST Research Findings**

Analysis of the BLAST Initiative has led to the work of the police and legal advisers being subject to detailed scrutiny. In this context it is important to comment on the work environment within which both the police and legal advisers were operating. With a high volume of cases to deal with custody sergeants were often busy and frequently working under a lot of pressure. Solicitors too were seen to be working hard in a complex and bureaucratic system. Analysis of

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<sup>35</sup> There were ten white male custody sergeants, a white female and a BME male respondent. PACE requires certain tasks to be undertaken by an Inspector, such as carrying out a regular review of those detained. In this busy custody suite there were five shifts of custody sergeants, each of which had its own PACE Inspector who was based full-time at the Bridewell. All PACE Inspectors were white and male.

<sup>36</sup> All these respondents were white males, with the exception of one black and minority ethnic (BME) custody sergeant.

<sup>37</sup> For reasons of confidentiality the name of custody sergeants and defence solicitors interviewed in this study have been replaced with a coded reference. In addition, and for the same reason, comments are referred to in the masculine even though references also relate to female participants.

<sup>38</sup> Eight interviews were conducted with females, all white except for one BME female respondent. Of the four male interviewees, there were two BME and two white respondents. The definition of a 'large' firm used in this study was those with five or more partners, a 'medium' sized firm had three to five partners and a 'small' firm had just one or two partners.

<sup>39</sup> This includes further commentary on the methodology and copies of the interview topic guides.

observations records, not just at the Bridewell but in other police stations too, has revealed a system which is both inefficient and highly resource intensive.<sup>40</sup> The purpose of this research study is not to criticise the efforts of those trying their best to manage in a complex and bureaucratic process but to try and identify ways in which it can be reformed. The research findings arising out of the BLAST Initiative are addressed in relation to each research question in turn.

### **6.A Why do suspects decline legal advice?**

This important question had been raised by the Public Accounts Committee when considering the take-up of police station legal advice.<sup>41</sup> The LSRC had previously explored the question of why people decline legal advice when surveying over 1,000 people in the criminal justice system.<sup>42</sup> Of those in that study who had refused legal advice in the police station, over two-thirds said they ‘did not need’ a solicitor – some said this was because they were guilty and others because they were innocent. The next main reason, given by one in five respondents, was because they felt that having a solicitor would increase the time they spent in custody.<sup>43</sup> In setting up the BLAST arrangements it was agreed with the police that from the outset I would try and interview suspects who had refused legal advice in order to ascertain the reasons why. The main purpose of these interviews was to check that suspects were aware of the on-site duty solicitor scheme and to see if when questioned about legal advice this prompted a change of mind.

As part of the current research, a total of 40 interviews were carried out with suspects in the period from 14 February to 10 March 2011. It seemed that the new arrangements did help to address people’s concerns about delays because only two respondents gave this as their reason for refusing legal advice. The two main reasons given by 29 respondents for rejecting a solicitor was either because they ‘did not need’ one (n=15) or they had ‘not done anything wrong’ (n=14). Of those who said they ‘did not need’ a solicitor this included those being dealt with for serious offences such as kidnapping, robbery and causing grievous bodily harm with intent. Of the 40 respondents interviewed, 13 subsequently changed their mind and asked to speak to a solicitor.

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<sup>40</sup> See Kemp (2013).

<sup>41</sup> See Public Accounts Committee (2010).

<sup>42</sup> See Kemp and Balmer (2008) and Kemp (2010).

<sup>43</sup> The proportion of those reporting concerns over delays had increased significantly from 4% in Bucke and Brown’s study (1997) to 20% in the LSRC’s survey (see Kemp, 2010:41).



In the research interviews respondents were also asked questions about the duty solicitor in order to establish whether they understood that the service was provided by solicitors who are independent of the police.<sup>44</sup> Of the 40 respondents two-thirds said they did not understand the role of the duty solicitor (16 who had previous experience of custody and 10 who did not) and five (13%) said that they thought they were employed directly by the police. These findings show a lack of understanding of the duty solicitor scheme and how it operates in practice.

## **6.B What impact did the Initiative have on the take-up of legal advice, duration and case outcomes?**

In order to address this question a statistical analysis of the police electronic custody records was undertaken. The police provided the LSRC with anonymised custody records for the county during the period of the Initiative, 14 February to 13 May 2011 and, for comparative purposes, over the same period of time in 2010. With the closure of two custody suites in the county at the end of 2010, and with cases being transferred to the Bridewell, analysis of cases dealt with at those two police stations have been included in the 2010 data. The data extracted provided personal details of detainees, the offence for which they had been arrested, how long they were in custody, whether or not they had requested legal advice and the case outcome. It had been intended to collect data concerning the type of solicitor requested but this information was not always recorded on custody records.<sup>45</sup>

For the three-month period from February to May 2010 the county's overall request rate for legal advice was 37.6 per cent, rising to 41.5 per cent during the same period in 2011. In 2010 the Bridewell had a request rate of 41.6 per cent and the two police stations which subsequently closed had 40.5 per cent and 41.0 per cent respectively. When the data from these two police stations was combined with that of the Bridewell the overall request rate for legal advice in 2010 was 41.2 per cent, which increased to 45.0 per cent in 2011. However, these figures include requests for legal advice made over all periods of detention. For the purposes of BLAST, with the new arrangements being targeted mainly at those first brought into custody, it is the records pertaining to the first detention period only which have been analysed: a total overall of 11,550 records.

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<sup>44</sup> In the 2008 survey, 767 respondents were asked questions about the duty solicitor and almost a quarter said they thought the police station duty solicitor was employed directly by the police, and over two-thirds were not sure if this was the case or not (see Kemp and Balmer, 2008:44).

<sup>45</sup> This data was instead to be collected from the DSCC but, as noted above, there were occasions where custody sergeants would refer cases under the BLAST Initiative as normal referrals to the duty solicitor.

When comparing details between the two comparator periods there was little change identified concerning the demographics of detainees in relation to their age, gender and ethnicity. There were also found to be similarities when comparing the types of offences dealt with during the two periods with the exception of ‘offences against the person’, where there was an increase of 3.9 per cent between the two periods and ‘all other offences (excluding motoring)’ in which there was a 3.4 per cent drop.<sup>46</sup>

#### *6.B (i) Take up of legal advice*

The rates at which solicitors were requested by detainees following their arrest increased significantly between the comparator periods from 39.3 per cent in 2010 to 43.0 per cent in 2011 ( $\chi^2_1 = 16.65$ ,  $p < 0.001$ ). However, in order to more accurately determine whether BLAST had an impact on the take-up of legal advice for those brought into custody for the first time with regards to a particular offence, a binary logistic regression model was fitted to data using Stata 11. Both the data period (i.e. the year detained (in either 2010 or 2011)) and whether the detainee was placed into custody when the on-site solicitor was on duty, referred to as ‘within office hours’ (between 9 am through to 6 pm Monday to Friday), were added to the model as fixed effects, as well as an interaction of these two variables (in effect discriminating between those detained within and outside of the BLAST Initiative itself).<sup>47</sup>

Output from the model confirms that differences in requests for legal advice between the two data periods were significant. Interestingly, however, neither those being detained ‘within office hours’ (i.e. 9 am to 6 pm – Monday to Friday) and importantly, those detained within and outside the operation of BLAST (denoted by ‘data period x within office hours’) proved to be significant. It follows that while the take-up of legal advice did increase during the BLAST Initiative when compared to the 2010 data, this did not appear to be due to the effect of the new arrangements as there was a similar increase in request rates outside of the times that the on-site duty solicitor was present. This difference could be due to BLAST having a positive effect on request rates by increasing the profile of legal advice more generally within custody.

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<sup>46</sup> Further details of the analysis are set out in the Appendix (from page 33).

<sup>47</sup> See the output from the binary logistic regression model of requests for a solicitor in the Appendix (page 35).

6.B (ii) Time spent in custody

A generalized linear model was fitted to model duration of the first period of police custody (hours).<sup>48</sup> The year of detention ('data period'), whether detained 'within office hours', and if 'solicitor requested' were added to the model as fixed effects. Four interaction terms were also included in the model.<sup>49</sup> The model suggests that the interaction terms were not significant in determining the time spent in custody. Importantly, the model found no significant differences in the time spent in custody by those who had requested a solicitor during the BLAST Initiative.<sup>50</sup> Indeed, Figure 1 compares the length of time spent in custody by detainees who *had* requested to see a solicitor between the comparator periods based on means derived from the raw data.

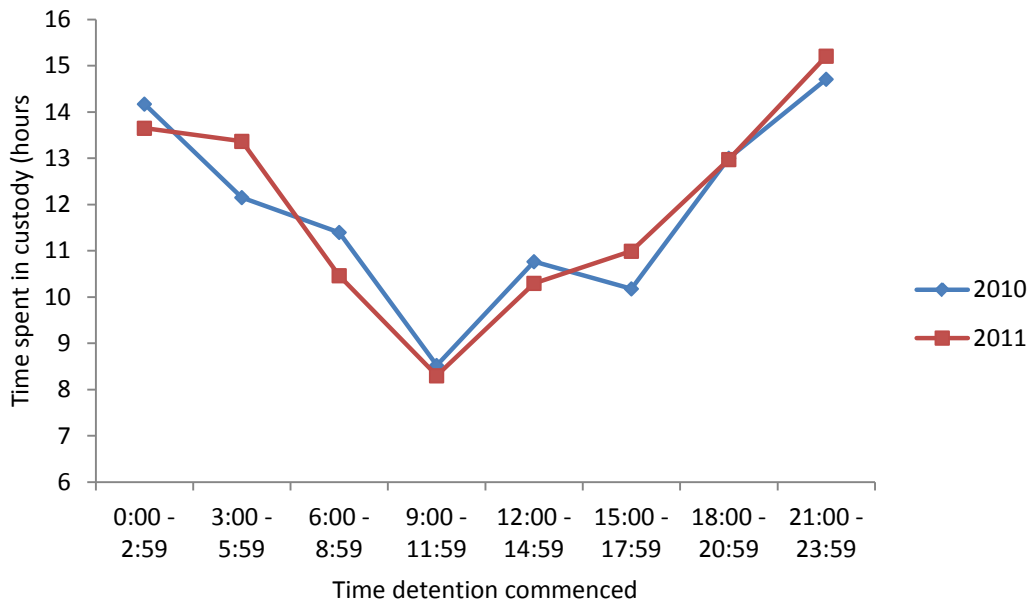


Figure 1: Mean custody duration for detainees who had requested advice by year detained

Looking at the raw data alone the model showed little difference in the amount of time spent in custody between the two comparator years – the mean length of detention was 8.8 hours in both 2010 and 2011. Indeed, controlling for other variables,<sup>51</sup> the year of detention proved to be

<sup>48</sup> Once again using Strata 11.

<sup>49</sup> The four interaction terms were: 'data period x within office hours'; 'data period x solicitor requested'; 'within office hours x solicitor requested'; and 'data period x within office hours x solicitor requested'.

<sup>50</sup> This finding is derived from the three way interaction term included in the model (denoted by 'data period x within office hours x solicitor requested'); see also the statistical output included in the Appendix (from page 35).

<sup>51</sup> See the Appendix (page 35).

non- significant, accounting for a difference of less than nine minutes. Being detained within ‘office hours’ appeared to have a significant effect on the length of detention, with those detained between the hours of 9 am through to 6 pm, Monday to Friday spending 2.9 hours less in custody than those detained outside of those hours (this included those arrested overnight or at weekends).<sup>52</sup> Detention times were significantly increased if a detainee requested a solicitor. Controlling for other variables in the model, over the first period of detention, requesting a solicitor added on average 5.0 hours on to the time spent in custody. Means taken from raw data show that those who did not have a solicitor were detained for 6.8 hours, compared to 11.7 for those having legal advice. However, previously published research has demonstrated that requesting a solicitor is in part related to circumstances which would have resulted in longer durations in any event, such as the seriousness of the offence.<sup>53</sup>

*6.B (iii) Case outcomes*

Changes in the outcome of cases between the comparator periods are set out in Table 1.

*Table 1: Case outcomes by the two comparator periods*

<i>Case Outcome</i>	<i>2010</i>		<i>2011</i>	
	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>
Released/no further action	1745	31.2	1470	26.9
Out-of-court disposal	1109	19.8	1053	19.2
Charge and bail	1833	32.7	2118	38.7
Charge and remand	806	14.4	723	13.2
Other	108	1.9	110	2.0
<b>Total</b>	<b>5601</b>	<b>100</b>	<b>5474</b>	<b>100</b>

The most significant change was seen to be reduction of almost 5 per cent in the proportion of cases where no action was taken in 2010 compared to 2011, but with a corresponding increase in those charged and bailed. It is unlikely that BLAST would have had an effect on case outcomes, and instead, as considered below, such a change could be due to the pressure the police were under to increase detections.

Table 2 below sets out the extent to which case outcomes changed depending on whether legal advice was requested between the two comparator periods. The main difference between the two comparator years is in relation to cases charged, with a higher proportion - whether on

<sup>52</sup> The means taken from the raw data were 6.9 hours and 9.8 hours respectively.

<sup>53</sup> See Kemp et al. (2012:748).

bail or remanded in custody - having legal advice. When not comparing the two years, the most significant difference is to be found in relation to out-of-court disposals with just one in five suspects in both years having legal advice in relation to this disposal. Once again, a possible explanation explored below is the preference of some arresting officers to deal with cases considered suitable for a caution quickly and without a solicitor.

*Table 2: Case outcomes by legal advice over the two comparator periods*

<b>Solicitor and Outcome</b>	<b>2010</b>		<b>2011</b>	
	<b>No Advice %</b>	<b>Advice %</b>	<b>No Advice %</b>	<b>Advice %</b>
Released/no further action	57.8	42.2	56.6	43.4
Out-of-court disposal	79.1	20.9	78.6	21.4
Charge and bail	57.7	42.3	51.8	48.2
Charge and remand	49.3	50.7	43.3	56.7
Other	58.3	41.7	51.8	48.2
<b>Total</b>	60.8	39.2	57.1	42.9

In conclusion, the electronic custody records have shown that there was a statistically significant increase in requests rates for legal advice when comparing the same three-month period in 2010 and 2011. However, such an increase was not concentrated during the hours BLAST was operational, which suggests that a focus on legal advice more generally might have influenced request rates rather than the Initiative itself. The statistical data also confirms that the Initiative did not make any difference to the duration of cases. Indeed, and again as explored below, with the police frequently not having any evidence when booking suspects into custody, there was no early opportunity provided for solicitors to liaise with the police in seeking to expedite cases. The data on duration, however, has helped to highlight two important issues. First, the duration of detention in custody increases significantly depending on whether or not someone is detained in or out-of-office hours and, secondly, on whether a suspect requests legal advice.

These findings from the statistical data have helped to inform analysis of the qualitative data drawn from observations and interviews.

## **6.C Has the Initiative changed the way custody sergeants read suspects their legal rights?**

When the on-site duty solicitor arrangements were operational custody sergeants were required to go through a suspect's legal rights in the usual way. However, if legal advice was rejected they were to advise a suspect that a duty solicitor was available on-site. By advising suspects of the new arrangements custody sergeants were required to be more encouraging of legal advice but it seemed from observing suspects being booked into custody that some custody sergeants were more positive about the new arrangements than others. It was also intended that BLAST would help to expedite matters by providing early access to legal advice and that this, in turn, would encourage custody sergeants to be supportive of the Initiative. However, as noted above, while the new arrangements did improve access to legal advice they had no impact on custody duration, mainly because the police tended not to have any evidence at the early stages of the investigation. Nevertheless, the Initiative has helped to identify some issues concerning custody sergeants' attitudes towards legal advice which could have an influence on request rates.

### *6.C (i) Reading suspects their legal rights*

There is a set procedure for custody sergeants to follow when booking suspects into custody. When opening a new custody record on the computer they are presented with a series of questions which have to be read out to suspects. The first set of questions concern the welfare of the suspect, including an assessment of risk of those being detained.<sup>54</sup> The next set of questions deal with a suspect's legal rights. 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 consult with the PACE Codes of Practice, although very rarely is this right exercised.<sup>55</sup>

In the past researchers found that custody sergeants would sometimes use the ploy of reading suspects their legal rights quickly and/or unintelligibly in order to discourage them from having legal advice.<sup>56</sup> However, custody sergeants in this study said that such ploys were no longer feasible because the police are now required to have cameras and microphones within custody

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<sup>54</sup> The assessment helps custody sergeants to decide whether the suspect needs to be seen by a nurse or doctor. It also helps to determine how often suspects are to be visited by custody staff.

<sup>55</sup> It would be useful to explore the extent to which this third right is acted upon as during my observations there was just one occasion where a suspect asked to see the Codes of Practice. With this being included as a third right it was sometimes seen to confuse suspects about their right to legal advice, particularly if the approach adopted by custody sergeants was to read all three rights out together. In addition, the Codes of Practice as presently written are likely to be unintelligible to most people unless they have a background in law.

<sup>56</sup> See Sanders et al. (1989).

suites which capture the booking in process. With their actions being recorded it seems that this safeguard is effective in helping to ensure that those who want legal advice receive such advice. However, it was in relation to those who were confused and/or unsure about what to do that custody sergeants were at times seen to be more ‘encouraging’ or ‘discouraging’ of legal advice.

When observing suspects being booked into custody it was noted that some custody sergeants vary the pace at which their legal rights were read out, generally depending on whether or not they had prior experience of police custody. For experienced suspects they seemed to know from the outset whether or not they wanted a solicitor and the reading of their legal rights could be very brief. When dealing with vulnerable suspects, including those who seemed to be unsure about what to do, custody sergeants would generally take their time to make sure that they understood their legal rights.<sup>57</sup> However, with custody sergeants booking suspects into custody multiple times during each shift, it was noted that some could get into the habit of reading out their legal rights quickly. While this seemed at times to be used as a ploy to deter a suspect from having legal advice, this was not always the case. In one case observed, for example, a custody sergeant went quickly through all three rights when dealing with a 16 year old, whose mother was also present as his ‘appropriate adult’. After having gone through his legal rights the custody sergeant asked the suspect if wanted to exercise any of the three rights and looking somewhat bemused he replied ‘No’. In seeking to clarify the response the custody sergeant then said, ‘So you don’t want a solicitor then?’, to which the suspect replied in the affirmative saying that his solicitor was waiting for him in the police station (F/N 28.3.2011).<sup>58</sup>

#### *6.C (ii) Custody sergeants’ attitudes towards legal advice*

The qualitative data suggests that some custody sergeants had a more positive attitude towards legal advice than others. However, findings from the observations data showed that custody sergeants who were identified as being more positive about legal advice than their colleagues would nevertheless sometimes make their own judgements about whether or not suspects required a solicitor. In my earlier research study of four police stations, custody sergeants were asked if they would seek to influence a suspect’s decision about whether or not to have legal advice.<sup>59</sup> Analysis of the interview data highlighted a dilemma for custody sergeants as PACE requires them to be ‘impartial’ so they are neither to ‘encourage’ or ‘discourage’ someone from

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<sup>57</sup> Instead of reading the questions out from the computer screen custody sergeants tended to paraphrase these legal rights. They also hand over to suspects a leaflet which sets out in detail their legal rights.

<sup>58</sup> The reference ‘F/N’ refers to the date the ‘fieldwork note’ was taken.

<sup>59</sup> See Kemp (2013).

having a solicitor. Nevertheless, a number of custody sergeants in that study said that they would on occasions encourage a suspect to have legal advice. One Bridewell custody sergeant spoke of their dilemma when saying, 'We have to be very guarded against giving any sort of advice. Quite often they [the suspects] will ask us what we think they should do. I normally finish off by telling someone that if they are asking me what to do then they need a solicitor' (IX.2). Custody sergeants were next asked if they would encourage a suspect to have legal advice if they were being dealt with for a very serious offence, such as rape or murder, and eleven out of the thirteen Bridewell custody sergeants said that they would. In adopting a more rigid approach the other two custody sergeants said that the severity of the offence would not change their approach. As one described it, 'I will go through their rights. They have the opportunity for legal advice and it's their choice. Whether the offence is a 10p bag of chews or murder, it is the same rules for everyone so far as I'm concerned' (UV.2).

While the 'impartiality' required of custody sergeants is helpful in guarding against them trying to discourage suspects from having legal advice, a strict interpretation of this rule can inhibit them from being more encouraging of legal advice. As noted by some custody sergeants, such encouragement can be important when dealing with certain categories of suspects; including those accused of very serious offences, those brought into custody for the first time and also those identified as vulnerable.<sup>60</sup> PACE provides protections for vulnerable suspects by requiring them to have an appropriate adult, whose role in police custody is to support, assist and advise them, including explaining their right to legal advice. Indeed, there can be adverse consequences later on in court if the admissibility of the police interview(s) is challenged on the basis that a vulnerable suspect did not receive legal advice at the police station. The on-site Initiative was intended to encourage custody sergeants to promote legal advice, although this was evidently easier for those who held more positive attitudes towards legal advice.

The attitude of investigating officers to legal advice was also seen on occasions to influence the behaviour of custody sergeants when dealing with suspects' legal rights. Indeed, there were occasions when the more positive approach adopted by some custody sergeants towards BLAST was seen to be resented. It was over this issue that the following confrontation was observed taking place between an investigating officer and a custody sergeant when booking a suspect into custody:

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<sup>60</sup> PACE recognises as vulnerable children up to 16 years of age and those identified with a mental illness and/or a learning disability.



### *Case Study 1*

A young female suspect was upset at having been brought into custody for the first time. When asked if she wanted legal advice she said she did not know what to do and started to cry. The police officer interjected, saying to her, 'If you don't have one [a solicitor] now you can always change your mind later on'. The custody sergeant ignored this comment and advised her that there was an on-site duty solicitor who could help her to decide. The police officer was annoyed at this comment and told the custody sergeant that he would report him for encouraging legal advice. The officer tried once again to re-assure the suspect that she had an on-going right to legal advice and that although rejecting advice at this stage she could change her mind at any point in the future.<sup>61</sup> The custody sergeant once again ignored the police officer's comment and asked the suspect if she wanted to see a solicitor to which she replied, 'Yes' (F/N 20.5.2011).<sup>62</sup>

Interestingly, the BLAST Initiative had concluded at the time of this altercation but the custody sergeant made references to the on-site scheme in an attempt to counteract the officer's attempts to discourage the suspect from having legal advice. This case is useful as it helps to highlight the potential difficulties for custody sergeants if they are perceived as 'encouraging' suspects to have legal advice.

There are various points in the criminal process where custody sergeants are required to read out to suspects their legal rights, although on some occasions it seemed that they were actively discouraging suspects from having legal advice. This was seen to be a sensible approach in cases where suspects had been bailed to return back to the police station but no action was to be taken and/or they were re-bailed to another date. However, in cases where a suspect was returning to the police station to be charged or cautioned it seemed that some custody sergeants would seek to deter suspects from having a solicitor, mainly because they felt it was too late for a legal intervention. This was not always necessarily the case but while the involvement of a solicitor at

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<sup>61</sup> There were a number of occasions where custody sergeants seemed to try to deflect suspects away from having legal advice by informing them that this was an ongoing right (as required by Code C, para. 3.1 of PACE). Previous research has identified similar ploys (see Bottomley et al., 1991:361).

<sup>62</sup> At the end of the booking in process the police officer said that the custody sergeant was in the wrong to have encouraged legal advice but that he would not report him. The custody sergeant disagreed saying that it was appropriate to take time with someone who was upset and who had never been in custody before.

such a late stage could influence the disposal decision it was also likely to lead to delays, which suspects were very keen to avoid. The following case helps to highlight this dilemma:

### *Case Study 2*

The suspect had been arrested for an offence of theft after he removed and discarded a wheel clamp which had been locked onto his vehicle. He declined legal advice and he had been bailed to return back to the police station. On returning to the station he again rejected legal advice but changed his mind when advised that there was a duty solicitor in the station. The solicitor responded immediately to the request for legal advice and established that the police had taken CPS advice, which was to impose a conditional caution. After taking his client's instructions, the solicitor advised the police that a civil rather than criminal action should have been pursued and that the amount of compensation required was too high. These representations were passed on to the CPS but both were rejected. While the solicitor advised his client not to accept the conditional caution this advice was rejected as the priority for the client was to leave custody as soon as possible (F/N.17.2.2011).

There were occasions observed where it seemed that some custody sergeants were colluding with investigating officers in seeking to discourage suspects from having legal advice. This was mainly in cases where the police had brought suspects into custody saying that they would be quickly 'in and out' as they were ready to interview them straight away. In reinforcing this point-of-view, there were times where custody sergeants were seen to tell suspects they would not take any property from them as they were going straight into the police interview. If the suspect then requested legal advice they were told that their property would be removed as they would have to wait in a cell for their solicitor to arrive. Not surprisingly, this was seen to be effective in discouraging some suspects from having a solicitor. However, it was not only those custody sergeants with negative attitudes towards legal advice who behaved in this way, as there were also occasions observed where those who were seen to be more positive were also adopting such practices. In these cases it seemed that the custody sergeants would make a judgement about what they considered to be in the best interests of those detained. When being dealt with for non-serious matters, for example, they tended to deter suspects from having legal advice so that they were only in custody for a short period of time.

To a certain extent, therefore, it seems that custody sergeants do have discretion at times when seeking to either 'encourage' or 'discourage' suspects from having legal advice. However,

there are other factors which can also influence the behaviour of custody sergeants when reading suspects their legal rights. Critically, are the relationships between custody sergeants and solicitors which is considered next.

#### **6.D Has the Initiative led to changes in communications between custody sergeants and duty solicitors?**

With solicitors having been excluded from the main custody suite in the Bridewell for over five years there were poor relationships identified between the police and defence practitioners. The intention of BLAST was to help improve communications by requiring the various parties to work together more closely. When the Initiative first started it seemed that a number of custody sergeants were supportive of the new arrangements and some would drop into the solicitors' room to have a friendly chat. It was also helpful that the Initiative appeared to gain the support of some investigating officers as they too seemed to recognise the benefit of having legal advisers based in the police station, with some going to the solicitors' room to check which firms were on duty. Custody sergeants also commented on the practical benefits of having solicitors based on-site, as they could be called upon sometimes to provide informal legal advice.<sup>63</sup>

There were also negative attitudes expressed both by police officers and custody staff towards the on-site scheme, particularly as it was to increase the presence of solicitors in the police station. Although it had been agreed with senior officers that duty solicitors should be allowed access it was evident that day-to-day decisions were determined by the PACE inspector and custody sergeants, with some shifts being more accommodating of legal advisers than others. A number of solicitors had started off by entering into the ground floor custody suite but this was not to last as their presence was successfully resisted by a small number of custody sergeants. On one occasion an on-site duty solicitor complained that he had been asked to leave the ground floor custody suite; on making enquiries a custody sergeant said he was not prepared to have legal advisers 'loitering' in 'his space' (F/N 2.3.2011). There were also complaints made by the police over legal advisers on the first floor who were said to be 'loitering' and 'touting' for business, as well as trying to overhear confidential police discussions (F/N 22.2.2011). At other points during the study solicitors described how they had been reprimanded and escorted by the

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<sup>63</sup> There were a couple of instances, for example, where custody sergeants said that they had asked the on-site duty solicitor to talk to suspects who had refused to have their fingerprints taken. The police would also, on occasions, ask the duty solicitor to help in cases where suspects had been brought into custody in a highly agitated state and they helped them to calm down. A couple of PACE Inspectors also commented positively on the benefits of the Initiative as it helped when serving papers on suspects if their solicitor was from one of the firms on duty.

police out of the custody suite. It seemed that solicitors were willing to accept this treatment because they were mindful of the need to avoid antagonising custody sergeants within this three-month period, which could then have impacted negatively on their relationships in the future.

It is perhaps not surprising that custody sergeants who had recently transferred from the two custody suites which had closed were seen to have a more positive attitude towards solicitors as they had experienced having closer interactions with them. In general, they tended to be more encouraging of solicitors coming into the custody suite. However, this was seen to lead them into conflict with other Bridewell colleagues. For example, one of the new custody sergeants said that he had been told off by a PACE inspector for allowing a solicitor to enter into the ground floor custody suite in order to make representations (F/N 7.3.2011).

Despite these setbacks, it seemed that the Initiative did have some success in helping to build closer working relationships between the police and the defence. With solicitors having been excluded from the ground floor custody suite for a long time, it was pleasing to hear solicitors making positive remarks about custody sergeants. During the first week, for example, one solicitor commented on the friendliness of custody sergeants and how such a bad atmosphere in the police station had changed in such a relatively short period of time (F/N 17.2.2011). Almost a month later, another solicitor described as ‘fantastic’ some of the relationships with custody sergeants and he said this was helping to break down barriers. That same day another solicitor said that while there had been progress they did not want to push custody sergeants too hard, recognising that it would take time to build relationships with the police (F/N 10.3.2011). While some custody sergeants were seen to be more positive about legal advice than others, it is pleasing to note that all respondents, both custody sergeants and solicitors, agreed that they should be working together more constructively and all agreed that they would support a second phase of BLAST.<sup>64</sup>

If the Initiative is to be effective in improving communications between practitioners it is important that custody sergeants are more willing to engage with legal advisers in the pre-charge process. Overall, while it seemed that a number of custody sergeants started off with a positive approach towards BLAST, it was the more negative attitudes which were seen to dominate over

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<sup>64</sup> There was one custody sergeant interviewed who was generally negative about the new arrangements but said he would not be adverse to a second phase. While all solicitors said that they too would support a second phase, there were some reservations raised by practitioners from small firms on whom the burden of providing full-time cover fell disproportionately when compared to the large firms.

time. This could be explained by the fact that there were seen to be no apparent gains for the police in working more closely with solicitors. It is anticipated that there would be improvements in communications if the new arrangements were to help deal with cases more quickly and effectively. To this end, a suggestion arising out of the interviews with both custody sergeants and legal advisers was to hold joint training events so that they can better understand the pre-charge process from each other's perspective.

## **6.E Did the Initiative increase efficiencies and cost savings?**

When setting up the BLAST Initiative early access to legal advice was intended to help identify system efficiencies and achieve cost savings. As outlined in the BLAST objectives set out above, these were expected to originate by dealing with appropriate cases expeditiously and by reducing the amount of evidence required in cases. Although these objectives have not been met during this first phase of the Initiative, the research has helped to identify a number of issues which impact directly or indirectly on these objectives. Explored in this section are four key issues: I) minor cases brought into custody inappropriately, II) delays and failing to expedite cases, III) pressure on the police to increase detections, and IV) the role of legal advisers in police stations.

### ***6.E (i) Minor cases brought inappropriately into custody***

The intention of BLAST had been to focus on dealing with high volume and minor offences expeditiously. However, the research findings raise questions about the appropriateness of detaining some suspects in custody, especially those being dealt with for minor offences and borderline criminal activity. This is because custody effectively operates as a short-term prison with people being detained securely in cells, with the associated high costs of detention.<sup>65</sup> In addition, the use of custody can be extremely stressful and traumatic, particularly for those experiencing custody for the first time, especially children and older people. It can also be traumatic for people with mental health problems, particularly as the experience of custody can sometimes exacerbate such problems. Despite this, there are currently no restrictions on the type of offences for which custody sergeants can authorise detention. Instead, when suspects are brought into custody and there is insufficient evidence to charge a custody sergeant can authorise their detention on the basis that he has reasonable grounds for believing that their detention is

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<sup>65</sup> There are policies and procedures which seek to ensure the safe detention of those brought into custody. This includes requiring frequent visits from custody staff (with some suspects requiring constant observations), access to health professionals (with nurses being based on-site), interpreters and legal advisers, if required, and also by providing regular meals and drinks. Such provision is highly resource intensive.

‘necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him’.<sup>66</sup>

A number of custody sergeants complained about high volume and low level offences, such as shoplifting, being brought at times unnecessarily into custody. One custody sergeant was critical of having to book in a suspect for shoplifting to a value of £5 and reported that this was the third one he had dealt with that day. Also on the same day, another custody sergeant said that he had just booked someone in for stealing a box of chocolates (F/N 2.3.2011). There were also complaints made by both custody sergeants and solicitors about the police bringing children into custody inappropriately, i.e. for behaviour such as fights in school playgrounds and minor disputes arising out of family arguments.<sup>67</sup>

With the police under pressure to increase detections, which is explored further below, it seems that investigating officers are required to take positive action once a complaint has been made. A number of custody sergeants were critical that this often led to officers first making an arrest and detaining a suspect before gathering any evidence. Commenting on the inappropriateness of such an approach a solicitor said, ‘I find it amazing that they actually arrest someone without a witness statement. There are cases where people don’t want to follow through [and make a complaint] so it’s a waste of time then’ (SH). There were also cases where a police intervention was not needed following the initial enquiries. This seemed to be the situation in the following two cases.

### *Case Study 3*

This case arose out of an argument between two men at a sports club in which they were pushing and shoving each other. When one of the men fell over he called the police and complained that he had been assaulted. The police arrested the other man and he was detained in custody while the police took a statement from the complainant and other witnesses at the sports club. The suspect was bailed to return to the police station but subsequently no action was taken (F/N 12.5.2011).

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<sup>66</sup> This requirement on custody sergeants is under Section 37 (2) of PACE.

<sup>67</sup> There is further comment below in section 6.E (iii) about minor offences being brought into custody due to the pressure the police are under to increase detections.

#### *Case Study 4*

A husband and wife in their early 70's were arrested and brought into custody over an ongoing neighbour dispute. On this occasion a complaint had been made that they had thrown something onto their neighbour's lawn which caused damage. They were both of good character and one of them was in ill-health. The custody sergeant rebuked the police officer for having brought the couple into custody, saying that the shock could be fatal for elderly people. He also added that this did nothing to enhance 'police/public relations'. No further action was taken in this case (F/N 3.3.2011).

These two cases not only help to illustrate the pressure the police are under to take positive action but also show how the police response can lead to different treatment of the parties following a complaint, with the complainant being perceived as the 'victim' and the other party being dealt with as if they are the 'offender'. The 'victim' is interviewed at a place which is convenient to them while the 'offender' is arrested and brought into custody. In reality, not only is such a distinction unlikely to be so clear-cut but it seems unfair in minor cases for the police to take action where an alternative response could have been more appropriate.<sup>68</sup>

From analysis of observational data there were suspects detained for minor incidents which had arisen out of domestic disputes. When responding to complaints involving minor domestic incidents custody sergeants said that the police needed to take positive action because such matters could escalate into more serious offences and the police could then be criticised for having not intervened earlier on. In addition, by bringing the suspect into custody the police are then able to interview the complainant in a safe environment. However, some custody sergeants were critical of the police for trying to impose a caution in cases which appeared to be little more than a heated argument and in which the complainant had refused to make a statement. Included in the observational data were a number of minor domestic incidents where it seemed that the legal criteria for a caution had not been met. This was mainly because the complainant was not prepared to make a statement, and the CPS would then be reluctant to pursue a prosecution, but a caution was still recorded.<sup>69</sup> In cases where the suspect had received legal advice the offer of a

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<sup>68</sup> It might have been sufficient in Case Two, for example, if instead of the police the sports club had intervened and taken action to resolve this matter. In Case Three, it might have been more appropriate for a civil rather than criminal response to have been adopted.

<sup>69</sup> The legal criteria require that there is an admission, sufficient evidence to convict and that it is in the public interest not to prosecute.

caution was generally rejected but for those without a solicitor, and having been detained over many hours, suspects were seen to be only too willing to accept a caution.

Bringing minor matters into custody not only creates inefficiencies but it is also a very expensive way of dealing with low level offending. It is also an approach which may have a disproportionate effect on vulnerable suspects. Indeed, it was discomfiting to see children and elderly people, some of whom had not come to the notice of the police before, being put into cells for minor offences. In one case, an 11 year old was detained and put in a cell while the police investigated a complaint that he had damaged a neighbour's fence (F/N 23.2.2011). A police officer also complained about a boy having been brought into custody for giving another a 'dead leg' (F/N 27.4.2011). On one occasion commonsense was seen to prevail as a custody sergeant refused to authorise the detention of an 87 year old woman who had been arrested for a first offence of shoplifting to a value of £3 (F/N 2.3.2011).

The use of custody for minor matters can also have a disproportionate impact when involving people with mental health problems as the experience of custody can exacerbate such issues. There were a number of cases observed where suspects were brought into custody and concerns over their mental health then arose. In one case, for example, a suspect was brought into custody for a Public Order Act offence after having an argument with a ticket collector on a train. He informed the custody sergeant that he had mental health problems and asked not to be placed in a cell. The custody sergeant was unable to accede to this request but he placed the suspect under constant supervision. Within 30 minutes the detainee had tried to kill himself and he was transferred to the local hospital. As he was extremely agitated, and considered a threat to hospital staff in such a state, he was subsequently brought back into police custody and detained under Section 136 of the Mental Health Act 2007.<sup>70</sup> There were long delays before a mental health assessment could be undertaken and so he was detained for over 24 hours. He was bailed to return back to the police station and was subsequently charged.

As there can be substantial resource implications when bringing people into custody it would be helpful if the police were also required to consider issues of proportionality, particularly when dealing with minor offences and vulnerable detainees. Indeed, one custody sergeant suggested

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<sup>70</sup> Section 136 allows the police to remove an individual suffering from 'mental disorder' from a public place to a 'place of safety', which can include police custody. While police custody is not considered to be a suitable environment for people with mental health problems (as it can exacerbate their mental state, and in the most tragic cases lead to deaths in custody) there is no alternative secure provision available in some areas (see Bradley, 2009).



the need for a threshold test in which they could apply criteria based on ‘necessity’ and ‘proportionality’ (FX.1). The issue of proportionately is particularly important when considering the disproportionate costs of the criminal process compared to the case outcome when dealing with minor matters. For those caught shoplifting for low value offences, for instance, the costs of custody will tend to far outweigh that of a financial penalty, if one is imposed.<sup>71</sup> The routine use of custody for minor matters is also likely to increase legal aid costs as it is anticipated that those detained are more likely to have a solicitor than those dealt with in other ways. In one case, for instance, two co-accused were brought into custody for having stolen aftershave to a value of £26. Both requested a solicitor, at a cost of £400 for the legal advice alone (F/N 7.3.2011).<sup>72</sup>

There were occasions where some suspects were brought into custody for minor offences because of aggravating factors which justified their being detained. When caught for shoplifting offences, for example, some people use violence, or the threat of violence, in order to avoid an arrest which could then lead to them being arrested and held in custody. In addition, although committing a minor offence a perpetrator could have numerous previous convictions which would justify the need to arrest and detain them. Nevertheless, the extent to which some minor matters were brought into custody unnecessarily is explored further below when considering the pressure the police are under to increase detections.

A key theme of the interviews with custody sergeants suggested that people were brought into custody unnecessarily. They also expressed the view that it was too convenient for the police to hand suspects over to custody staff as this then left them free to carry out their investigations in their own time. In addition, once suspects were detained, custody staff rather than the investigating officers were required to carry out tasks such as the taking of fingerprints, photographs and DNA evidence.<sup>73</sup> When asked what arresting officers should do as an alternative to bringing suspects into custody for minor offences a number of custody sergeants said that they should carry out ‘voluntary interviews’, which requires the taking of contemporaneous notes (a PACE requirement) and, if requiring a court intervention to report

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<sup>71</sup> In discussion with another police force they had calculated that when dealing with suspects arrested for minor matters that there was an estimated cost per detention of £1,000. It is not clear what costs were included in this calculation, and whether or not it included the costs of legal aid. There are complex calculations which are required when identifying the unit cost of custody but it would be helpful if such costs could be quantified.

<sup>72</sup> A fixed fee of almost £200 is paid for each suspect requesting police station legal advice.

<sup>73</sup> When dealing with acquisitive crimes suspects are also required to undertake a ‘spit test’ to see whether there is evidence of Class A drugs in their system. The taking of fingerprints and photographs was an issue which some custody staff raised as a justification for bringing suspects into custody. However, other custody sergeants said that alternative arrangements could also be effective when dealing with suspects outside of custody.

them for summons.<sup>74</sup> However, as some custody sergeants explained, as the police currently have no training on how to deal with suspects outside of custody their practice was to make an arrest, detain suspects in custody and to then gather the evidence prior to carrying out the interview.<sup>75</sup>

### ***6.E (ii) Delays and failing to expedite cases***

Research into police station legal advice has consistently found that delays not only cause inefficiencies but also have the potential to discourage suspects from having a solicitor. By providing early access to legal advice BLAST was intended to address some of these problems. However, as noted briefly when considering BLAST in Action above, these new arrangements were not effective, mainly because the police tended not to have any evidence when booking suspects into custody. It is useful to explore further factors found to influence delays and consider implications for the take-up of legal advice.

#### ***6.E (ii) (a) Delays in the police investigation***

At the start of the BLAST Initiative, solicitors tried to speak to the investigating officers when requests for the ‘pilot duty solicitor’ were made. However, in the majority of cases observed this was not possible, either because the officers said they did not have any evidence to disclose or, by the time the request for legal advice was received, the officers had left the building. In interview, custody sergeants acknowledged that the police seldom had any evidence when booking suspects into custody. While this was understandable in relation to a spontaneous arrest, most criticised the police for first making an arrest and detaining the suspect prior to conducting their enquiries. As this custody sergeant put it, ‘It’s where we are arresting people for offences which happened a few days ago where we should be gathering all the evidence before bringing people into custody. We are failing in that regard though’ (SC.1). A PACE inspector also commented on this when he said, ‘The [custody] sergeants should be able to challenge the police about this [having no evidence] but they are up against the senior officers’ (AO.1).<sup>76</sup>

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<sup>74</sup> With voluntary interviews the police can interview suspects at more convenient venues, which could include the suspect’s home as well as at police stations.

<sup>75</sup> After this Initiative had concluded the police were using voluntary interviews more in cases where suspects had been ‘warned’ to the police station - that is they had been given an appointment to attend. It is anticipated that the number of voluntary interviews will further increase following revisions to Code G of PACE in November 2012, which deals with the statutory power of the police to arrest suspects (see Home Office, 2012).

<sup>76</sup> Tensions between custody sergeants and senior investigating officers in relation to custody decisions are explored further in sub-section 6.E (iii) (c) below.

While the evidence from observations and interview data suggests that it is the police investigation which leads to delays, many suspects were seen to perceive their solicitors as the main cause of delays. Solicitors complained that such a perception was due to the police telling their clients that their solicitor was the cause of the delay as they were waiting for them to arrive at the station when this was not always the case. Also, as noted above, there were occasions where some custody sergeants seemed to collude with the police by giving suspects the impression that they would be dealt with far more quickly if they did not have a solicitor.

*6.E (ii) (b) Delays and legal advisers*

There were criticisms from custody sergeants of the defence creating delays, particularly if they were not available when the police were ready to interview their client. When suspects were then told that the police were waiting for their solicitor to arrive some would change their mind about having legal advice. On one occasion a PACE inspector complained that a suspect had changed her mind about having legal advice because the solicitor had phoned in saying they would be at least another 45 minutes before arriving at the station. The suspect was interviewed without having received legal advice but when being returned to her cell the solicitor arrived and took the opportunity to have a ‘quick word’ with her. This intervention meant that the solicitor was able to claim a fixed fee (F/N 11.5.2011).<sup>77</sup>

There were some custody sergeants who felt that solicitors were more likely to create delays following the introduction of fixed fees. As one custody sergeant explained:

We ask solicitors to attend for the interview but sometimes they are delayed. I know there have been changes recently to their funding and they now either seem to be putting out fewer people or they are trying to cover a bigger area. We will call them but they can be held up at another police station and sometimes they tell us that it will take a couple of hours to get someone else out from the same firm (PD.1).

A main complaint made by custody sergeants over solicitors causing delays was when they ‘stacked’ cases - that is taking on three or more cases, which meant they were not always available when the police were ready to carry out an interview with a specific suspect. Administratively, the LSC had sought to minimise delays in duty solicitor cases with a

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<sup>77</sup> The custody sergeant commented that this was not an isolated incident, although it should be noted that the solicitor was not one of those who regularly attended at the Bridewell.

requirement for attendance within 45 minutes of a request being made. If unable to meet this target duty solicitors were expected to hand cases back to the DSCC so that these could be deployed to the next firm on duty. However, there was little evidence that this process occurred, perhaps as reallocating cases in this way would entail the loss of the fixed fee.

For custody sergeants, such delays over solicitors 'stacking' cases was said to occur mainly out-of-office hours. Solicitors interviewed acknowledged that this was the case as they tended to have fewer staff on duty at night meaning that there was not full 24-hour coverage. This was the situation described by a solicitor in one firm:

We can have 12 or more accredited legal advisers available to provide cover during the day. At weekends and night time we have a skeleton staff with two on duty, one being the main adviser and the other one a back-up (FE).

It was noted above that on average suspects detained outside of office-hours spend three hours longer in custody than those detained weekdays between the hours of 9 am and 6 pm. While solicitors might be the cause of delays on occasions, it is important to reflect that having received a request for legal advice solicitors can then wait many hours before the police are ready to conduct an interview. It is not surprising, therefore, if during that time solicitors accept other referrals and try to deal with them consecutively. One legal adviser suggested that such an approach could work well, particularly if the police assisted by trying to co-ordinate the interviews so that these could be dealt with by a single legal adviser in turn.<sup>78</sup>

With solicitors tending to accept the police timetable, and not pressing to expedite cases, it is perhaps not surprising if some suspects perceive them to be the cause of delays. When being booked into custody a number of suspects were observed stating that they did not want legal advice because they wanted to get out of custody quickly. When asked why he had refused legal advice, one detainee said, 'I don't want to have to wait all day for them to turn up' (F/N 16.2.2011).<sup>79</sup>

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<sup>78</sup> This could help to deal with cases more efficiently at a single police station but would not resolve the problem when custody sergeants complained that some duty solicitors would be covering two or more police stations. In addition, with fewer police officers on duty during the night, once an arrest has been made it is usual for a case to be handed over to the next shift so the officer can return to front-line duties.

<sup>79</sup> Similar issues have arisen in other police stations (see Kemp, (2013) and Skinns (2009)).

It is interesting that while the police investigation process appears to be the main cause of delays, legal advisers were not more challenging of such delays. A number of custody sergeants queried why advisers did not do more to challenge them. As one custody sergeant commented:

I think the defence should challenge the police on what is a reasonable length of time for them to investigate a matter. I mean, how long does it take to get a statement and get CCTV? It is not right that people should be kept in custody waiting for the police to get this evidence (SC.1).

Long delays in police investigations are a major source of inefficiency in the criminal justice process. While the main problem is with the police failing to have any evidence for many cases brought into custody, there are also issues for the defence to address. On a practical level, solicitors need to ensure that there is sufficient cover for legal advice provision, particularly out-of-office hours. More importantly, in accordance with PACE protections, the defence could be more challenging of unduly long delays in the police investigation, particularly as there was noted to be a difference of around five hours in the length of time people were detained depending on whether or not they had legal advice.

### ***6.E (iii) Pressure on the police to increase detections***

It seems that the target to increase detections is popular with police performance managers as an increase in arrests and detections is easy to measure. Like all performance targets however, there can be negative consequences, for example, in encouraging the police to take positive action in relation to minor offences and to pursue 'easy targets', particularly children.<sup>80</sup> These distortions had been identified nationally which led to the target being re-focussed on serious offences before it was subsequently abandoned by the Government in June 2010.<sup>81</sup> Nevertheless, as a popular performance tool it has been adopted as a local target in a number of police force areas, including this area.<sup>82</sup>

It is useful first of all to consider the background to this target, including why it was to become popular with the police nationally but was subsequently abandoned. At a local level it is

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<sup>80</sup> In my previous research into Youth Courts (see Kemp, 2008) I highlighted problems with this performance target as it seemed to be encouraging the prosecution of minor and weak cases (the research took place in another county).

<sup>81</sup> The Home Secretary announced the withdrawal of police performance targets, which includes the target to increase detections (see Greenwood, 2010).

<sup>82</sup> In the study of four police stations there was just one police force which had not incorporated into the local policing plan a target to increase detections.

also useful to consider the potential impact of the target on incentivising the police to take positive action. With its emphasis on proactive policing, it is also important to consider to what extent the target can encourage a hard-line approach to policing, with complaints being made at times that investigating officers were seeking to use the process as a punishment.

#### *6.E (iii) (a) Narrowing the Justice Gap*

In 2002 concerns were raised over the performance of the criminal justice system with just 20 per cent of crimes being recorded by the police found to result in a detection, which can include sanctions such as a reprimand, warning, caution, conditional caution, cannabis warning, fixed penalty notice and a charge. The previous Government sought to reduce the ‘justice gap’ - that is the difference between the number of crimes which are recorded and the number which then result in a sanction – by setting a new target to bring 1.2 million offences to justice by 2005-06, which was increased to 1.25 million by 2007-08. The target was soon exceeded with 1,477 million offences having been brought to justice by March 2008.<sup>83</sup>

By 2007, concerns were raised in Parliament over the way in which the police had increased detections, with the figures showing a high number of cautions and penalty notices for disorder, while the number of convictions remained low as a proportion of overall police disposals.<sup>84</sup> The Home Affairs Select Committee (2007) noted that, ‘Despite a huge increase in resources, such a large number of offences brought to justice seem to be made up of petty offences’. In response to the Select Committee, the President of the Police Superintendents Association criticised the target itself, saying ‘In terms of offences brought to justice...the performance measurement, quite frankly, is in a mess in some parts of the country as to officers knowing exactly what they should be doing and what counts’. In a subsequent meeting of the Home Affairs Select Committee (2008) it was noted that the target was continuing to have perverse outcomes, which included encouraging the police to concentrate on the quantity rather than the quality of case outcomes. The target was changed in 2008 to encourage the police to concentrate on more serious offences but, as noted above, it was subsequently abandoned by the Coalition Government in June 2010.

In my earlier research study of four police stations concerns had been raised by custody sergeants over local performance targets aimed at increasing detections. The following comments from respondents based in each of the four police stations helps to summarise a common theme arising out of interviews with custody sergeants:

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<sup>83</sup> See CPS (2002), the Office for Criminal Justice Reform (2007) and the Home Affairs Select Committee (2008).

<sup>84</sup> See the Home Affairs Select Committee (2007).

*Police Station A.1*

The major problem here is the pressure the police are under to get detections. I've known it where police teams have gone out with the blue lights flashing so that they are first there to arrest a shoplifter and get a detection. We get a lot more cannabis notices now because this increases detections. The police also want to issue cautions when they have no evidence but I won't let them - that will be my decision and I won't allow it. The problem is the pressure they are under, I'm not joking it is leading to the criminalisation of a section of society who should never have a criminal record (A:ES).

*Police Station B.1 (the Bridewell)*

I'm not measured on detections and I'll tell the inspectors that I'm here for the guy's best welfare and not to detect your crimes. You get more and more officers bringing in jobs where a few years ago they wouldn't have taken them to the police station. But the inspector tells me I have to book them in. There are a lot now where we won't authorise a detention because we think it is a load of rubbish. Like school boy fall-outs, minor assaults and shop thefts. They are under pressure to get detections and picking on school kids is an easy target (B:QT.2).

*Police Station C.1*

The investigating officers are under pressure to get detections and there are a lot of needless arrests. There are many incidents which could be dealt with in a different way outside of custody and with the same result ... All they are doing is chasing the figures because individual officers are assessed on how many arrests and detections they get (C:BM).

*Police Station D.1*

I'll give you an example of how things are. One team gets a pat on the back because they have the highest number of detections but when you look at the figures they were mainly for possessing cannabis. So every night the Governor is sending a couple of officers up to the University in order to turn over students for using cannabis. They get a caution and a criminal record and they will probably find that this then comes up on a CRB (Criminal Records Bureau) check when they are looking for a job (D:SD).

Having set out the broader context within which the performance target was seen to encourage the police to focus on minor offences and ‘easy targets’, I now turn to consider some of the consequences for the local target identified at the Bridewell.

*6.E. (iii) (b) Policing minor matters and ‘easy targets’*

One of the key findings of this research study, arising out of observations and interviews with custody sergeants and solicitors, has been the inappropriate use of police custody for minor offences and borderline criminal activity. Custody sergeants not only complained that some people should not be brought into custody but that it had also led to people being criminalised unnecessarily. For one custody sergeant this was the case when children were brought into custody for what he described as ‘a kid-on-kid fight in a school playground’ (JL.1). One of the PACE inspectors had been out of custody for five years and on returning he said he was surprised that the police were now making arrests in relation to relatively trivial matters (JS.1).

Custody sergeants also complained about the pressure the police were under to take positive action after having received a complaint and, if at all possible, to make sure a detection was recorded. As one custody sergeant remarked, ‘We have become so target driven and obsessed that the cops want to arrest all the time. We used to have discretion but it has been beaten out of us’ (FX.1). As noted above, there were cases involving domestic violence where the legal criteria for a caution had not been met but the police were under pressure to take positive action and thereby impose a sanction, which is then recorded as a detected crime. In cases where the legal criteria had been met, some custody sergeants remarked that it would be useful for the police to have available the disposal of ‘detected no further action’ to help facilitate alternatives, such as adopting a restorative justice approach but at the same time maintain their strong performance in relation to detections.<sup>85</sup> However, there have subsequently been changes which now enable the police to record a restorative justice outcome as a ‘detected’ crime.

*6.E (iii) (c) The impartial role of custody sergeants*

The PACE Act created the impartial role of the custody sergeant so that key custody decisions would be made by officers who were independent of the police investigation. This section explores complaints made by custody sergeants that their impartiality was being undermined as

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<sup>85</sup> A restorative justice approach involves a resolution agreed between the parties and can include the making of an apology and/or reparation to the victim. Such an approach means that some incidents can be resolved to the satisfaction of the victim without the imposition of a formal disposal which would criminalise offenders for a minor first offence.



investigating officers were at times interfering in their custody decisions. In particular, a number of custody sergeants said that with the police being under pressure to increase detections that this was encouraging a more proactive and aggressive style of policing. Such complaints suggest the increasing dominance of a 'Crime Control' model of policing, which prioritises the regulation and control of suspects, leading in some cases to the process being used as a punishment.<sup>86</sup> When a 'Crime Control' approach becomes dominant this is to the detriment of the alternative 'Due Process' model, with its emphasis on the rights of the individual, including access to legal advice.

Custody sergeants were concerned that the process was at times being used as a punishment due to the interference of senior investigating officers in what they considered to be their 'custody decisions'.<sup>87</sup> In cases where the police were seen to bring suspects into custody without any evidence, while custody sergeants might be reluctant to authorise their detention, they also seemed to be aware of the pressure their police colleagues could be under from senior officers. On one occasion, for example, a custody sergeant asked a police officer what evidence he had when booking a suspect into custody and the reply was, 'Nothing really, I'm going on a wing and prayer'. He went on to explain that the arrest had been made on the insistence of his senior officer and so the custody sergeant agreed to authorise the detention (F/N 23.3.2011).<sup>88</sup>

There were also complaints from inspectors, custody sergeants and solicitors of the custody process being used in order to harass known offenders by bringing them into custody and detaining them without any evidence.<sup>89</sup> Following such arrests suspects could be held in custody for 14 hours or longer, after which they were generally bailed to return back to the police station and eventually refused charge.<sup>90</sup> It was not possible to identify how often these tactics were being used against known offenders but a PACE inspector complained that on one day he had

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<sup>86</sup> Packer (1968) identified two models of the criminal process: the 'Crime Control' and 'Due Process' models. The purpose is to present two different value systems which compete for priority in the operation of the criminal process. The two models provide a convenient way of talking about the operation of the criminal process within the competing demands of two different value systems.

<sup>87</sup> The main custody decisions relate to issues concerning the detention of suspects, the length of time they are held in custody, decisions as to remand or bail suspects (including whether or not to impose conditions) and disposal decisions made by the police.

<sup>88</sup> It seemed that custody sergeants were colluding with their colleagues by authorising detention in such cases. While this might have been the case with some, there were others who had tried on occasions to maintain their independence by refusing detention but this had brought them into conflict with senior officers.

<sup>89</sup> Increasingly there were complaints of known burglars being arrested at the behest of a senior officer, based on what was loosely referred to as 'intelligence' but with no evidence then emerging.

<sup>90</sup> Not only did custody sergeants consider this to be an abuse of the custody process but it was also a strategy which was highly resource intensive, particularly for custody staff.

three such cases brought into custody (F/N 18.4.2011). When bailed to come back to the police station these suspects generally had pre-charge bail conditions attached, which tended to include a requirement to reside at a particular address and to be subject to a curfew,<sup>91</sup> which meant that their liberty could be restricted over a period of several months. While some custody sergeants were critical of such tactics for being in breach of PACE, they felt unable to challenge the decisions of senior officers. This strategy has significant resource implications, both for the police and for the legal aid fund, as it is anticipated that those experienced in the criminal justice system who are harassed by the police would be more likely to request a solicitor. Interestingly, in cases where solicitors were involved they did not seem to challenge the police on whether the detention was lawful but instead tended to focus on the details of the alleged offence.<sup>92</sup>

So far as pre-charge bail conditions are concerned more generally, custody sergeants said that they had tried to resist the imposition of inappropriate conditions but this had brought them into conflict with senior investigating officers. While some custody sergeants said that they had initially refused to impose conditions which they considered to be inappropriate, they reported that they were now required to set down conditions as required by the police. The type of bail conditions which custody sergeants objected to included imposing a night-time curfew for offences committed during the day, and also cases where suspects were being excluded from all public houses in the county although the incident had occurred in a single venue. In addition, on one occasion a custody sergeant complained about a condition he had to impose on a 16 year old girl. She had been arrested for a low value shoplifting offence and the condition was that she was not allowed out in public unless accompanied by an adult (F/N 14.4.2011).

There were complaints made by custody sergeants over two other decisions which senior officers would sometimes seek to influence. The first decision related to the timing of suspects being bailed back to the police station. When deciding on the date for suspects to return, custody sergeants said they would take into account what evidence was to be gathered and how long this would take. If medical or forensic evidence was to be obtained, for instance, this could take up to six weeks and so they would be bailed accordingly. However, there were complaints that some senior officers required all suspects to be bailed back within a 14 day period, even though they

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<sup>91</sup> Such bail conditions enabled police officers to check on compliance by turning up at the homes of suspects late at night. If they were not found at the address they could be re-arrested and brought back into custody.

<sup>92</sup> It is not known if some solicitors have made a commercial decision not to challenge the legality of their clients' detention as a fixed fee is payable each time a suspect is arrested and asks to speak to a solicitor.

would have to be re-bailed in cases where more time was needed. One custody sergeant commented as follows on the punitiveness of such an approach:

It is figures based and they are using bail as a punishment. I hate this idea when we are bailing for forensics, which can take six weeks, and the cops are told by X [a senior officer] that he won't abide bail being for any longer than two weeks. We have to keep bailing just to disrupt them ... You only have to look at the re-bails - I had one yesterday who had been re-bailed for 9 times. It's ridiculous (UT.1).

The second decision concerned disagreements between custody sergeants and investigating officers over what constitutes 'fresh evidence' in relation to starting a new PACE clock. It seems that difficulties had arisen in some cases where the police had detained suspects over a long period of time and if some evidence was later to emerge there was then insufficient time left on the PACE clock to deal with it. Custody sergeants complained of some officers wanting to start a new PACE clock but with evidence they disputed was 'fresh' and instead had been part of the initial investigation.<sup>93</sup> While custody sergeants said they had on occasions refused to start a new PACE clock they complained that their decisions were being overturned by senior investigating officers who were adopting a more liberal interpretation of 'fresh evidence'. One custody sergeant said it was wrong that the police can effectively, 'Lock someone up for as long as they want to' (HF.1).

The PACE Act was intended to provide legal protections for those held in police custody, which included setting up the impartial role of the custody sergeant and PACE inspector. It is interesting to reflect that according to some custody sergeants such protections have been undermined over recent years due to the interference of some senior investigating officers into custody decisions. There were also concerns raised by both PACE inspectors and custody sergeants that defence practitioners were no longer challenging inappropriate custody decisions; which was said to be a change from the past when such challenges helped to provide support to custody sergeants when seeking to resist interference from senior officers.

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<sup>93</sup> When dealing with non-terrorism offences under PACE the police generally have 24 hours in which to complete their investigations and decide on what action to take. The police can extend this to 36 hours but only on the authority of a Superintendent. Cases where custody sergeants felt it was inappropriate to start a new PACE clock was if forensic tests had come back with a positive result in relation to an offence which was already under investigation. If a positive result came back in relation to a different offence from that being investigated it was accepted that this could amount to 'fresh evidence'.

### ***6.E (iv) The role of legal advisers in the Bridewell***

PACE provides access to free and independent legal advice in order to protect the legal safeguards of those held in police custody. By challenging unlawful detentions and unduly long delays the defence not only help to uphold legal protections but such interventions can also improve efficiencies and reduce costs. However, evidence from this study suggests that legal advisers are tending to concentrate more specifically on the offence rather than on wider issues concerning their clients' detention. This raises questions about the quality of police station legal advice and the extent to which the legal rights of suspects are upheld in custody. The intention here is not to try and differentiate between the working practices of the different solicitors, particularly as the commercial decisions made by some are likely to be different to those made by others, but to consider more generally implications for quality which have arisen out of my observations of police custody and interviews with defence practitioners and custody sergeants.

In this section, first considered is the potential for commercial pressures on solicitors to influence case management decisions following the introduction of fixed fees. Next examined are two more specific issues, the first relating to solicitors' advising 'no comment' responses during police interviews, and the second relating to the extent to which the police and the defence consider the potential for out-of-court disposals in order to avoid unnecessary prosecutions. Finally, the potential for improving relations between the prosecution and defence in order to help increase efficiencies and to reduce cost savings are explored.

#### ***6.E (iv) (a) Fixed fees and police station legal advice***

Fixed fees for police station legal advice were introduced in 2008. Prior to this, legal advisers had been paid for the amount of time spent on cases (including travel and waiting times). It was felt by the previous Government that changing payment to a fixed fee could encourage practitioners to work more efficiently on cases.<sup>94</sup> When interviewed, seven out of eleven legal advisers said that fixed fees had made them more commercially aware and that this had reduced

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<sup>94</sup> Travel and waiting time is incorporated into the fixed fee.

the amount of time they would spend on cases.<sup>95</sup> This was the view of one solicitor, 'We are all on fixed fees now and so there is a limit to how many hours we can put into a case' (SH).

With the introduction of fixed fees it seems that solicitors became more aware of the financial pressures they were under and that this was to have implications for the way in which they managed cases. However, while being critical of some of their practices, it is important to acknowledge that local defence practitioners do seek to provide a quality service by generally being present at the police interview. This is important for two reasons. First, by attending at the station a solicitor can examine the strength of the prosecution case and this can then help to inform the legal advice given to clients. Second, a solicitor is entitled to hold confidential discussions with their client and it is only by attending in person that such privacy can be assured.<sup>96</sup>

Remuneration under a system of fixed fees seems to have made solicitors more conscious about the time they spend on cases and with their budgets coming under increasing pressure it is anticipated that further steps will be taken in seeking to minimise the amount of work undertaken.<sup>97</sup> When considering what other factors might influence their case management decisions it is important to reflect on some of the problems experienced by solicitors when seeking to provide a quality service. After first receiving a referral for legal advice, for example, solicitors agreed that it was good practice to speak to their client but it was pointed out that this was not always possible. In particular, there were complaints that telephone calls to the custody suite were not always answered<sup>98</sup> or, if there was a response custody staff were sometimes too busy to facilitate a telephone conversation with their client. Due to these difficulties some solicitors acknowledged that it was their general practice to speak to their client just before the police interview, even though this could be many hours after the request for legal advice was

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<sup>95</sup> One duty solicitor respondent had recently qualified and he only had experience of being remunerated under the fixed fee scheme.

<sup>96</sup> Most telephone conversations between a solicitor and his client take place in the custody suite with custody staff being able to overhear what is being said.

<sup>97</sup> A number of solicitors acknowledged that they no longer accompanied clients who had been bailed to return to the police station unless specifically asked to do so. A recent example of solicitors seeking to reduce the time spent on cases is a policy decision made by one firm in the area not to accompany their clients on police Vipers (Video Identification Parade Electronic Recording), which deals with issues of identity.

<sup>98</sup> In Kemp (2010:49) is set out the extent to which custody telephones were unanswered in 13 police stations. While this had been a major complaint of solicitors in the Bridewell, a number of respondents noted that there had been an improvement following the installation of a dedicated telephone line for legal advisers in this custody suite.

made.<sup>99</sup> Such problems for solicitors in trying to contact their clients in custody are likely to get worse as impending police budget cuts are likely to reduce the number of custody staff available to facilitate such contact.

Being conscious of the time spent on cases, a number of solicitors said that since the introduction of the fixed fees they were no longer prepared to wait around in police custody in order to make representations in cases which had to be referred on to the CPS for a charging decision.<sup>100</sup> This was because there were seen to be long delays in such cases as the police had to electronically forward information to the CPS and then wait for a decision to be made.<sup>101</sup> This was the view of one solicitor who said, 'I can't understand why someone would wait around for a CPS decision as it will take two to three hours. It's a pointless exercise really' (FI). Another solicitor said, 'We used to concentrate more on client care and wait for a decision because our client would be anxious about what was going to happen. With fixed fees now we are under pressure to move on to the next job' (BC).

Such changes are also likely to have implications for the way in which solicitors make representations to the police over issues concerning bail/or and outcome decisions. As one solicitor put it:

I'm not going to pay my staff to spend five hours or more at the station when we get a £200 fee. I know people will say that we have a duty to our client but if we have something to say we can raise it later over the phone. I know it isn't as good as making representations when the officer is there but it will do (XB).

There were noted to be difficulties for solicitors when trying to make representations in the Bridewell, both in person and over the telephone. With five or six custody sergeants on duty at any one time, for example, it was not always possible for solicitors to know which one would be dealing with their case. This was particularly difficult for detainees held on the ground floor as the exclusion of solicitors meant that they were unable to see which custody sergeant would be

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<sup>99</sup> Such practices were corroborated when examining notes made on custody records and also from observational data. In one case, for example, a 13 year old boy requested legal advice when he was first brought into custody but he did not speak to his solicitor until just prior to the police interview, over 12 hours later (F/N 21.3.2011).

<sup>100</sup> The Statutory Charging Initiative brought the CPS into pre-charge decision-making in 2006, particularly in relation to more serious cases and those involving allegations of domestic violence.

<sup>101</sup> See Kemp (2010:50-54) and Kemp (2013).

dealing with their case. Similarly, when seeking to make representations over the telephone, solicitors would not always know which custody sergeant would be involved and instead their representations were sometimes noted on the custody record.

It is interesting to reflect that while suspects are entitled to legal advice there is no requirement for custody sergeants to take into account representations made by the defence. On the contrary, in cases where representations were made by legal advisers these could either be ignored by custody sergeants or otherwise lip service was paid to the defence point-of-view. In one case, for example, a solicitor had made representations over the telephone to the effect that his client should not have any bail conditions imposed because he had spent a long time in custody. These comments were noted on the custody record but unbeknown to the solicitor his client had already been bailed and with conditions attached (F/N 18.4.2011). Following the police interview in another case, the on-site solicitor said that he had been given the impression by the police that no further action was to be taken. This was not the case, and the solicitor was annoyed when he later found out that his client had been charged and remanded in custody, without his firm having been given the opportunity to make representations (F/N 8.4.2011).

The effect of solicitors pulling back on the amount of work undertaken in cases, as well as spending less time in police stations, seems to have helped marginalise them from the pre-charge process. Such an effect was seen to be exacerbated with solicitors also having been excluded from waiting around in the main custody suite.<sup>102</sup> Over time, and particularly following the introduction of fixed fees, it seems that solicitors have tended to concentrate more specifically on the offence rather than on broader issues concerning their clients' detention. In the past, for example, a couple of custody sergeants commented that solicitors would threaten to take legal action in cases where they considered their clients to be detained unlawfully. While custody sergeants accepted that such problems continued, they said there were no longer any challenges coming from defence practitioners. The potential implications for a breakdown in relations between the police and defence practitioners on the legal safeguards of those detained are explored further below.

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<sup>102</sup> In a study of four large police stations legal advisers had been excluded from the custody suite in two of those stations, which included the Bridewell (see Kemp, 2013).

*6.E (iv) (b) Legal advice and 'no comment' interviews*

The extent to which 'no comment' was made during police interviews was seen to be a source of conflict between the police and legal advisers. For the police, their main complaint was that while suspects did not have to give an account of their actions this meant that the police had to investigate the case from all possible angles and prepare it as if proceeding to trial. While custody sergeants accepted that there were circumstances in which a solicitor quite properly advises their client to make 'no comment', this was not accepted by all investigating officers. When observing suspects being booked into custody and legal advice was requested, for example, there were sometimes negative comments made by investigating officers as they then anticipated that 'no comment' would be made during the interview.

On a number of occasions investigating officers were heard to complain that it was only those who were guilty who would make 'no comment' as those who had nothing to hide would be content to give their account of events. In one case, for example, an investigating officer said that it was his practice to give to the defence very little by way of disclosure as the purpose of the interview was for them to 'tell the truth' (F/N 6.4.2011). Without the police disclosing any evidence about what had led to the suspect being arrested, it is not surprising if a solicitor advises their client to make 'no comment' during the police interview. This was not appreciated by all police officers and during an informal discussion taking place between a solicitor and a detective, the detective said that in his opinion a 'no comment' interview was never appropriate. He was not prepared to accept the solicitor's response that it was in cases where the police did not disclose any evidence against their client (F/N 29.3.2011). Within an adversarial system of justice it would be helpful if the police were to understand the reasons why solicitors might advise their clients to make no response to questions asked by the police. On the other hand, and as explored further below, it is also important that legal advisers do not routinely advise clients to make 'no comment' but instead judge each case on its merits.

In interview solicitors usefully helped to clarify the circumstances in which they felt it was appropriate to advise clients to make no response during the police interview. In addition to advising 'no comment' in cases where the police did not have any evidence, for example, one solicitor said that there might be occasions where he might advise clients to make 'no comment' even though the offence was admitted. This was because, as he explained, there could be other issues arising which might lead his clients to say something during the interview which could



incriminate them in relation to more serious offences and/or new offences. In such cases, he said that after a 'no comment' interview he would sometimes advise the police to anticipate a 'guilty plea' at court (XB).<sup>103</sup> When asked about the circumstances in which he would advise clients to make 'no comment' during the police interview, this solicitor replied:

It isn't always appropriate. I mean a monkey could do this job if you didn't differentiate when it was needed or not. Sometimes you need to test out the strength of the prosecution case by saying nothing. If your client has something to say, it might be a full denial, a defence or alibi details, then these need to be mentioned early on. If you always get your client to go no comment then you are an idiot really (GI).

Other solicitors pointed out that each case was different and that their advice to clients would tend to depend on the information disclosed by the police. However, they were also aware that adverse comment could be made in court if their client later relied on information which was not mentioned during the police interview.

Despite solicitors explaining that routinely advising 'no comment' responses in police interviews was not always in the best interests of their clients, ten out of the twelve custody sergeants interviewed said they thought that some legal advisers routinely advised 'no comment' responses. Interestingly, half of the solicitors interviewed said that they were aware that this was the practice of some legal advisers. With the salary for accredited legal representatives being said to start as low as £14,000 to £16,000 there could be commercial reasons for some solicitors' firms to require their inexperienced staff to advise clients to make 'no comment' so that they were then protected from making inappropriate and/or self-incriminating comments during the police interview. However, according to one solicitor such advice was not limited to junior staff when he said, 'It's not just the young and inexperienced ones who advise 'no comment' but some of the experienced ones too, but they are being lazy' (FE).

The effect of suspects making 'no comment' during the police interview can be resource intensive for the police as this requires them to gather all possible evidence and to prepare cases as if proceeding to trial. It can also maximise the time suspects spend in custody waiting for the police to carry out their detailed investigations. In contrast, for the defence a 'no comment'

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<sup>103</sup> Another solicitor pointed out that while in some cases he might advise his clients to give their account to the police, such advice could sometimes be ignored with the client deciding to make no comment to the questions asked.

response can be financially advantageous if cases then proceed to trial. Indeed, a couple of solicitors have commented on the most profitable cases for them being those which involve a Crown Court trial. Indeed, there were complaints from a couple of solicitors about the practice of others which they said was to specifically advise a 'no comment' response with the intention of taking cases through to trial. When working for one firm, for example, a solicitor said that he was instructed when advising police station clients to, 'Tell them to make no comment and we can get a trial out of it' (VN).

#### *6.E (iv) (c) Negotiating out-of-court disposals*

There can be financial gains for solicitors when advising 'no comment' interviews in cases which are eligible for a caution but without an admission these cases are instead prosecuted, with the potential for an additional fee at court being payable. While all solicitors interviewed said this was not their practice, commenting instead on the importance of their reputation in keeping clients out of court, they did acknowledge that this could be the practice of others aware of the potential financial gain. These competing incentives were highlighted by one solicitor when he said, 'It might be preferable for our business interest if a case goes to court but ultimately our work is based on results' (BD). Another solicitor said, 'I will try to encourage a caution if appropriate but not everybody does. I know some solicitors don't because it isn't good for them financially as they want to get their court fee' (FE).

There was a difference of opinion among custody sergeants when asked what they would do in cases where a suspect was eligible for a caution but they had made 'no comment' during the interview. Some custody sergeants said they would try to get solicitors to change their mind about advising a 'no comment' response. As one custody sergeant put it, 'I have paraded clients back down to their solicitor and said that he might want to talk to them again. They will typically take a caution but not always' (JL.1). Other custody sergeants took the view that if 'no comment' had been made in the police interview then it was too late for the defence to try and negotiate a caution if a decision was made to charge. As one custody sergeant explained: 'The solicitors are testing out the water [when advising 'no comment'] and when they know their client is going to be charged they want another go but no, they've had their chance' (QT.1).

When advising their clients, an important distinction which solicitors have to make is whether the legal criteria for a caution have been met and, if so, the likelihood that the police will prosecute. However, when seeking clarification from the police as to whether a caution was

appropriate, the general response from custody sergeants was to say that ‘all options are open’. While this response generally means that the suspect is eligible for a caution it does not bind the police decision. Unfortunately, such an approach means that in cases where a caution would be accepted by the police, but they still retained the option to charge, a ‘no comment’ response precludes the police from imposing a caution as the offence is not admitted.<sup>104</sup> This can lead to minor first-time offenders being charged unnecessarily, with their cases subsequently being dismissed at court and returned to the police for a caution to be imposed. There are not only resource implications for the police and the defence in dealing with cases in this way but also the emotional and monetary costs of those being required to attend unnecessarily at court. However, due to the intransigence of some custody sergeants there were legal advisers who felt unable to negotiate with the police over out-of-court disposals. As one solicitor put it:

It is rare that I can discuss with the police the potential for having a caution. What sometimes happens is when you are at court with someone for the first time, and you have your legal aid order, you then ask for the case to be sent back to the police for a caution. It then gets cautioned and the proceedings are dismissed. So it doesn’t really go anywhere but it has reached the court stage (BD).

There are limitations at present for the police and legal advisers to negotiate a caution because the Cautioning Circular requires that this disposal is only administered when, ‘An unsolicited admission [has been] made without any inducement or invitation to comment at any time outside the context of an interview’ (Home Office, 2008: paragraph 19). While this requirement is intended to help protect suspects from police pressure to accept cautions inappropriately, it would be helpful if in cases where legal advisers are involved that they are allowed to enter into negotiations with the police over alternatives to prosecution. It is not known to what extent cases are withdrawn from court for a caution but a solicitor commented that during one morning in court a District Judge had sent back three cases to the police for a caution to be imposed (F/N 20.4.2011).<sup>105</sup> It would be helpful in cases where legal advisers are involved if prosecution decision-makers were allowed to negotiate with the defence over the appropriateness of an out-of-court disposal as an alternative to a charge.

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<sup>104</sup> As noted above, one of the legal criteria for the imposition of a simple caution is that the offence is admitted.

<sup>105</sup> In a study of 166 youth court cases (in another county area) 22% were diverted from court for the equivalent of a caution to be imposed (see Kemp (2008)).

*6.E (iv) (d) Improving liaison between the police and the defence*

Early discussions between the police and the defence could help to expedite cases and improve the quality of legal decision-making at the pre-charge stage. In particular, if the police were required to carry out preliminary investigations prior to making an arrest, in appropriate cases, this could enable an early police interview to be undertaken which could help to expedite matters. If the prosecution were to have sufficient evidence to gain a realistic prospect of a conviction in court, and the offence was admitted, for example, the case could be dealt with quickly and fast-tracked through to court. Alternatively, in weak and ill-considered cases, an early interview would provide an opportunity for the defence to make representations encouraging the case to be dismissed by the police early on in the investigation. There are also benefits to be obtained during an early interview with the defence providing an account of events which could assist the police investigation. In cases where there were issues of identity to explore, for instance, it could be beneficial for the police to know whether the suspect says whether or not they were present at the scene of a crime. It would also help to identify potential defence witnesses, who could then be included in the police investigation. An early first account provided by the defence in an offence such as rape could also assist the police if the suspect accepts whether or not they had sexual intercourse with the complainant.<sup>106</sup> For the suspect, the benefit of an early interview could lead to their quicker release from custody.

With the police and the defence having no opportunity to discuss cases until just prior to the police interview this means that many suspects are waiting in custody for many hours in cases which could be resolved earlier on in the process. In addition, it is interesting to note that in cases involving a solicitor that these on average take around five hours longer than those without legal advice.<sup>107</sup> While there are factors which will increase delays, such as the seriousness of the offence, which cases are also more likely to include requests for a solicitor, such a difference in the time taken to deal with cases is likely to discourage some suspects from having legal advice. Instead of the defence going along with the police timetable, therefore, challenges over unduly long delays could help to expedite matters. It could also help to improve the take-up of legal advice if suspects appreciate that the involvement of a solicitor can help to reduce delays. However, militating against early discussions between the police and the defence at the Bridewell

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<sup>106</sup> In one case a rape suspect had been held in a dry cell for over 14 hours in order to preserve evidence that sexual intercourse had taken place. This was later found to be unnecessary as he accepted having consensual sex with the complainant.

<sup>107</sup> This five hour difference is during the first period of detention only and it does not take into account the time taken on subsequent visits to the police station.

is the exclusion of solicitors from the main custody suite, as this restricts their access to custody sergeants. With this exclusion having been effective for over five years this has led to an impasse between the police and the defence and any potential for bringing about change requires practitioners to work together more effectively.

It is interesting to reflect that the good relationship between custody sergeants and legal advisers can help to uphold PACE legal protections. However, a breakdown in those relations appears to have inadvertently weakened those safeguards, mainly because custody sergeants no longer have the support of defence practitioners when seeking to resist the influence of senior investigating officers when making custody decisions.

#### **6.F Are there alternatives ways to achieving efficiencies and cost savings by improving access to legal advice?**

The research study has identified a number of issues which, if addressed, could help to achieve efficiencies and cost savings during a second phase of BLAST. First and foremost, it was evident when observing the pre-charge process that this has developed over the years into a highly complex and bureaucratic system. Both the police and defence solicitors have been observed working extremely hard in order to try and cope in such a complex system and with a high volume of cases. However, their practices tend to operate in isolation of one another rather than working constructively together. While there are limitations to the extent to which practitioners should co-operate within an adversarial system of justice it seems that changes over recent years have led to an impasse between the police and the defence. This has implications for inefficiencies and delays as well as the quality of pre-charge decision-making.

Within a second phase of BLAST it would be helpful to encourage relationships to develop further between custody sergeants and defence practitioners. It had been anticipated that if the new arrangements had been effective in expediting cases that the more positive attitudes shown by some custody sergeants towards the Initiative would have begun to dominate. While it is important that practitioners work together in seeking to break down barriers, it is also necessary for custody sergeants to recognise that they will have to give ground to the defence by allowing better access to information concerning their client and also to help facilitate representations which the defence might want to make. For defence practitioners, it appears that they have been sidelined from the pre-charge process over a number of years and it seems that the commercial approach of some has been to adopt a minimum response in relation to police station legal advice.

In order to encourage improved working relations between the police and the defence, there could be an expectation of having an early police interview once a suspect is brought into custody. It is anticipated that this would help to expedite many cases with either an admission being made or, alternatively, with the police accepting early representations from the defence that the case is weak and/or ill-considered and should be dismissed.<sup>108</sup>

PACE envisaged an important role for legal advisers in police stations to provide a 'check and balance' on police powers. By concentrating more specifically on the offence, solicitors could be criticised for failing to provide such protections. If the defence were to be more challenging of police decisions, particularly those relating to the initial decision to detain and over how long some suspects are held in custody, as well as over remand and disposal decisions, this could help to increase efficiencies and lead to cost savings. For the more commercially aware defence practitioners, such a strategy could impact negatively on their profit costs, as successful challenges over those who detained could lead to fewer potential clients being in police custody and subsequently prosecuted. However, if solicitors are seen by suspects to be effective in reducing the time they spend in custody this could have a positive effect on the take-up of legal advice.

There were potential benefits for solicitors identified in BLAST as this helped to centralise arrangements and enabled one legal adviser to manage a number of cases on each shift. In addition, being on-site also meant that solicitors could contact their clients more easily and this could help to improve their access to custody sergeants. There were indications that relationships between the police and the defence were improving and in interview all practitioners acknowledged that they should be working together more constructively. It is also positive that all respondents agreed to support a second phase of BLAST. With a first phase having been undertaken, there is now a better understanding of what is required in order to make the new arrangements effective. This is an important time for practitioners in the criminal justice system because without such reform impending budget cuts are likely to have a negative impact on the current arrangements.

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<sup>108</sup> As noted above, the police can also benefit from an early exchange with the defence as this can help them to focus more specifically on particular issues when constructing the prosecution case.

While the new arrangements can help to provide a framework within which practitioners can work together more constructively, it is important that change is taken forward by the practitioners themselves.

## **7. Discussion**

The BLAST Initiative did not meet its objective of increasing the efficient processing of cases but it has helped to highlight a number of issues which need to be addressed if the quality of police station legal advice is to be improved. In seeking to work together more constructively, and in attempting to simplify the current arrangements, it is anticipated that the aim of providing early access to legal advice could not only help to increase efficiencies and achieve cost savings but also help to improve the effectiveness of the pre-charge process. However, within this study these findings should be treated as exploratory and requiring further investigation. To this end, practitioner respondents agreed to support a second phase of BLAST.

A second phase would only be successful if there were improved relations between the police and the defence. Such relationships have been very poor over recent years, particularly with solicitors having been excluded from the main custody suite. There were tensions observed during BLAST with some custody sergeants resisting attempts to improve access to legal advice, which included barring duty solicitors from entering into the ground floor custody suite. With legal advisers having been sidelined from the pre-charge process over a number of years, it also seems that the commercial approach of some has been to adopt a minimum response in relation to police station legal advice. Nevertheless, there were positive comments made by both the police and solicitors over the potential of the new arrangements to help build relations between them. It is anticipated that if the new arrangements were to be effective in helping to expedite cases, and reduce the amount of evidence the police require in some cases, that practitioners would see the benefits of working together more closely. Co-operation between the practitioners is also necessary when seeking to identify new ways of delivering a high standard of access to justice but at a lower cost.

Another important issue which requires further exploration during a second phase of BLAST concerns the extent to which there are sufficient legal protections available for suspects held in police custody. PACE provides such protections by requiring access to free and independent legal advice. It also set up the ‘impartial’ role of the custody sergeant and PACE inspector, who are required to be independent of the police investigation when making custody decisions. While

PACE seems generally to have been effective in providing such protections over the past 25 years, questions are raised in this study about whether those safeguards are now being eroded. A proposition, which requires further exploration, is that with solicitors adopting a more narrow focus on the offence, rather than on wider issues concerning their clients' detention, that this has removed an important 'check and balance' on police powers. In the past, when solicitors were to challenge 'custody decisions' for being unlawful, for example, this would have given support to the arguments of custody sergeants when seeking to resist interference from senior officers. However, with such legal support no longer being forthcoming, some custody sergeants have been critical of senior officers for interfering in custody decisions and sometimes for using the process as a punishment. While custody sergeants have tried to resist such interference they tend to be unsuccessful because of the police hierarchy in which their decisions are subordinated to those of higher ranking officers.

In a second phase of BLAST it would be helpful to explore whether there are alternative ways of providing 'checks and balances' on police powers in custody. At present, it is only police personnel who are allowed 'behind the scenes' in police custody and this does not allow for an independent check on police powers. With the potential sensitivity of information being passed between police officers, however, this is not a space which can be easily accommodated by solicitors representing individual clients. Within a busy custody suite it would be useful to explore whether the involvement of independent lawyers could help to provide a useful resource, not only in safeguarding legal protections but also by using their expertise to help improve the quality of legal decision-making in police custody.

Within the first phase of BLAST this research study has examined the processing of cases in the police station. If a second phase is to be undertaken, the research study could usefully focus more specifically on individual cases and examine issues concerning the quality of legal decision-making within the pre-charge process. This could include examination of the construction of the prosecution case, including what evidence is disclosed to the defence and, with the suspect's permission, to observe the police interview. It would then be informative to see how prosecution decisions are made, including analysis of the interrelationships between the police, defence and the CPS. Cases prosecuted could then be followed through to final disposal in court to see whether improvements in the quality of pre-charge decision-making were helping to deal with cases more efficiently and effectively.



With a focus on legal decision-making the research could also usefully explore whether there is the potential for alternative arrangements in providing legal safeguards. This would require a review of the effectiveness of the current arrangements and any changes proposed would at least need to be cost neutral. Within such a complex and bureaucratic process, however, it is anticipated that the new arrangements would help to improve the effectiveness of the pre-charge process as well as lead to significant cost savings. By focusing more specifically on pre-charge decision-making the research in a second phase of BLAST would require the support and involvement of not only the police and defence practitioners but also the CPS.

In summary, the BLAST Initiative did not achieve the objectives of improving access to legal advice and increasing efficiencies and cost savings. However, the research suggests that the new arrangements have the potential to do so. In responding to the issues raised in this report, the local practitioners have agreed to address the obstacles identified and to support a second phase of BLAST, which commenced in July 2012. Within such a highly complex process it is important to try and simplify the current arrangements as this will not only help to achieve efficiencies but also make more transparent the working practices of those involved in the pre-charge process. There are procedures in custody involving the safeguarding of detainees which should not be interfered with during a second phase. However, there are other issues relating to PACE, to the national crime recording standards and the duty solicitor arrangements which could usefully be reviewed in order to help improve the pre-charge process. If progress is made during a second phase of BLAST it is proposed that in addition to a local steering group, which can provide guidance and oversee this work, that there is also set up a national advisory group. This group would comprise representatives from the Ministry of Justice, the Home Office, the Crown Prosecution Service, the Law Society, Criminal Law Solicitors' Association, the Legal Services Commission and the Association of Chief Police Officers as well as senior academics.

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