

# Criminal Law Review

2011

## The justice lottery? Police station advice 25 years on from PACE

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Crim. L.R. 2011, 1, 3-18

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Police detention; Right of access to legal advice; Socio-legal studies; Suspects

### Summary

*January 2011 marks the 25th anniversary of the introduction of the unequivocal right of police station detainees to obtain advice from a solicitor. However, while this right is a fundamental safeguard to procedural propriety, no large-scale investigation of the rates at which advice is requested or received has been undertaken in over a decade. This study, the most extensive yet undertaken, draws on data extracted from 30,921 custody records, across 44 police stations in 4 police force areas. We find the advice request rate has risen less than recent studies indicate. We also find substantial variation in request rates between police stations and police forces, after accounting for other factors, and a sharp drop in the request rate between ages 16 and 17. This drop supports proposals to extend requirements around appropriate adults to 17 year olds. We argue that, at a time of change in police station operation and advice provision, further monitoring of, and investigation into, the operation of the right to advice is required.*

### Introduction

#### *Background*

January 1, 2011 marks the 25th anniversary of the introduction, under s.58(1) of the Police and Criminal Evidence Act 1984 (PACE), of an "unequivocal"<sup>1</sup>right of police station detainees "to consult a solicitor<sup>2</sup> privately at any time," along with the associated requirement that the police inform detainees of this right (Code C, PACE Codes of Practice, para.3.1). This represented a significant extension and strengthening of the previous provision for advice under the Judges' Rules, which had only limited recognition,<sup>3</sup> provided the police with "considerable discretion to preclude access to a solicitor,"<sup>4</sup>involved practice "as obscure as the law,"<sup>5</sup> and did not amount to "'law' in the sense of being common law or statute."<sup>6</sup>

The PACE right to advice was itself strengthened five years on, in April 1991, through the revision of Code C to require that detainees be told "clearly" about their right to "free independent legal advice" (para.3.1). Paragraph 6.4 of the revised Code C also requires that:

"No police officer should, at any time, do or say anything with the intention of dissuading a detainee from obtaining legal advice."

This is a matter of some importance in light of Sanders et al.'s early finding that "one way or another, the police seem to influence a large number of suspects[']' decisions to decline advice, through the use of "ploys".<sup>7</sup> These included commenting on the (lack of) need for advice, or the (negative) impact of requesting advice on the duration of custody or processes that will ensue.<sup>8</sup>

As can be seen from Table 1, the introduction of PACE and the 1991 revisions to Code C both appear to have led to an immediate rise in the rate of requests for advice in police stations. Nevertheless, those who undertook early studies of post-PACE police station advice expressed surprise at the continued relatively low rate of requests,<sup>9</sup> with the majority of suspects "still appear[ing] to be refusing a free gift."<sup>10</sup> It was recognised, though, that for some minor offences, where "elasticity of demand for solicitors" is low, detainees will not normally request advice "even if it is free and easily available," as such offences are not the sort "where legal advice is often likely to be of any benefit."<sup>11</sup> Surprise at low request rates was compounded by findings that a significant proportion of requests did not actually result in solicitor consultations. For example, Sanders et al. found that a "remarkable" 10.4 per cent of requests did not even lead to an initial telephone call to obtain a solicitor, despite the limited grounds for delay under PACE.<sup>12</sup>

It is notable, therefore, that despite studies in the 1990s pointing to frequent lapses in adherence to PACE provisions,<sup>13</sup> differences in practice between police stations,<sup>14</sup> and substantial differences in advice request rates between police stations that could not be explained by differences in the profile of offences, offenders or reasons for detention,<sup>15</sup> no large-scale investigation of the rate at which advice is requested or received has been conducted for almost 15 years. Moreover, 25 years on from the implementation of PACE, it remains the case that "there are no national data on requests for advice."<sup>16</sup>

**Table 1--Main studies indicating advice request rates and solicitor consultations, by date**

<b>Date</b>	<b>% of Detainees Requesting Advice</b>	<b>% of Detainees Consulting Solicitor</b>	<b>Study</b>	<b>Details</b>
Pre-PACE	< 10	< 10	e.g. Young (1987)	-
1987	25	21	Brown (1989)	32 police stations, 10 areas
1988	25	19	Sanders, Bridges, Mulvaney & Crozier (1989)	10 police stations, 7 areas
1990	24	18	Brown, Ellis & Larcombe (1992)	12 police stations, 6 areas
1991	32	25	Brown, Ellis & Larcombe (1992)	12 police stations, 6 areas
1993/4	37	32	Phillips & Brown (1998)	10 police stations, 7 areas
1995/6	40	34	Bucke & Brown (1997)	25 police stations 10 areas

2007	60	48	Skinns (2009)	2 police stations 2 areas
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So, while Table 1 might suggest that request rates have risen steadily over a quarter-century and are now comfortably over 50 per cent, the picture is not as clear as it appears. Skinns' recent finding that 60 per cent of police station detainees requested advice was based on a study of just two police stations, which were associated with very different request rates: 68 per cent and 51 per cent.<sup>17</sup> Although even the lower rate was surpassed in only 1 of the 25 police stations in Bucke and Brown's study of 1995/6 custody data,<sup>18</sup> and none of the 10 police stations in Sanders et al.'s study of 1988 data,<sup>19</sup> there therefore remains much uncertainty as to what the precise rate is today, and how it is changing over time.<sup>20</sup>

Yet, knowing the rate at which detainees request and receive advice, and the factors that lie behind requests and their success, are matters of considerable public importance; in terms of the integrity of the criminal justice system, public expenditure and ascertaining the impact of reform. In the first case, the right to advice acts as a "fundamental safeguard"<sup>21</sup> to procedural propriety in the police station; a safeguard of particular consequence in an adversarial system in which, as Cape argues:

"Whilst it continues to be the case that 'the trial starts at the police station', increasingly that is where the trial will effectively take place and the sentence imposed."<sup>22</sup>

Information on request rates allows a determination of whether arbitrary factors--such as the police station in which someone happens to be detained--influence the ability of detainees to exercise their rights, and whether vulnerable people are properly benefiting from the protections of PACE. Such information thus provides a basis for public confidence in the criminal justice system, and security against a justice lottery, in which protections are allocated by (say) postcode. It also provides basic insight into the experience of detainees, whose perceptions of the legitimacy of the system are also of importance, and may even influence whether people obey the law.<sup>23</sup>

In the second case, the rate at which police station detainees request advice directly impacts on criminal justice agency budgets. Most obviously, the request rate is directly linked to the legal aid budget. Understanding whether the rate is steady or changing therefore enables effective forecasting and planning. In the third case, our ability to monitor the effects of criminal justice system reform on the behaviour and experience of detainees (and others in the police station) is dependent upon the availability of regular and consistent information on that behaviour and experience. As Pattenden and Skinns have recently commented, the lack of research in this area is "unfortunate," as there have been, and continue to be, "major changes in both the management of police stations and the provision of legal aid to suspects."<sup>24</sup> Within police stations, custody functions are transferring from police officers to civilians, sometimes employees of private security companies.<sup>25</sup> Within the legal aid system, the introduction of the Defence Solicitor Call Centre has changed the process through which the police "secure provision" of advice under para.6.5 of Code C of the PACE Codes of Practice, telephone advice is becoming increasingly prominent with the expansion of CDS Direct, the right to consult a solicitor of choice is being increasingly controlled,<sup>26</sup> and the basis for payment for police station advice continues to undergo fundamental change.<sup>27</sup> All these changes may impact on the inclination and ability of police station detainees to request and obtain advice, and their impact should therefore be closely monitored. This is especially so, if the "unintended consequences" of change are to be avoided.<sup>28</sup> For example, when the Defence Solicitor Call Centre and CDS Direct were introduced in 2005, it would not have been anticipated that there would be no answer to 22 per cent of telephone calls made by CDS Direct to police stations, and that the police would not be ready to act on a further 23 per cent of calls,<sup>29</sup> a problem that has not been resolved<sup>30</sup> and sits

uncomfortably with both the need for the scheme to be “usable”<sup>31</sup> and the obligation on the police to secure the provision of advice “without delay” (Code C, PACE Codes of Practice, para.6.5).<sup>32</sup> What is more, although both the number of occasions solicitors have attended police stations and the volume of telephone advice have increased since national rollout in 2008,<sup>33</sup> the resolution of this problem presents a particular challenge in the context of public spending cuts.

### ***Drivers of demand for, and supply of, legal advice***

Various studies have investigated the drivers of demand for legal advice in police stations,<sup>34</sup> and all have highlighted significant variation in the advice request rate between stations.

Evidently, the mix of offences, circumstances of arrest and detainee characteristics varies between police stations, and each of these affects request rates. For example, it has been consistently found that request rates increase along with gravity of offence. Thus, offences of a more serious nature, such as robbery, are associated with higher request rates than less serious offences, such as shoplifting.<sup>35</sup> In addition, detainees responding to bail have been found to request advice more often,<sup>36</sup> as have those arrested at particular times of the day or week,<sup>37</sup> those who “give cause for concern” on arrival at the police station<sup>38</sup> and those who consult the police doctor.<sup>39</sup> The availability of solicitors,<sup>40</sup> and detainees' perceptions of local solicitors<sup>41</sup> have also been suggested to influence request rates. Accordingly, Skinns put forward the “possible explanation” that the higher rate of requests observed in “Sunnyside”, one of the two police stations she studied, was a product of detainees' “better relationships and prior experiences” with solicitors in that area.<sup>42</sup>

In terms of detainees themselves, it has been found that black and minority ethnic people (particularly black people) are more likely to request advice<sup>43</sup> --perhaps reflecting greater mistrust of the police<sup>44</sup> --as also are those who are unemployed,<sup>45</sup> living in social housing<sup>46</sup> or cohabiting/married.<sup>47</sup> There is also evidence that those with previous convictions request advice more often,<sup>48</sup> and there is some indication that level of guilt (and strength of evidence) is influential.<sup>49</sup>

It has also been observed that women<sup>50</sup> and juveniles<sup>51</sup> request advice less often than men and adults, respectively. However, neither Phillips and Brown nor Skinns found any difference in rates after accounting for other factors.<sup>52</sup> Also, Bucke and Brown found that juveniles requested advice at “a slightly *higher* rate than adults.”<sup>53</sup>

So, might the variation in request rates between police stations be attributable to variations in the issues and people they deal with? It would seem not, or at least, not entirely. Those studies that have employed regression analysis to account for observable differences in police station throughput have still pointed to a significant difference in request rates between police stations.<sup>54</sup> Furthermore, it is clear that there are real differences in the physical conditions, staffing arrangements and levels, and police culture and attitudes between police stations, all of which might influence the rate at which detainees request advice.<sup>55</sup> For example, Brown found a “very slight tendency for busy stations to have lower take-up rates;”<sup>56</sup> a finding echoed in Skinns' observation that higher staffing levels entail “more staff to take note of ... requests, including for legal advice.”<sup>57</sup> Interestingly, though, while there is general support for the idea that police “ploys” (which appear to persist<sup>58</sup>) act to suppress request rates, Brown, Ellis and Larcombe found that only the occurrence of two or more ploys appeared to do so, with a single ploy being associated with a higher request rate.<sup>59</sup> Also, Skinns' efforts to explore “ploys” through the inclusion of “informal conversations” in her regression analysis, yielded unexpected results, with the finding that detainees who held casual discussions

with police offices outside of the booking in process were more likely to request advice.<sup>60</sup> This is, though, somewhat at odds with her qualitative findings.<sup>61</sup>

Some studies have also explored the factors that lie behind whether requests for advice are met. Here again, there is evidence of variation between police stations,<sup>62</sup> although the picture is not as clear as in the case of requests.<sup>63</sup> Requests will mostly be unmet where a detainee is released before a solicitor consultation occurs or has a change of mind. Thus, delay is a key factor underlying whether advice is obtained following a request.<sup>64</sup> Linked to this, the availability of solicitors<sup>65</sup> and the gravity of offence<sup>66</sup> have been found to be associated with attrition between requests and consultations. For example, detainees are more likely to change their mind in relation to less serious offences.

### ***This Study***

This study draws on two recent samples of police station custody records to, first, provide an indication of the current rate at which advice is requested and obtained by detainees and, second, explore the factors that lie behind whether or not advice is requested or obtained. In doing so, this paper identifies the extent to which request rates vary by police station and police force area, after controlling for other factors, and sets out the influence of a broad range of detainee, offence and process characteristics on request and advice rates.

### **Methods**

Detainee, reason for arrest, process and advice request data were obtained for a sample of 30,921 electronic custody records, relating to 25,005 persons, across 44 police stations in 4 police force areas. Data represented all new detentions in the four areas during the months of March and September 2009. One of the areas was in South Western England (Area A), two were in the Midlands (Areas B and C) and one was in Southern England (Area D). The police forces included in the study were selected as they all used the same custody software,<sup>67</sup> were willing and able to participate, and provided a broad geographical coverage.<sup>68</sup> Data included details of age, gender, ethnicity, whether an interpreter was required, reason for arrest, offence type, whether rights were read, police station and police force area.

Regression analysis was used to test the influence of detainee, reason for arrest, and process characteristics on the likelihood of detainees having requested advice.<sup>69</sup> For the purposes of our analysis, reason for arrest was grouped into 13 offences<sup>70</sup> and two other categories (administrative (i.e. bail/warrant) and other). Seriousness of offence was based on a four point scale, derived from the Youth Offender Case Disposal Gravity Factor System, developed by the Association of Chief Police Officers with the Crown Prosecution Service, Home Office and Youth Justice Board.<sup>71</sup>

A similar regression analysis<sup>72</sup> was also used to compare request rates in two separate custody suites in Area A, which shared the same building, but were staffed by different people. There was no apparent reason for the throughputs of the two custody suites to differ, though the allocation process did not amount to a natural experiment.

Further to the above, data relating to whether or not requests actually resulted in solicitor consultations were obtained from a sub-sample of 2,781 detentions--where advice was requested--spread across 15 larger police stations in the 4 areas. Data related to September 2009 only.<sup>73</sup> As in the case of requests for advice, regression analysis was used to test the influence of detainee, reason for arrest, and process characteristics on the likelihood of detainees who had requested advice having had a solicitor consultation.

Statistical output and a full list of the detainee, reason for arrest and process characteristics included in the above analyses are set out in Tables A1 and A2 in the statistical appendix.

## Results

Across all four areas, 45.3 per cent of detainees (counting each detention period separately) requested advice, with 77.5 per cent of requests resulting in solicitor consultations (35.1 per cent overall). The figures for suspects were 44.9 per cent and 81.3 per cent respectively (36.5 per cent overall), and for other detainees they were 49.8 per cent and 50.6 per cent respectively (25.2 per cent overall).

If just first arrests are included, then the overall request rate dropped to 42.4 per cent, with 82.1 per cent of requests leading to solicitor consultations (34.8 per cent overall). Alternatively, if individual detainees are looked at across all detention periods, then 42.5 per cent of individual detainees requested advice, with 83.4 per cent of detainees making requests going on to have solicitor consultations (35.4 per cent overall).

In overall terms there were considerable differences in the request rates as between the four police force areas under study, with rates of 41.3 per cent and 40.1 per cent being observed in Areas A and B respectively, in contrast to rates of 49.2 per cent and 52.5 per cent in Areas C and D respectively. Furthermore, this large difference between the two pairs of areas was apparent even after accounting for the detainee, reason for arrest and process characteristics included in the regression analysis (Table A1 in the statistical appendix).<sup>74</sup>

Similarly, the broad range of request rates (from 31.8 per cent to 62.4 per cent) observed for different police stations (excluding smaller volume police stations, with fewer than 500 detentions) was apparent after controlling for other factors included in the regression analysis (Table A1).

The difference between police stations was most particularly notable in the case of the two separately recorded custody suites in Area A, which shared the same building, but were staffed by different people. One had a request rate of 44.5 per cent, the other 52.1 per cent. While an examination of the throughputs of the two suites revealed some subtle differences,<sup>75</sup> when individual police stations were examined in the regression analysis the difference between the two custody suites was found to be statistically significant after accounting for the different throughputs.<sup>76</sup>

More generally, the regression analysis indicated that the seriousness of offence was a crucial driver of requests for advice, playing a far greater role than broad offence type (Table A1). Thus, in overall terms, level 4 (highest) seriousness offences were associated with more than double the advice request rate than level 1 (lowest) seriousness offences (57.2 per cent v 22.3 per cent). Furthermore, the most serious offences, such as homicide and rape, were associated with higher rates still (77.4 per cent).<sup>77</sup>

The regression analysis also indicated that women were a little less likely to request advice than men, White British detainees were less likely to request advice than most other detainees (as also were those who did not require an interpreter), and that the very youngest detainees (aged under 14) and those aged between 17 and 24 were less likely to obtain advice than those aged between 25 and 34, who in turn were no different from other age groups.<sup>78</sup>

Figure 1 shows a plot of request rates against age. As can be seen, there appears to be an interruption, at the age of 17, in the gradual rise in the rate at which detainees request advice. The rate then picks up again, from around the age of 20, until it plateaus, at around 47 per cent.

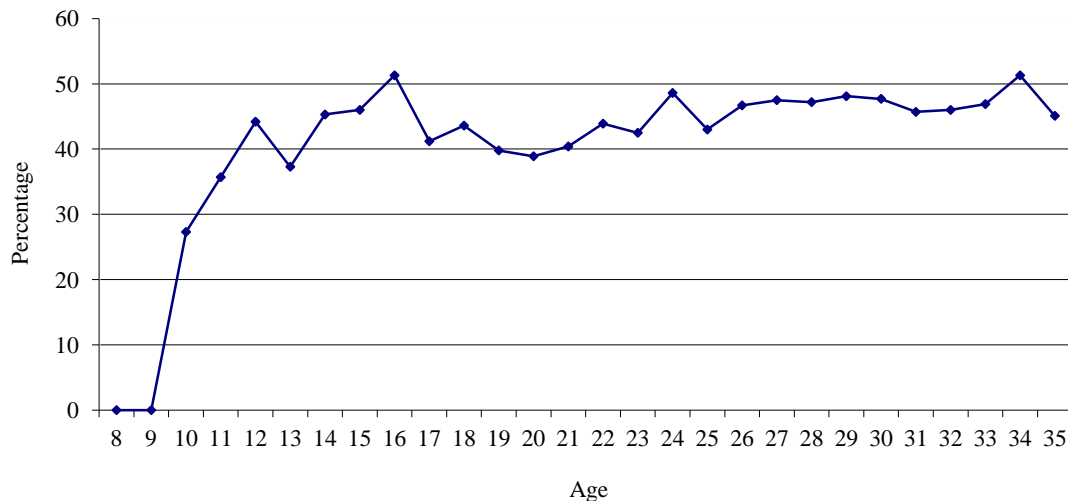


Figure 1. Advice request rate by detainee age

In contrast to requests for advice, there was no significant difference in the rate at which requests for advice were met as between the four police force areas. However, regression analysis revealed a statistically significant difference between the rates in different police stations (Table A2). In simple numerical terms, the rate at which requests were met (excluding police stations where fewer than 100 records were available) varied from 68 per cent to 92 per cent. Again, also, the rate of request fulfilment was found to vary by offence seriousness. However, in this case a difference was observed only between the least serious offences and all others, rather than there being a continuous increase in the rate with seriousness. No difference was found between the rates at which men's and women's requests were met, or for detainees of different ages.

## Discussion

Our findings suggest that the 60 per cent rate at which advice was requested by detainees across the two police stations recently studied by Skinns<sup>79</sup> is not indicative of rates in general. It is, rather, indicative of the extent to which rates continue to vary significantly between police stations--a possibility that Skinns herself raised in cautioning against generalisation of her findings. In fact, "Sunnyside" police station, where Skinns found a 68 per cent request rate, was also included in our own study. We too found it to have a high request rate (62 per cent).<sup>80</sup> Indeed, "Sunnyside" had the highest request rate of all 29 police stations in our study for which details of more than 100 cases were available.

Nevertheless, request rates would appear to have risen somewhat since the 1990s, even though it still appears that only a minority of detainees request advice. But, with significant variance between police stations (and also, as we have demonstrated for the first time, between police forces) still evident, the important question remains of what lies behind this variance.

It may be that unobserved differences in the characteristics of detainees, offences, the physical environment of police stations and the local market for criminal defence services account for the variance--although, the last two of these could not provide a full explanation in light of the significant difference found between the advice request rates in the two custody suites in Area A that share the same building, but not the same staff. However, it is also clear that staffing levels, arrangements, and practices vary considerably between police stations, all of which might influence the rate at which

detainees request advice.<sup>81</sup> Indeed, as Brown observed soon after the introduction of PACE:

“The possibility must be considered that some of the unexplained variation arises from differences in the interpretation of PACE and Code of Practice provisions.”<sup>82</sup>

Moreover, while it is evident that non-compliance with PACE has diminished in the 25 years since its introduction, lapses still occur, both in terms of how much information is provided to detainees and attempts to dissuade detainees from requesting advice.<sup>83</sup> Thus, ongoing monitoring of the rates at which police station detainees request and receive advice, along with further investigation into the manner in which the PACE right to advice is operationalised, would seem essential to preventing any “collective amnesia regarding the lessons of history”<sup>84</sup> from undermining “the adequacy of the legislation to achieve the aims of the legislators.”<sup>85</sup> It must not be forgotten that “the police station is police territory”<sup>86</sup> and, with the adversarial nature of our criminal justice system, the right to advice when detained by the police is a “core issue”<sup>87</sup> within the criminal justice system.

Finally, our findings indicate that there is a drop in the rate at which police station detainees request advice between the ages of 16 and 17, which ties in with the end of the requirement that the police inform an “appropriate adult” of a detention, as soon as practicable, and ask the adult to come to the police station (PACE s.37(15), Code C paras 3.13 and 3.15). This finding is interesting in the context of the 2008 PACE review proposal<sup>88</sup> to extend the requirements around appropriate adults to 17 year olds, which has received “overwhelming support in principle,”<sup>89</sup> but has yet to be effected. While some have suggested that 17 year olds do not require additional support,<sup>90</sup> our findings indicate that the policy of many appropriate adult services requesting advice for detainees “as a matter of course,”<sup>91</sup> may be instrumental in raising request rates to the adult norm. We observe that it takes some years after detainees turn 18 before this rate is reached again.

## Statistical Appendix

Tables A1 and A2 show statistical output from the two principal regression analyses undertaken as part of this study. Each explanatory variable has a reference category, to which other categories are compared. For example, in the case of area, areas B, C and D are compared to area A (the reference category). Reference categories can be identified by the fact that they have an estimate of zero and no standard error in the output tables. Positive estimates indicate an increased rate of requesting/obtaining advice, compared to the reference category, while negative estimates indicate a decreased rate. The standard error can be used to determine whether any indicated increase/decrease is statistically significant (i.e. is likely/not likely to be the product of chance). In Tables A1 and A2 statistically significant findings are indicated by one or more asterisks, with more asterisks indicating findings that are increasingly significant. The final columns in Tables A1 and A2 set out odds ratios, which indicate the relative odds of requesting/obtaining advice, as compared to the reference category. Odds ratios vary around 1 (which would indicate no change). Odds ratios above 1 indicate an increased likelihood, and below 1 a decreased likelihood of requesting/obtaining advice. So, an arrest in connection with homicide (with an odds ratio of 8.33) is more than 8 times as likely to involve a request for advice than an arrest for a level 2 seriousness offence against the person (the reference category). In contrast, an arrest for an “other” level 1 seriousness offence (with an odds ratio of 0.52) is only around half as likely to do so.



Table A1 - Estimates and standard errors for multilevel model of whether advice requested

<i>Covariate</i>	<i>Categories</i>	<i>Whether advice requested</i>		
		<i>Estimate</i>	<i>Std. Error</i>	<i>Odds Ratio</i>
<b>Constant</b>		-5.89	0.72	-
<b>Age</b>	25-34	0.00	-	-
	Under 14	-0.37**	0.12	0.69
	14-16	0.06	0.06	1.06
	17-19	-0.28***	0.05	0.76
	20-24	-0.23***	0.05	0.79
	35-44	0.06	0.05	1.06
	45-54	0.10	0.06	1.11
	55+	0.01	0.09	1.01
<b>Gender</b>	Male	0.00	-	-
	Female	-0.08*	0.04	0.92
<b>Ethnicity (Self-descripton)</b>	White - British	0.00	-	-
	White - Irish	0.32	0.20	1.38
	White - Other	0.08	0.07	1.08
	Asian - Indian	0.38**	0.12	1.46
	Asian - Pakistani	0.21	0.15	1.23
	Asian - Bangladeshi	0.59	0.30	1.80
	Asian - Other	0.50***	0.14	1.65
	Black - African	0.84***	0.11	2.32
	Black - Caribbean	0.28**	0.10	1.32
	Black - Other	0.23	0.13	1.26
	Mixed - White/Asian	0.35	0.37	1.42
	Mixed - White/Black African	0.03	0.26	1.03
	Mixed - White/Black Carib.	0.34**	0.12	1.40
	Mixed - Other	0.62***	0.17	1.86
	Chinese	0.74*	0.30	2.10
	Other	0.55**	0.21	1.73
	Not Stated	0.43	0.12	1.54
<b>Rights read</b>	No	0.00	-	-
	Yes	5.15***	0.72	172.43
<b>Interpreter required</b>	No	0.00	-	-
	Yes	0.66***	0.10	1.93
<b>Area</b>	A	0.00	-	-
	B	-0.10	0.10	0.90
	C	0.26***	0.07	1.30
	D	0.50***	0.07	1.65
<b>Month</b>	March 2009	0.00	-	-
	September 2009	-0.04	0.04	0.96
<b>Offence type / seriousness</b>	OAP, level 2	0.00	-	-
	OAP, level 1	-0.44	0.77	0.64
	POA, level 1	-0.53***	0.15	0.59
	Other, level 1	-0.66***	0.12	0.52
	Sexual offences, level 2	0.32	0.20	1.38
	Motor theft, level 2	0.66***	0.16	1.93
	Other theft / handling, level 2	-0.05	0.06	0.95
	Fraud / forgery, level 2	-0.48	0.36	0.62

	Criminal damage, level 2	0.10	0.10	1.11
	Drugs offences, level 2	-0.50***	0.15	0.61
	POA, level 2	-0.21	0.11	0.81
	Other, level 2	0.17	0.19	1.19
	Motoring offences, level 2	-0.81	0.51	0.44
	OAP, level 3	0.48***	0.06	1.62
	Sexual offences, level 3	0.90***	0.18	2.46
	Burglary, level 3	0.56***	0.11	1.75
	Motor theft, level 3	0.73**	0.24	2.08
	Other theft / handling, level 3	0.52***	0.11	1.68
	Fraud / forgery, level 3	0.85***	0.13	2.34
	Criminal damage, level 3	0.18*	0.09	1.20
	Drugs offences, level 3	-0.19	0.13	0.83
	POA, level 3	0.41***	0.10	1.51
	Other, level 3	0.46*	0.18	1.58
	Motoring offences, level 3	0.00	0.25	1.00
	Homicide, level 4	2.12***	0.45	8.33
	OAP, level 4	1.31***	0.10	3.71
	Sexual offences, level 4	1.41***	0.13	4.10
	Burglary, level 4	1.18***	0.09	3.25
	Robbery, level 4	1.13***	0.12	3.10
	Motor theft, level 4	0.86***	0.26	2.36
	Other theft / handling, level 4	1.50***	0.19	4.48
	Fraud / forgery, level 4	0.69*	0.30	1.99
	Criminal damage, level 4	1.59***	0.28	4.90
	Drugs offences, level 4	1.16***	0.10	3.19
	POA, level 4	1.31***	0.25	3.71
	Other, level 4	1.09***	0.17	2.97
	Motoring offences, level 4	-0.30***	0.08	0.74
	Administrative (bail/warrant)	0.82***	0.07	2.27
	Non-PACE	-0.23*	0.12	0.79
<b>Police station level variance</b>		0.06***	0.01	-
<b>Person level variance</b>		1.34***	0.05	-

\* p < 0.05

\*\* p < 0.01

\*\*\* p < 0.001

Table A2 - Estimates and standard errors for multilevel model of whether consultation followed request for advice (bold figures = p < 0.05)

<b>Covariate</b>	<b>Categories</b>	<b>Whether consultation held</b>		
		<b>Estimate</b>	<b>Std. Error</b>	<b>Odds Ratio</b>
<b>Constant</b>		-0.44	2.13	-
<b>Age</b>		0.02	0.02	1.02
<b>Age squared</b>		0.00	0.00	1.00
<b>Gender</b>	Male	0.00	-	-
	Female	-0.22	0.14	0.80
<b>Ethnicity (Appearance)</b>	White – Northern European	0.00	-	-
	White – Southern European	0.40	0.32	1.49

	Middle Eastern	1.63*	0.77	5.10
	Asian	0.26	0.23	1.30
	Black	0.18	0.16	1.20
	Chinese	0.53	0.57	1.70
	Unknown	0.02	0.57	1.02
<b>Interpreter required</b>	No	0.00	-	-
	Yes	-0.04	0.27	0.96
<b>Seriousness level / Reason for arrest</b>	Seriousness level 2	0.00	-	-
	Seriousness level 1	-0.91**	0.31	0.40
	Seriousness level 3	-0.10	0.14	0.90
	Seriousness level 4	-0.01	0.14	0.99
	Administrative	-1.64***	0.17	0.19
	Other	-1.51***	0.30	0.22
<b>Rights read</b>	No	0.00	-	-
	Yes	1.66	2.09	5.26
<b>Area</b>	A	0.00	-	-
	B	-0.68	0.59	0.51
	C	0.40	0.24	1.49
	D	-0.44	0.82	0.64
<b>Police station level variance</b>		0.64***	0.17	-
<b>Person level variance</b>		0.00	0.00	-

\* p < 0.05

\*\* p < 0.01

\*\*\* p < 0.001

## Endnotes

1. A. Sanders, L. Bridges, A. Mulvaney and G. Crozier, *Advice and Assistance in Police Stations and the 24-Hour Duty Solicitor Scheme* (London: Lord Chancellor's Department, 1989), p.1.
2. A "solicitor" is now taken to include only a practising solicitor or an accredited or probationary representative.
3. H. Fisher, *Report of an Inquiry into the Circumstances Leading to the Trial of Three Persons on Charges Arising out of the Death of Maxwell Confait and the Fire at 27 Doggett Road, London SE6*, ( London: HMSO, 1977).
4. D. Brown, T. Ellis and K. Larcombe, *Changing the Code: Police Detention under the Revised PACE Codes of Practice* ((HORS 129), London: HMSO, 1992), p.1.
5. L. Bridges and A. Sanders, "Access to Legal Advice and Police Malpractice" [1990] Crim. L.R. 494.
6. A. Sanders, R. Young and M. Burton, *Criminal Justice*, 4th edn (Oxford: Oxford University Press, 2010), p.228.
7. Sanders et al. (1989), above, fn.1, p.63
8. Brown, Ellis and Larcombe (1992), above, fn.4, have noted the difficulty of ascertaining intentions around actions observed in a police station, and suggested that some of the ploys described by Sanders et al. (1989), above, fn.1, could also "be construed as honest advice delivered by the custody officer" (p.29). Skinns has also recently made the same point: L. Skinns "'Let's Get it Over With: Early Findings on the Factors Affecting Detainees' Access to Custodial Legal Advice'" (2009a) 19(1) *Policing and Society*, 58.
9. Sanders et al. (1989), above, fn.1; Brown, Ellis and Larcombe (1992), above, fn.4.
10. Bridges and Sanders (1990), above, fn.5, p.497.
11. M. Maguire, "Effects of the PACE Provisions on Detention and Questioning" (1988) 28(1) B. J. Crim. 19 at 31.
12. Sanders et al. (1989), above, fn.1.
13. Brown, Ellis and Larcombe (1992), above, fn.4.
14. Brown, Ellis and Larcombe (1992), above, fn.4.
15. C. Phillips and D. Brown, *Entry into the Criminal Justice System: A Survey of Police Arrests and their Outcomes* ((HORS 185), London: HMSO, 1998).
16. Bridges and Sanders (1990), above, fn.5, p.495.
17. L. Skinns, "I'm a Detainee: Get Me Out of Here" (2009b) 49(3) B.J. Crim. 399.
18. T. Bucke and D. Brown, *In Police Custody: Police Powers and Suspects' Rights under the Revised Codes of Practice* ((HORS 174), London: HMSO 1997).
19. Sanders et al. (1989), above, fn.1.

20. Some support for Skinns' (2009b), above, fn.17, figures comes from Kemp and Balmer's study of users of criminal defence services: V. Kemp and N.J. Balmer, *Criminal Defence Services: Users' Perspectives* (Interim Report) (London: Legal Services Research Centre, 2008). They interviewed 212 police station detainees and 642 defendants in magistrates' courts in 6 areas of England and Wales, who reported having requested police station advice in 54% and 62% of cases, respectively. In the case of the court sample, the authors noted, "it is not surprising that more [police station] respondents requested legal advice ... because these respondents had been prosecuted" (p.23). Moreover, random sampling could not be employed in the study.
21. Home Secretary Douglas Hurd, quoted in M. Zander, *Cases and Materials on the English Legal System*, 5th edn (Cambridge: Cambridge University Press, 1988), p.154.
22. E. Cape, *Defending Suspects at Police Stations: The Practitioner's Guide to Advice and Representation*, 5th edn (London: Legal Action Group, 2006), p.v.
23. T.R. Tyler, *Why People Obey the Law* (Princeton: Princeton University Press, 2006).
24. R. Pattenden and L. Skinns, "Choice, Privacy and Publicly Funded Legal Advice at Police Stations" (2010) 73(3) M.L.R. 349 at 351.
25. Skinns (2009a), above, fn.8; Skinns (2009b), above, fn.17.
26. See Pattenden and Skinns (2010), above, fn.24, for a discussion of the implications, in this area, of the reference to "legal assistance of his own choosing" in art.6(3)(c) of the European Convention on Human Rights.
27. P. Carter, *Legal Aid: A Market-Based Approach to Reform* (London: Department for Constitutional Affairs, 2006); Department for Constitutional Affairs and Legal Services Commission, *Legal Aid Reform: The Way Ahead* (London: HMSO, 2006); L. Bridges and E. Cape, *CDS Direct: Flying in the Face of the Evidence* (London: Centre for Crime and Justice Studies, 2008); Legal Services Commission, *Statistical Information 2008/9* (London: Legal Services Commission, 2009); Pattenden and Skinns (2010), above, fn.24.
28. R.K. Merton, "The Unanticipated Consequences of Purposive Social Action" (1936) 1(6) *American Sociological Review*, pp.894-904.
29. Legal Services Commission, *CDS Direct Six Month Evaluation Report* (London: Legal Services Commission, 2006).
30. Bridges and Cape (2008), above, fn.27; V. Kemp, *Transforming Legal Aid: Access to Criminal Defence Services* (London: Legal Services Research Centre, 2010).
31. Legal Services Commission, *Evaluation of CDS Direct First Phase Expansion* (London: Legal Services Commission, 2008).
32. In the 2008 evaluation of CDS direct, 91% of custody officers were found to consider the scheme "workable" and 96% thought it was as good as or an improvement on the previous system: Legal Services Commission (2008), above, fn.31.
33. (Legal Services Commission (2009), above, fn.27; Legal Services Commission, *Statistical Information 2009/10* (London: Legal Services Commission, 2010).
34. Maguire (1988), above, fn.11; D. Brown, *Detention at the Police Station under the Police and Criminal Evidence Act 1984* ((HORS 104), London: HMSO, 1989) Sanders et al. (1989), above, fn.1; Brown, Ellis and Larcombe (1992), above, fn.4; Bucke and Brown (1997), above, fn.18; Phillips and Brown (1998), above, fn.15; Kemp and Balmer (2008), above, fn.20; Skinns (2009b), above, fn.17; Kemp (2010), above, fn.30.
35. Maguire (1988), above, fn.11; Brown (1989), above, fn.34; Sanders et al. (1989), above, fn.1; Brown, Ellis and Larcombe (1992), above, fn.4; Bucke and Brown (1997), above, fn.18; Phillips and Brown (1998), above, fn.15; Kemp and Balmer (2008), above, fn.20; Skinns (2009b), above, fn.17.
36. Phillips and Brown (1998), above, fn.15.
37. Brown, Ellis and Larcombe (1992), above, fn.4; Skinns (2009b), above, fn.17.
38. Brown (1989), above, fn.34.
39. Skinns (2009b), above, fn.17.
40. A particular problem prior to the introduction of the 24 hour duty solicitor scheme. Maguire (1988), above, fn.11, Brown (1989), above, fn.34; Brown, Ellis and Larcombe (1992), above, fn.4.
41. Skinns (2009b), above, fn.17.
42. Skinns (2009b), above, fn.17, p.408.
43. Bucke and Brown (1997), above, fn.18; Phillips and Brown (1998), above, fn.15; Kemp and Balmer (2008), above, fn.20.
44. Phillips and Brown (1998), above, fn.15.
45. Phillips and Brown (1998), above, fn.15.
46. Kemp and Balmer (2008), above, fn.20.
47. Kemp and Balmer (2008), above, fn.20.
48. Phillips and Brown (1998), above, fn.15; Kemp and Balmer (2008), above, fn.20.
49. Skinns (2009b), above, fn.17. However, Skinns acknowledges that her proxy for guilt (receipt of a caution) is problematic.
50. Bucke and Brown (1997), above, fn.18; Phillips and Brown (1998), above, fn.15; Kemp and Balmer (2008), above, fn.20.
51. Brown (1989), above, fn.34; Sanders et al. (1989), above, fn.1; Phillips and Brown (1998), above, fn.15.
52. Phillips and Brown (1998), above, fn.15; Skinns (2009b), above, fn.17.
53. Bucke and Brown (1997), above, fn.18, p.20.
54. Brown (1989), above, fn.34; Phillips and Brown (1998), above, fn.15; Skinns (2009b), above, fn.17.
55. Brown (1989), above, fn.34; Sanders et al. (1989), above, fn.1; R. Morgan, R. Reiner and I.K. McKenzie, *Police Powers and Policy: A Study of the Work of Custody Officers*(Swindon: ESRC, 1991); Brown, Ellis and Larcombe (1992), above, fn.4; Phillips and Brown (1998), above, fn.15; Skinns (2009b), above, fn.17.
56. Brown (1989), above, fn.34, p.24.
57. Skinns (2009b), above, fn.17, p.408.

58. Skinns (2009a), above, fn.8.
59. Brown, Ellis and Larcombe (1992), above, fn.4.
60. Skinns (2009b), above, fn.17.
61. Skinns (2009a), above, fn.8.
62. Sanders et al. (1989), above, fn.1; Brown, Ellis and Larcombe (1992), above, fn.4; Bucke and Brown (1997), above, fn.18; Phillips and Brown (1998), above, fn.15.
63. cf. Skinns (2009b), above, fn.17.
64. Brown, Ellis and Larcombe (1992), above, fn.4; Phillips and Brown (1998), above, fn.15; Skinns (2009a), above, fn.8.
65. Maguire (1988), above, fn.11; Sanders et al. (1989), above, fn.1; Brown, Ellis and Larcombe (1992), above, fn.4; Phillips and Brown (1998), above, fn.15.
66. Brown (1989), above, fn.34; Phillips and Brown (1998), above, fn.15; Skinns (2009b), above, fn.17.
67. At present, ten different software packages are in use across England and Wales. The most popular is NSPIS Custody and Case Preparation, used by 27 forces.
68. Data were provided to us in Excel spreadsheets, using 7 templates designed to prevent multiple counting of entries.
69. Multilevel binary logistic regression analysis was undertaken using MLwiN (J. Rasbash, F. Steele, W. Browne and H. Goldstein, *A user's guide to MLwiN (version 2.10)* (Bristol: Centre for Multilevel Modelling, 2009)). Multilevel regression analysis (H. Goldstein, *Multilevel statistical models*, 3rd edn (London: Arnold, 2003)) was in order to correctly model the hierarchical structure of the datasets (requests or consultations were nested within detainees and detainees within police stations). Ignoring this type of hierarchical structure can result in serious technical issues, notably the underestimation of the standard errors of regression coefficients (Rasbash et al. (2009)). In both cases, random intercept models were fitted to allow the probability of requesting advice to vary across detainees (to acknowledge that how a detainee behaves during one detention period may link to how that detainee behaves during other periods), and police stations (to acknowledge that how a detainee behaves in a particular police station may link to how other detainees behave in that police station).
70. Homicide, offences against the person, sexual offences, burglary, robbery, motor theft, other theft and handling, fraud and forgery, criminal damage, drugs offences, public order offences, motoring offences, all other offences.
71. Excluded offences were allocated to seriousness levels by analogy with included offences.
72. An additional police station predictor was also fitted.
73. Data were provided in single Excel spreadsheets.
74. Indeed, when we simulated requests using the model in Table A1 and the *customised predictions* feature of MLwiN (while accounting for detainee, offence and process characteristics), the gap between the lowest and highest rate area only narrowed from 12.4% to 12.1%, indicating that other factors were unable to explain much of the inter-area differences observed.
75. Overall, the higher rate suite had a slightly higher throughput of younger, female and black and minority ethnic detainees, and detainees arrested on suspicion of more serious offences.
76.  $\chi^2 = 4.772$ ,  $p < 0.05$
77. In odds ratio terms, detainees arrested in relation to homicide were more than 8 times as likely to request advice as those arrested in relation to a level 2 seriousness offence against the person.
78. In odds ratio terms, women were around one-twelfth less likely as men to request advice, White British people around half as likely as Black African people to request advice, and juveniles under the age of 14 around one third as likely as those aged between 25 and 34.
79. Skinns (2009b), above, fn.17.
80. Intriguingly, the drop from 68% to 62% at "Sunnyside" is statistically significant. Skinns (2009b), above, fn.17, does not provide the numbers, but only the percentages, in her study. Nevertheless, the change is significant even if the lowest possible number that could equate to 68% is used for comparison:  $\chi^2 = 4.02$ ,  $p < 0.05$ . However, while Skinns' data were, like ours, taken from police records, her collection method was different. This raises the possibility that some of the difference may be attributable to methodological differences; though the difference might also stem from a change in the request rate in "Sunnyside" between 2007 and 2009. This could point to a variation in rates over time within police stations, as well as between stations. A general decline across the country would seem an unlikely explanation, given the rise in advice provision reported by the Legal Services Commission (see above, fn.27, 2009; see above, fn.33, 2010). The current rate that we found requests to be realised, at 77.5%, is also slightly lower than Skinns' recent study. Moreover, comparing the two sets of findings for "Sunnyside", the gap widens further (75% v 82%). Indeed, our request realisation rate is lower than the four most recent previous studies (Bucke and Brown (1997), above, fn.18, Phillips and Brown (1998), above, fn.15; Kemp and Balmer (2008), above, fn.20; Skinns (2009b), above, fn.17), again raising the possibility that the rate may be in decline. However, while, as indicated above, problems have been reported in advisors being able to get through to police station detainees on the telephone (Legal Services Commission (2006), above, fn.29; Bridges and Cape (2008), above, fn.27; Kemp (2010), above, fn.30), a recent general decline sits at odds with recent rises in advice provision (Legal Services Commission (2009), above, fn.27; Legal Services Commission (2010), above, fn.33).
81. Brown (1989), above, fn.34; Sanders et al. (1989), above, fn.1; Morgan, Reiner and McKenzie (1991), above, fn.56; Brown, Ellis and Larcombe (1992), above, fn.4; Phillips and Brown (1998), above, fn.15; Skinns (2009b), above, fn.17.
82. Brown (1989), above, fn.34, p.73.
83. Skinns (2009a), above, fn.8; Kemp (2010), above, fn.30.
84. Bridges and Cape (2008), above, fn.27, p.6.
85. Brown (1989), above, fn.34, p.73.

86. Sanders, Young and Burton (2010), above, fn.6, p.247.
87. Home Office, *PACE Review: Summary of Responses to the Public Consultation on the Review of the Police and Criminal Evidence Act 1984* (London: Home Office, 2010), p.4.
88. Home Office *PACE Review: Government Proposals in Response to the Review of the Police and Criminal Evidence Act 1984* (London: Home Office, 2008).
89. Home Office (2010), above, fn.88, p.14.
90. Home Office (2010), above, fn.88, p.14.
91. F. Brookman and H. Pierpoint, "Access to Legal Advice for Young Suspects and Remand Prisoners" (2003) 42(5) *Howard Journal* 452 at 459.