

Why do a high proportion of suspects not receive legal advice at the police station?

A considerable number of studies have been conducted at different police stations which has produced information identifying a range of factors which are involved in the result of suspects not receiving legal advice at the police station.

Prior to the Police and Criminal Evidence Act 1984, access to legal advice was overseen by the Judges' Rules, these had no specific power of enforcement, thus allowing the police to employ them arbitrarily. The police did not have to make records of the requests for advice, so how do we know that prior to PACE the proportion of suspects receiving legal advice was low? We can gain an idea from studying the research data in this field.¹ Softley's study of four police stations in 1980 shows there was not only a very low proportion of suspects seeking legal advice (9%) but the number receiving even it was even lower (7%). An earlier study by Zanders in 1972 produced different results finding that it was closer to half of all of suspects interviewed requesting access to a lawyer.² At this time the police did not have to inform the suspects of their rights and it is held that this is the main reason for the low take-up rates of legal advice previous to PACE.³

The Royal Commission on Criminal Procedure 1981 recognised the need for legal advice for suspects, accepting that the system is capable of failing to protect those detained at the police station, the report also considers the probable extent of suspects legal knowledge.⁴ The Police and Criminal Evidence Act and relevant Codes of Practice were put in place so to facilitate fairer treatment for suspects at the police station, supposedly providing them with a greater degree of protection and ability to exercise their rights.

Since PACE has been in place research studies have shown a significant increase in request levels for legal advice. Around a quarter of suspects requested legal advice in

¹ Sanders, A. and Young, R. (1999) 'The Right To Legal Advice' in C. Walker and K. Starmer (eds.) *Miscarriages of Justice*, Pp 84

² Belloni, F. and Hodgson, J. (1999) *Criminal Injustice*, Pp 42

³ Sanders, A and Young, R. (2000) *Criminal Justice. Second Edition*, Pp 214-215

⁴ See RCCP 1981 Report Para 4.89

Brown's 1989 study. However, with legal advice at the police station being paid for by the government it is concerning that so many people should refuse this 'free gift'.⁵ Despite COP and PACE the police use ploys and bending of the rules to discourage and prevent suspects gaining access to legal advice.⁶ JUSTICE reported that one or more ploys were used by the police in around 42 per cent of the cases they looked at in their research. A comprehensive breakdown of the different types of ploys used in 331 cases is given by Sanders *et al.*, examples being 142 suspects were told their rights either too quickly, incomprehensibly or incompletely and 14 suspects were told 'You're only here to be interviewed'.⁷ There is a vast number of different tactics which police officers can use to deter suspects from exercising their rights as countless police officers rationalize this behaviour with their belief that the scheme is 'impeding their detection of crimes – the purpose for which they exist'.⁸ Many research studies have involved interviews with police officers exploring their feelings towards detainee's receiving legal advice. Bottomley *et al.* found, when asking officers what they would do when a suspect approached *them* for advice on whether to call a solicitor or not 'just over one fifth of the sample (21 per cent) said that their advice would depend very much on the circumstance, both of the person and the offence'.⁹ Officers may feel there is often very little point in having a solicitor called out when the crime is, what they consider to be, a minor offence and if the suspect intends to plead guilty. This would result in the aforementioned attitude in an officer. However, it is felt that the police have a biased view when it comes to offences and are not likely to have the suspects best interests at heart. Police objectivity is an important issue in the justice process as a police officer's role is, rarely neutral 'because the police [are] still seen as the prosecutors truth and open mindedness [are] often casualties due to the pressure to get a conviction'.¹⁰ Despite COP reforms the police are still in a good position to stop suspects exercising their rights at the police

⁵ Sanders, A. (1997) 'From Suspect to Trial', in M. Maguire, R. Morgan and R. Reiner, *The Oxford Handbook of Criminology, Second Edition*. Pp 1062

⁶ Alderson, J. (1992) 'The Police' in E. Stockade and S. Casale (eds.) *Criminal Justice Under Stress*, Pp23

⁷ Sanders, A. and Young, R. (2000) *Criminal Justice. Second Edition*, Pp223

⁸ Alderson, J. (1992) 'The Police' in E. Stockade and S. Casale (eds.) *Criminal Justice Under Stress*, Pp23

⁹ Bottomley, K, Coleman, C., Dixon, D., Gill, M. and Wall, D. (1991) *The Impact Of PACE: Policing In A Northern Force*,

¹⁰ Williamson, T. (1996) 'Police investigation: the criminal justice context' in F Leisham, B. Loveday and S.P. Savage (eds.) *Core Issues in Policing*, Pp 28

station, thus accounting for a large proportion of cases where detainees do not receive legal advice.

There are, however, reasons that explain the request rates for legal advice which do not rest entirely on the police's assistance or hindrance. Brown *et al.*'s study in 1992 suggests that suspects request neither to see nor speak to solicitor 'because they are not informed (wholly or partly) of their rights'.¹¹ If a suspect is not informed of their rights it is acceptable to say most will be ignorant of their entitlement to legal advice. Even if suspects were partly informed the likelihood of the detainee questioning the police to reiterate their rights is low, as 'most will be frightened and apprehensive' being held involuntarily in unfamiliar surroundings.¹² This leads on to another influencing factor; suspects being desperate to leave the police station. The thought of delaying their departure to wait for a solicitor to arrive, it seems, plays a major part in the number declining legal advice.¹³ Sanders *et al.* found numerous different responses from detainees when an officer asked if they wanted a solicitor, including, 'well it depends how long I'm here for..', which displays how unsure suspects can be feeling at the time of interviewing, they believe that not requesting advice will result in them being released from custody earlier (which does have grounds of truth).¹⁴ Another explanation for low take-up of advice is suspects not being informed that it is free. Detainees should have access to free advice from a duty solicitor while they are in the police station, this is a provision of the law and suspects should be informed so both orally and in writing by the custody officer. However, Sanders *et al.* found 31.6 per cent of suspects who knew they were entitled to legal advice were unaware that it was free.¹⁵

This brings the discussion to the issue of detainees requesting legal advice but failing to receive it. Soon after PACE was introduced a Home Office research Study by Brown found a 4 per cent discrepancy in those requesting and those receiving advice, this and subsequent research instigated a revision of the Code of Practice in 1991. This resulted in 'rights of suspects [being] clarified, and obligations on the police to

¹¹ Ibid.

¹² Sanders, A. and Young, R. (2000) *Criminal Justice. Second Edition*, Pp 221

¹³ Sanders, A. and Young, R. (1999) 'The Right To Legal Advice' in C. Walker and K. Starmer (eds.) *Miscarriages of Justice*, Pp 86

¹⁴ Ibid.

¹⁵ Sanders, A. and Young, R. (1999) 'The Right To Legal Advice' in C. Walker and K. Starmer (eds.) *Miscarriages of Justice*, Pp 84

inform them of their rights [being] increased.’¹⁶ This did result in increases in request rates in police stations studied yet did not cause a dramatic increase. It could be that police officers are *still* failing to inform suspects of their rights. Sanders and Bridges ‘estimated that in some 10.5 per cent of cases *which the police knew the researches were observing* the police actually broke the law’.¹⁷ Another factor influencing suspects is their belief as to whether they need advice or not. Detainees often believe their offence too trivial or are quite fatalistic about their circumstance, for example, assuming a solicitor could not help them at all as they were *involved* in the offence. As Sanders and Bridges explain ‘confidence (or, indeed fatalism) may sometimes be misplaced. Many suspects are unaware of how helpful a solicitor could be in ensuring that their stories are told properly’.¹⁸

Other reasons for detainees not taking up the offer of legal advice is that under PACE in certain circumstances suspects are not entitled to it. Rights are ‘severely curtailed in respect of suspects detained under the Prevention of Terrorism Act 1989’, also in cases where the suspect is violent or likely to become violent and unable to understand what is being said to them.¹⁹ However this will account for a very small percentage of those not receiving advice. There is also the matter of offenders being put off solicitors. There is evidence which suggests detainees who have been in custody before may have accepted legal advice on their previous detention at the police station and found solicitors to be of little benefit to them. Baldwin has made summaries of a number of tape recorded cases where a solicitor was present and has paid particular attention to their role in the interrogation.²⁰ There was some astounding findings; ‘in many instances lawyers sat in silence when the situation seemed to cry out for them to intervene or to raise some objection’, also there was cases of the solicitor acting almost as a third interviewer.²¹ Not only this but there are cases where confession is encouraged by solicitors over the phone and in the interview room. Also there are cases when junior members of the legal profession are

¹⁶ Ibid

¹⁷ Sanders, A. (1997) ‘From Suspect to Trial’, in M. Maguire, R. Morgan and R. Reiner, *The Oxford Handbook of Criminology, Second Edition*. Pp1062

¹⁸ Sanders, A. and Young, R. (1999) ‘The Right To Legal Advice’ in C. Walker and K. Starmer (eds.) *Miscarriages of Justice*, Pp86

¹⁹ Sanders, A. and Young, R. (1999) ‘The Right To Legal Advice’ in C. Walker and K. Starmer (eds.) *Miscarriages of Justice*, Pp 84

²⁰ Baldwin, J. (1992) ‘The Role Of Legal Representatives At Police Stations’ in *Royal Commission on Criminal Justice, Research Study No 2,3 and 4*, Pp 28

²¹ Ibid.

employed to mete out advice even though their experience is unmatched to that of a police officer.²² These actions of the legal profession are likely to deter suspects from accepting legal advice when they weigh up the cost and benefits. Suspects should be encouraged to contact their own solicitor, should they have one, so they are dealing with a familiar person.

In conclusion, it is evident that there are a broad range of reasons why suspects do not receive legal advice at police stations. These range from individual detainee's viewpoints to unlawful police practices. However, it is true that the number of suspects receiving advice has risen considerably since the introduction of PACE, as well as introducing further guidelines to prevent police from 'getting around' the rules, the question that should be posed is, 'Does every suspect actually need advice?'. As long as suspects are making informed decisions there are certainly plenty of cases where advice is not in their best interests.

²² Sanders, A. (1997) 'From Suspect to Trial', in M. Maguire, R. Morgan and R. Reiner, *The Oxford Handbook of Criminology, Second Edition*. Pp. 1062

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