

Analysis of Pre-Charge Engagement

This document is drawn from two studies. The first concerned the Legal Aid Lawyer involved in PCE (40 participants). The second was drawn from Olliers Solicitors, who have a version of PCE for privately paying clients (6 lawyers).

Study 1: The Legal Aid Lawyer

What did they think of PCE?

The most worrying revelation was made by one lawyer who believed the 'purpose' of the scheme was to 'assist the police to better understand the defence of the suspect.'

The understanding of PCE among respondents is very mixed.

Whilst three (7.5%) respondents had no understanding of what PCE is, 11 respondents (27.5%) thought PCE exists to assist the police with their investigation. Two respondents (5%) stated that, to their understanding, PCE is effectively what they already do in the police station.

Is PCE working as Intended?

100% answered 'no.'

One respondent suggested '[it is] utterly pointless' and a 'complete waste of time.'

Nine respondents (22.5%) suggested issues with police understanding of PCE.

Some claimed that the 'police do not engage with PCE in any meaningful way' and that the scheme 'does not seem to be followed by the police.' Some thought there were broader concerns with the adversarial nature of police investigations and said, 'it exists only to assist the police and places the client in jeopardy' and that 'police officers believe they are there to secure convictions and not investigate [the allegation].'

It could work, but I fear that PCE should be a mechanism to strengthen a weak case.

Initial Analysis

Unsurprisingly, PCE is viewed generally as a negative development. There is a fear that the police will use what they find in PCE as evidence to help convict the suspect. However, the guidance clearly says that PCE ought to stop and the suspect re-interviewed should they discover anything they want to use at trial. As such, PCE should be considered an (almost) risk-free option.

Study 2: Private Paying PCE

From your firm, the results of PCE were very positive. From both a client care perspective and actual results.

Benefits

- Reassured clients, made the process clearer to them, affected charging decisions, made investigations more thorough
- can help collate mitigation to enable a better result when guilty
- Provided reassurance and guidance to clients in times of high anxiety and stress
- Some success in achieving out-of-court disposals when dealing with more low-level offences.
- Build a good relationship with the investigator - effective communication means keeping up to date with the case.

Results

- [The result] It depends on the case. Where I argue that the case should not proceed, I estimate that around 75% of representations are successful.
- If the 75% is accurate, this could greatly relieve pressures on the police workload and cases being sent to trial.
- They *can* be disposed of and cleared up in another way other than trial.
- But it needs significant engagement from both sides to reach the point where a decision to divert a case can be made.

Time taken to engage

100% of your lawyers stated that successful outcomes had taken **14 hours of engagement**, with around 20% saying it took over **20 hours**.

Analysis

The most significant disparity between a Legal Aid client and a privately paying client is the time taken to undertake engagement with the police. Your firm suggests that the results are generally good where you have the time to engage.

However, the Legal Aid client needs to be afforded such time. The rates of remuneration are perceived to be low, and 50% of respondents to the government's *consultation* suggested they were insufficient. The maximum amount of time that can be billed is approximately 4.5 hours –nowhere near the time you have taken to get your results. There is an argument that if the government frontloaded the cost of cases to the investigative stage, they could save money in the long run.

Arguably, this places the Legal Aid client at a disadvantage; their lawyer does not engage with PCE as it is not in their economic interests to do so. I think this points to a potential problem with the adversarial lawyer: are lawyers acting in their client's best interests by not engaging with the scheme? Of course, the issue of adversarial lawyers has been written about for decades. But one Legal Aid lawyer suggested that 'it takes a great deal of time and it's likely not worth engaging with.' I wonder if the 'not worth it' stems from not seeing a tangible result at the end of the not worth it in the economic sense.

Nevertheless, I think there is an argument that engaging with PCE represents advancing your client's best interest. Of course, with the privately paying suspect, you have the time and financial interest to do so. But I think there is a danger of widening the gulf between the Legal Aid suspect and the private paying client. This effectively creates a two-tier justice system, one for those with means and one for those without.

Actual Use of PCE in 2021-22

- The Impact Assessment of PCE estimated that the cost of the regime would be between £300,000 and £ 1.8 million per annum.
- Upper limit Legal aid claim: £273.75. (Hourly rate of £58.97 in London)

Only around £9,000 was claimed for PCE during this period.

- The upper limit will only allow for over 4 hours per case. Using these estimates means there were approximately 33 claims for defence work under the PCE scheme.
- Using the upper limit of £ 1.8 million of the Impact Assessment, the government could cover (using the London weighing) 65,753 cases per year, yet approximately **only 33 claims were made.**
- This remarkable disparity indicates that the scheme is not working as intended. If the scheme was working as intended, the evidence (from the Privately funded survey) suggests that many cases could be diverted from the trial.
- With proper engagement, the scheme could allow for a dilution of the court backlog, but it is not being used.

Conclusion

From the surveys, it can be said that PCE could work. The privately paid client affords a vast amount of time to have their lawyer engage with the police and potentially divert the case from prosecution (which occurred 75% of the time).

The government needs ought to consider several things to ensure the Legal Aid Client is not disadvantaged further:

1. Raise the rates of remuneration for engagement
2. Increase the upper limit of claims

3. Offer training to police regarding how to properly engage with PCE (I have started with a police force in the Midlands; I will update you in due course.


By increasing the fees and the upper limit of claims, active engagement could occur between the defence and police. From surveying your staff, it is clear that under 5 hours does not represent an opportunity for active engagement. But by funding a more significant amount of time to engage, a high volume of cases could be diverted from trial, thus making economic savings, delivering justice more swiftly and significantly reducing the burden on the courts.

PCE could work. It needs to be given the proper framework to allow it to thrive.

Your work in this field is commendable and shows a decent barometer that the scheme could work.

Please note, for this report; I could not include data from the police force as that is currently under embargo. Once this embargo is lifted, I will happily share my results on their perceptions of PCE.

All data concerned has received ethical clearance from the relevant ethics committees.

A handwritten signature in black ink, appearing to read 'Ed Johnston', written in a cursive style.

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