



HKU CCPL TALK

# (A Lack of) Pre-Charge Engagement in England and Wales: A Missed Opportunity

27 February 2024 (Tuesday) 1:00 - 2:00 PM

Academic Conference Room, 11/F Cheng Yu Tung Tower, HKU

This paper argues that the criminal justice system of England and Wales could benefit from the use of Pre-Charge Engagement (PCE) to address the significant backlog of criminal cases. PCE is a new scheme introduced by the Attorney General's Guidelines on Disclosure in December 2020, which encourages early engagement between suspects or their legal representatives and the police/CPS prior to formal charge. This scheme has the potential to divert cases from prosecution, thereby reducing the backlog. However, Johnston's study in 2022 (published in the *Criminal Law Review*) found that few defence lawyers were aware of or utilized PCE. This paper discusses the benefits of early engagement and highlights issues and obstacles hindering the police in early engagement. It proposes a roadmap for active engagement that ensures fair trial rights and meaningful participation between the parties. However, the paper notes that problems with the disclosure regime, of which PCE is a by-product of, point to issues in the culture of cooperation between competing sides. Although, effective use of PCE supports the objective of Criminal Procedure Rules of "dealing with cases justly" and ought to help foster a culture of cooperation. Ultimately, in the modern era of criminal procedure, adversarialism is a relic. It has been replaced by managerialism, in which PCE can play a pivotal role in the stages of proceedings. The effective use of the scheme could help the actors in the criminal justice system work together to clear the backlog and ensure timely justice for all parties involved.



*SPEAKER*

**Dr Ed Johnston, University of Northampton, UK**

Ed is an Associate Professor of Criminal Justice and Procedure. His research is focused on criminal justice and procedure and he specialises in the disclosure of evidence in criminal proceedings, the role of the defence lawyer and suspects' rights. In 2018, Ed completed his PhD entitled 'The Defence Lawyer in the Modern Era'. The thesis was based on empirical research that examined if the role of the defence lawyer ought to be re-conceived from that of a zealous advocate. Furthermore, the thesis examined the impact of the changing adversarial landscape for both defendants and the wider criminal justice process.



*CHAIR*

**Professor Simon Young**

Ian Davies Professor in Ethics, Faculty of Law, The University of Hong Kong



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