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POLICE AND CRIMINAL EVIDENCE ACT 1984 (PACE)

CODE C

REVISED

CODE OF PRACTICE FOR THE DETENTION,  
TREATMENT AND QUESTIONING OF PERSONS BY  
POLICE OFFICERS

The Codes of Practice apply to:-

- a) Police Officers;
- b) Persons "other than police officers who are charged with the duty of investigating offences or charging offenders"

The duty on investigators other than police officers is "to have regard to any relevant provision" of the codes. (s67(9) PACE 1984).

It is a question of fact whether or not a particular person is a person "charged with the duty of investigating offences."

Code C contains detailed provisions in relation to, amongst other things, cautions (C:10), interviews (C:11 and Annexes C and E) and interviews at police stations (C:12).

The Caution.

A person whom there are grounds to suspect of an offence must be cautioned before any questions about it (or further questions if it is his answers to previous questions that provide grounds for suspicion) are put to him for the purpose of obtaining evidence which may be given to a court in a prosecution.

He will not need to be cautioned if the questions are put for other purposes (Code C, para 10.1)

Where the interviewing officer already suspects the person to be questioned, a caution should be given before any questions are asked.





### What is an Interview?

Code C para 11.1A defines an "interview" as the "questioning of a person regarding his involvement or suspected involvement in a criminal offence or offences which, under paragraph 10.1, must be carried out under caution."

Any questioning, whether formal or informal, of a person regarding his involvement or suspected involvement in an offence should be under caution if there are grounds for suspecting him of having committed the offence. (Rv Sparks (1991) Crim LR 128 CA)

A conversation will constitute an interview if a suspect is being asked to incriminate himself. (Batley -v- DPP, The Times, March 5<sup>th</sup> 1998 DC)

One question alone may be an interview.

A spontaneous statement made by the suspect cannot amount to an interview. However any questions put as a result of the statement will clearly constitute an interview.

Any spontaneous remarks should be put to the suspect at the commencement of the formal interview: Code C para 11.4.

### The Consequences of a Failure to Caution.

The absence of a caution in circumstances in which it should have been administered will normally amount to a significant and substantial breach of the code.

The suspect must be made aware of the true nature of the investigation. It is only if this requirement is fulfilled that the suspect can make meaningful decisions as to whether to seek legal advice or how to respond to questions.

A breach or breaches of a code of practice may lead to evidence obtained after or in consequence of the breach being excluded by the trial judge.



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drug trafficking and suspected of having swallowed drugs. In the case of the healthcare needs of a person who has swallowed drugs, the custody officer subject to any clinical directions, should consider the necessity for rousing every half hour. This does not negate the need for regular visiting of the suspect in the cell.

- 9D Whenever practicable, arrangements should be made for persons detained for assessment under the Mental Health Act 1983, section 136 to be taken to a hospital. Chapter 10 of the Mental Health Act 1983 Code of Practice (as revised) provides more detailed guidance about arranging assessments under section 136 and transferring detainees from police stations to other places of safety.
- 9E It is important to respect a person's right to privacy and information about their health must be kept confidential and only disclosed with their consent or in accordance with clinical advice when it is necessary to protect the detainee's health or that of others who come into contact with them.
- 9F The custody officer should always seek to clarify directions that the detainee requires constant observation or supervision and should ask the appropriate healthcare professional to explain precisely what action needs to be taken to implement such directions.
- 9G Paragraphs 9.15 and 9.16 do not require any information about the cause of any injury, ailment or condition to be recorded on the custody record if it appears capable of providing evidence of an offence.
- 9H The purpose of recording a person's responses when attempting to rouse them using the procedure in Annex H is to enable any change in the individual's consciousness level to be noted and clinical treatment arranged if appropriate.

**10 Cautions**

*(a) When a caution must be given*

- 10.1 A person whom there are grounds to suspect of an offence, see *Note 10A*, must be cautioned before any questions about an offence, or further questions if the answers provide the grounds for suspicion, are put to them if either the suspect's answers or silence, (i.e. failure or refusal to answer or answer satisfactorily) may be given in evidence to a court in a prosecution. A person need not be cautioned if questions are for other necessary purposes, e.g.:
- (a) solely to establish their identity or ownership of any vehicle;
  - (b) to obtain information in accordance with any relevant statutory requirement, see *paragraph 10.9*;
  - (c) in furtherance of the proper and effective conduct of a search, e.g. to determine the need to search in the exercise of powers of stop and search or to seek co-operation while carrying out a search;
  - (d) to seek verification of a written record as in *paragraph 11.13*.
  - (e) *Not used*
- 10.2 Whenever a person not under arrest is initially cautioned, or reminded they are under caution, that person must at the same time be told they are not under arrest and informed of the provisions of paragraph 3.21 which explain how they may obtain legal advice according to whether they are at a police station or elsewhere. See *Note 10C*.
- 10.3 A person who is arrested, or further arrested, must be informed at the time if practicable, or if not, as soon as it becomes practicable thereafter, that they are under arrest and of the grounds and reasons for their arrest, see *paragraph 3.4*, *Note 10B* and *Code G, paragraphs 2.2 and 4.3*.
- 10.4 As required by *Code G, section 3*, a person who is arrested, or further arrested, must also be cautioned unless:





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- (a) it is impracticable to do so by reason of their condition or behaviour at the time;
- (b) they have already been cautioned immediately prior to arrest as in *paragraph 10.1*.

*(b) Terms of the cautions*

10.5 The caution which must be given on:

- (a) arrest;
- (b) all other occasions before a person is charged or informed they may be prosecuted; see *section 16*,

should, unless the restriction on drawing adverse inferences from silence applies, see *Annex C*, be in the following terms:

"You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence."

Where the use of the Welsh Language is appropriate, a constable may provide the caution directly in Welsh in the following terms:

*"Does dim rhaid i chi ddweud dim byd. Ond gall niweidio eich amddiffyniad os na fyddwch chi'n sôn, wrth gael eich holi, am rywbeth y byddwch chi'n dibynnu arno nes ymlaen yn y Llys. Gall unrhyw beth yr ydych yn ei ddweud gael ei roi fel tystiolaeth."*

See *Note 10G*

- 10.6 *Annex C, paragraph 2* sets out the alternative terms of the caution to be used when the restriction on drawing adverse inferences from silence applies.
- 10.7 Minor deviations from the words of any caution given in accordance with this Code do not constitute a breach of this Code, provided the sense of the relevant caution is preserved. See *Note 10D*.
- 10.8 After any break in questioning under caution, the person being questioned must be made aware they remain under caution. If there is any doubt the relevant caution should be given again in full when the interview resumes. See *Note 10E*.
- 10.9 When, despite being cautioned, a person fails to co-operate or to answer particular questions which may affect their immediate treatment, the person should be informed of any relevant consequences and that those consequences are not affected by the caution. Examples are when a person's refusal to provide:
  - their name and address when charged may make them liable to detention;
  - particulars and information in accordance with a statutory requirement, e.g. under the Road Traffic Act 1988, may amount to an offence or may make the person liable to a further arrest.

*(c) Special warnings under the Criminal Justice and Public Order Act 1994, sections 36 and 37*

- 10.10 When a suspect interviewed at a police station or authorised place of detention after arrest fails or refuses to answer certain questions, or to answer satisfactorily, after due warning, see *Note 10F*, a court or jury may draw such inferences as appear proper under the Criminal Justice and Public Order Act 1994, sections 36 and 37. Such inferences may only be drawn when:
  - (a) the restriction on drawing adverse inferences from silence, see *Annex C*, does not apply; and
  - (b) the suspect is arrested by a constable and fails or refuses to account for any objects, marks or substances, or marks on such objects found:



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- on their person;
  - in or on their clothing or footwear;
  - otherwise in their possession; or
  - in the place they were arrested;
- (c) the arrested suspect was found by a constable at a place at or about the time the offence for which that officer has arrested them is alleged to have been committed, and the suspect fails or refuses to account for their presence there.

When the restriction on drawing adverse inferences from silence applies, the suspect may still be asked to account for any of the matters in (b) or (c) but the special warning described in paragraph 10.11 will not apply and must not be given.

- 10.11 For an inference to be drawn when a suspect fails or refuses to answer a question about one of these matters or to answer it satisfactorily, the suspect must first be told in ordinary language:

- (a) what offence is being investigated;
- (b) what fact they are being asked to account for;
- (c) this fact may be due to them taking part in the commission of the offence;
- (d) a court may draw a proper inference if they fail or refuse to account for this fact;
- (e) a record is being made of the interview and it may be given in evidence if they are brought to trial.

(d) *Juveniles and persons who are mentally disordered or otherwise mentally vulnerable*

- 10.11A The information required in paragraph 10.11 must not be given to a suspect who is a juvenile or who is mentally disordered or otherwise mentally vulnerable unless the appropriate adult is present.

- 10.12 If a juvenile or a person who is mentally disordered or otherwise mentally vulnerable is cautioned in the absence of the appropriate adult, the caution must be repeated in the adult's presence.

(e) *Documentation*

- 10.13 A record shall be made when a caution is given under this section, either in the interviewer's pocket book or in the interview record.

*Notes for Guidance*

- 10A *There must be some reasonable, objective grounds for the suspicion, based on known facts or information which are relevant to the likelihood the offence has been committed and the person to be questioned committed it.*
- 10B *An arrested person must be given sufficient information to enable them to understand that they have been deprived of their liberty and the reason they have been arrested, e.g. when a person is arrested on suspicion of committing an offence they must be informed of the suspected offence's nature, when and where it was committed. The suspect must also be informed of the reason or reasons why the arrest is considered necessary. Vague or technical language should be avoided.*
- 10C *The restriction on drawing inferences from silence, see Annex C, paragraph 1, does not apply to a person who has not been detained and who therefore cannot be prevented from seeking legal advice if they want, see paragraph 3.21.*
- 10D *If it appears a person does not understand the caution, the person giving it should explain it in their own words.*





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- 10E It may be necessary to show to the court that nothing occurred during an interview break or between interviews which influenced the suspect's recorded evidence. After a break in an interview or at the beginning of a subsequent interview, the interviewing officer should summarise the reason for the break and confirm this with the suspect.
- 10F The Criminal Justice and Public Order Act 1994, sections 36 and 37 apply only to suspects who have been arrested by a constable or an officer of Revenue and Customs and are given the relevant warning by the police or Revenue and Customs officer who made the arrest or who is investigating the offence. They do not apply to any interviews with suspects who have not been arrested.
- 10G Nothing in this Code requires a caution to be given or repeated when informing a person not under arrest they may be prosecuted for an offence. However, a court will not be able to draw any inferences under the Criminal Justice and Public Order Act 1994, section 34, if the person was not cautioned.

11 Interviews - general

(a) Action

- 11.1A An interview is the questioning of a person regarding their involvement or suspected involvement in a criminal offence or offences which, under *paragraph 10.1*, must be carried out under caution. Whenever a person is interviewed they must be informed of the nature of the offence, or further offence. Procedures under the Road Traffic Act 1988, section 7 or the Transport and Works Act 1992, section 31 do not constitute interviewing for the purpose of this Code.
- 11.1 Following a decision to arrest a suspect, they must not be interviewed about the relevant offence except at a police station or other authorised place of detention, unless the consequent delay would be likely to:
- (a) lead to:
    - interference with, or harm to, evidence connected with an offence;
    - interference with, or physical harm to, other people; or
    - serious loss of, or damage to, property;
  - (b) lead to alerting other people suspected of committing an offence but not yet arrested for it; or
  - (c) hinder the recovery of property obtained in consequence of the commission of an offence.

Interviewing in any of these circumstances shall cease once the relevant risk has been averted or the necessary questions have been put in order to attempt to avert that risk.

- 11.2 Immediately prior to the commencement or re-commencement of any interview at a police station or other authorised place of detention, the interviewer should remind the suspect of their entitlement to free legal advice and that the interview can be delayed for legal advice to be obtained, unless one of the exceptions in *paragraph 6.6* applies. It is the interviewer's responsibility to make sure all reminders are recorded in the interview record.
- 11.3 Not used
- 11.4 At the beginning of an interview the interviewer, after cautioning the suspect, see *section 10*, shall put to them any significant statement or silence which occurred in the presence and hearing of a police officer or other police staff before the start of the interview and which have not been put to the suspect in the course of a previous interview. See *Note 11A*. The interviewer shall ask the suspect whether they confirm or deny that earlier statement or silence and if they want to add anything.



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- 11.4A A significant statement is one which appears capable of being used in evidence against the suspect, in particular a direct admission of guilt. A significant silence is a failure or refusal to answer a question or answer satisfactorily when under caution, which might, allowing for the restriction on drawing adverse inferences from silence, see *Annex C*, give rise to an inference under the Criminal Justice and Public Order Act 1994, Part III.
- 11.5 No interviewer may try to obtain answers or elicit a statement by the use of oppression. Except as in *paragraph 10.9*, no interviewer shall indicate, except to answer a direct question, what action will be taken by the police if the person being questioned answers questions, makes a statement or refuses to do either. If the person asks directly what action will be taken if they answer questions, make a statement or refuse to do either, the interviewer may inform them what action the police propose to take provided that action is itself proper and warranted.
- 11.6 The interview or further interview of a person about an offence with which that person has not been charged or for which they have not been informed they may be prosecuted, must cease when:
- (a) the officer in charge of the investigation is satisfied all the questions they consider relevant to obtaining accurate and reliable information about the offence have been put to the suspect, this includes allowing the suspect an opportunity to give an innocent explanation and asking questions to test if the explanation is accurate and reliable, e.g. to clear up ambiguities or clarify what the suspect said;
  - (b) the officer in charge of the investigation has taken account of any other available evidence; and
  - (c) the officer in charge of the investigation, or in the case of a detained suspect, the custody officer, see *paragraph 16.1*, reasonably believes there is sufficient evidence to provide a realistic prospect of conviction for that offence. See *Note 11B*.
- This paragraph does not prevent officers in revenue cases or acting under the confiscation provisions of the Criminal Justice Act 1988 or the Drug Trafficking Act 1994 from inviting suspects to complete a formal question and answer record after the interview is concluded.
- (b) Interview records**
- 11.7 (a) An accurate record must be made of each interview, whether or not the interview takes place at a police station.
- (b) The record must state the place of interview, the time it begins and ends, any interview breaks and, subject to *paragraph 2.6A*, the names of all those present; and must be made on the forms provided for this purpose or in the interviewer's pocket book or in accordance with the Codes of Practice E or F.
- (c) Any written record must be made and completed during the interview, unless this would not be practicable or would interfere with the conduct of the interview, and must constitute either a verbatim record of what has been said or, failing this, an account of the interview which adequately and accurately summarises it.
- 11.8 If a written record is not made during the interview it must be made as soon as practicable after its completion.
- 11.9 Written interview records must be timed and signed by the maker.
- 11.10 If a written record is not completed during the interview the reason must be recorded in the interview record.
- 11.11 Unless it is impracticable, the person interviewed shall be given the opportunity to read the interview record and to sign it as correct or to indicate how they consider it inaccurate. If the person interviewed cannot read or refuses to read the record or sign it, the senior interviewer present shall read it to them and ask whether they would like to sign it as correct or make their mark or to indicate how they consider it inaccurate. The interviewer shall certify on the interview record itself what has occurred. See *Note 11E*.



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- 11.12 If the appropriate adult or the person's solicitor is present during the interview, they should also be given an opportunity to read and sign the interview record or any written statement taken down during the interview.
- 11.13 A written record shall be made of any comments made by a suspect, including unsolicited comments, which are outside the context of an interview but which might be relevant to the offence. Any such record must be timed and signed by the maker. When practicable the suspect shall be given the opportunity to read that record and to sign it as correct or to indicate how they consider it inaccurate. See *Note 11E*.
- 11.14 Any refusal by a person to sign an interview record when asked in accordance with this Code must itself be recorded.
- (c) Juveniles and mentally disordered or otherwise mentally vulnerable people*
- 11.15 A juvenile or person who is mentally disordered or otherwise mentally vulnerable must not be interviewed regarding their involvement or suspected involvement in a criminal offence or offences, or asked to provide or sign a written statement under caution or record of interview, in the absence of the appropriate adult unless *paragraphs 11.1, 11.18 to 11.20* apply. See *Note 11C*.
- 11.16 Juveniles may only be interviewed at their place of education in exceptional circumstances and only when the principal or their nominee agrees. Every effort should be made to notify the parent(s) or other person responsible for the juvenile's welfare and the appropriate adult, if this is a different person, that the police want to interview the juvenile and reasonable time should be allowed to enable the appropriate adult to be present at the interview. If awaiting the appropriate adult would cause unreasonable delay, and unless the juvenile is suspected of an offence against the educational establishment, the principal or their nominee can act as the appropriate adult for the purposes of the interview.
- 11.17 If an appropriate adult is present at an interview, they shall be informed:
- they are not expected to act simply as an observer; and
  - the purpose of their presence is to:
    - ~ advise the person being interviewed;
    - ~ observe whether the interview is being conducted properly and fairly;
    - ~ facilitate communication with the person being interviewed.
- (d) Vulnerable suspects - urgent interviews at police stations*
- 11.18 The following persons may not be interviewed unless an officer of superintendent rank or above considers delay will lead to the consequences in *paragraph 11.1(a) to (c)*, and is satisfied the interview would not significantly harm the person's physical or mental state (see Annex G):
- (a) a juvenile or person who is mentally disordered or otherwise mentally vulnerable if at the time of the interview the appropriate adult is not present;
  - (b) anyone other than in (a) who at the time of the interview appears unable to:
    - appreciate the significance of questions and their answers; or
    - understand what is happening because of the effects of drink, drugs or any illness, ailment or condition;
  - (c) a person who has difficulty understanding English or has a hearing disability, if at the time of the interview an interpreter is not present.
- 11.19 These interviews may not continue once sufficient information has been obtained to avert the consequences in *paragraph 11.1(a) to (c)*.





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- 11.20 A record shall be made of the grounds for any decision to interview a person under paragraph 11.18

*Notes for Guidance*

- 11A Paragraph 11.4 does not prevent the interviewer from putting significant statements and silences to a suspect again at a later stage or a further interview.
- 11B The Criminal Procedure and Investigations Act 1996 Code of Practice, paragraph 3.5 states 'In conducting an investigation, the investigator should pursue all reasonable lines of enquiry, whether these point towards or away from the suspect. What is reasonable will depend on the particular circumstances.' Interviewers should keep this in mind when deciding what questions to ask in an interview.
- 11C Although juveniles or people who are mentally disordered or otherwise mentally vulnerable are often capable of providing reliable evidence, they may, without knowing or wishing to do so, be particularly prone in certain circumstances to provide information that may be unreliable, misleading or self-incriminating. Special care should always be taken when questioning such a person, and the appropriate adult should be involved if there is any doubt about a person's age, mental state or capacity. Because of the risk of unreliable evidence it is also important to obtain corroboration of any facts admitted whenever possible.
- 11D Juveniles should not be arrested at their place of education unless this is unavoidable. When a juvenile is arrested at their place of education, the principal or their nominee must be informed.
- 11E Significant statements described in paragraph 11.4 will always be relevant to the offence and must be recorded. When a suspect agrees to read records of interviews and other comments and sign them as correct, they should be asked to endorse the record with, e.g. 'I agree that this is a correct record of what was said' and add their signature. If the suspect does not agree with the record, the interviewer should record the details of any disagreement and ask the suspect to read these details and sign them to the effect that they accurately reflect their disagreement. Any refusal to sign should be recorded.

12 Interviews in police stations

*(a) Action*

- 12.1 If a police officer wants to interview or conduct enquiries which require the presence of a detainee, the custody officer is responsible for deciding whether to deliver the detainee into the officer's custody. An investigating officer who is given custody of a detainee takes over responsibility for the detainee's care and safe custody for the purposes of this Code until they return the detainee to the custody officer when they must report the manner in which they complied with the Code whilst having custody of the detainee.
- 12.2 Except as below, in any period of 24 hours a detainee must be allowed a continuous period of at least 8 hours for rest, free from questioning, travel or any interruption in connection with the investigation concerned. This period should normally be at night or other appropriate time which takes account of when the detainee last slept or rested. If a detainee is arrested at a police station after going there voluntarily, the period of 24 hours runs from the time of their arrest and not the time of arrival at the police station. The period may not be interrupted or delayed, except:
- (a) when there are reasonable grounds for believing not delaying or interrupting the period would:
- (i) involve a risk of harm to people or serious loss of, or damage to, property;
  - (ii) delay unnecessarily the person's release from custody;
  - (iii) otherwise prejudice the outcome of the investigation;
- (b) at the request of the detainee, their appropriate adult or legal representative;





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- (c) when a delay or interruption is necessary in order to:
- (i) comply with the legal obligations and duties arising under *section 15*;
  - (ii) to take action required under *section 9* or in accordance with medical advice.

If the period is interrupted in accordance with (a), a fresh period must be allowed. Interruptions under (b) and (c), do not require a fresh period to be allowed.

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- 12.3 Before a detainee is interviewed the custody officer, in consultation with the officer in charge of the investigation and appropriate healthcare professionals as necessary, shall assess whether the detainee is fit enough to be interviewed. This means determining and considering the risks to the detainee's physical and mental state if the interview took place and determining what safeguards are needed to allow the interview to take place. See *Annex G*. The custody officer shall not allow a detainee to be interviewed if the custody officer considers it would cause significant harm to the detainee's physical or mental state. Vulnerable suspects listed at *paragraph 11.18* shall be treated as always being at some risk during an interview and these persons may not be interviewed except in accordance with *paragraphs 11.18 to 11.20*.
- 12.4 As far as practicable interviews shall take place in interview rooms which are adequately heated, lit and ventilated.
- 12.5 A suspect whose detention without charge has been authorised under PACE, because the detention is necessary for an interview to obtain evidence of the offence for which they have been arrested, may choose not to answer questions but police do not require the suspect's consent or agreement to interview them for this purpose. If a suspect takes steps to prevent themselves being questioned or further questioned, e.g. by refusing to leave their cell to go to a suitable interview room or by trying to leave the interview room, they shall be advised their consent or agreement to interview is not required. The suspect shall be cautioned as in *section 10*, and informed if they fail or refuse to co-operate, the interview may take place in the cell and that their failure or refusal to co-operate may be given in evidence. The suspect shall then be invited to co-operate and go into the interview room.
- 12.6 People being questioned or making statements shall not be required to stand.
- 12.7 Before the interview commences each interviewer shall, subject to *paragraph 2.6A*, identify themselves and any other persons present to the interviewee.
- 12.8 Breaks from interviewing should be made at recognised meal times or at other times that take account of when an interviewee last had a meal. Short refreshment breaks shall be provided at approximately two hour intervals, subject to the interviewer's discretion to delay a break if there are reasonable grounds for believing it would:
- (i) involve a:
    - risk of harm to people;
    - serious loss of, or damage to, property;
  - (ii) unnecessarily delay the detainee's release;
  - (iii) otherwise prejudice the outcome of the investigation.
- See *Note 12B*
- 12.9 If during the interview a complaint is made by or on behalf of the interviewee concerning the provisions of any of the Codes, or it comes to the interviewer's notice that the interviewee may have been treated improperly, the interviewer should:
- (i) record the matter in the interview record;
  - (ii) inform the custody officer, who is then responsible for dealing with it as in *section 9*.



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**(b) Documentation**

12.10 A record must be made of the:

- time a detainee is not in the custody of the custody officer, and why
- reason for any refusal to deliver the detainee out of that custody.

12.11 A record shall be made of:

- (a) the reasons it was not practicable to use an interview room; and
- (b) any action taken as in *paragraph 12.5*.

The record shall be made on the custody record or in the interview record for action taken whilst an interview record is being kept, with a brief reference to this effect in the custody record.

12.12 Any decision to delay a break in an interview must be recorded, with reasons, in the interview record.

12.13 All written statements made at police stations under caution shall be written on forms provided for the purpose.

12.14 All written statements made under caution shall be taken in accordance with *Annex D*. Before a person makes a written statement under caution at a police station they shall be reminded about the right to legal advice. See *Note 12A*.

**Notes for Guidance**

12A *It is not normally necessary to ask for a written statement if the interview was recorded in writing and the record signed in accordance with paragraph 11.11 or audibly or visually recorded in accordance with Code E or F. Statements under caution should normally be taken in these circumstances only at the person's express wish. A person may however be asked if they want to make such a statement.*

12B *Meal breaks should normally last at least 45 minutes and shorter breaks after two hours should last at least 15 minutes. If the interviewer delays a break in accordance with paragraph 12.8 and prolongs the interview, a longer break should be provided. If there is a short interview, and another short interview is contemplated, the length of the break may be reduced if there are reasonable grounds to believe this is necessary to avoid any of the consequences in paragraph 12.8(i) to (iii).*

**13 Interpreters**

**(a) General**

13.1 Chief officers are responsible for making sure appropriate arrangements are in place for provision of suitably qualified interpreters for people who:

- are deaf;
- do not understand English.

See *Note 13A*

**(b) Foreign languages**

13.2 Unless *paragraphs 11.1, 11.18 to 11.20* apply, a person must not be interviewed in the absence of a person capable of interpreting if:

- (a) they have difficulty understanding English;
- (b) the interviewer cannot speak the person's own language;
- (c) the person wants an interpreter present.





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- 13.3 The interviewer shall make sure the interpreter makes a note of the interview at the time in the person's language for use in the event of the interpreter being called to give evidence, and certifies its accuracy. The interviewer should allow sufficient time for the interpreter to note each question and answer after each is put, given and interpreted. The person should be allowed to read the record or have it read to them and sign it as correct or indicate the respects in which they consider it inaccurate. If the interview is audibly recorded or visually recorded, the arrangements in Code E or F apply.
- 13.4 In the case of a person making a statement to a police officer or other police staff other than in English:
- (a) the interpreter shall record the statement in the language it is made;
  - (b) the person shall be invited to sign it;
  - (c) an official English translation shall be made in due course.
- (c) Deaf people and people with speech difficulties*
- 13.5 If a person appears to be deaf or there is doubt about their hearing or speaking ability, they must not be interviewed in the absence of an interpreter unless they agree in writing to being interviewed without one or *paragraphs 11.1, 11.18 to 11.20* apply.
- 13.6 An interpreter should also be called if a juvenile is interviewed and the parent or guardian present as the appropriate adult appears to be deaf or there is doubt about their hearing or speaking ability, unless they agree in writing to the interview proceeding without one or *paragraphs 11.1, 11.18 to 11.20* apply.
- 13.7 The interviewer shall make sure the interpreter is allowed to read the interview record and certify its accuracy in the event of the interpreter being called to give evidence. If the interview is audibly recorded or visually recorded, the arrangements in Code E or F apply.
- (d) Additional rules for detained persons*
- 13.8 All reasonable attempts should be made to make the detainee understand that interpreters will be provided at public expense.
- 13.9 If *paragraph 6.1* applies and the detainee cannot communicate with the solicitor because of language, hearing or speech difficulties, an interpreter must be called. The interpreter may not be a police officer or any other police staff when interpretation is needed for the purposes of obtaining legal advice. In all other cases a police officer or other police staff may only interpret if the detainee and the appropriate adult, if applicable, give their agreement in writing or if the interview is audibly recorded or visually recorded as in Code E or F.
- 13.10 When the custody officer cannot establish effective communication with a person charged with an offence who appears deaf or there is doubt about their ability to hear, speak or to understand English, arrangements must be made as soon as practicable for an interpreter to explain the offence and any other information given by the custody officer.
- (e) Documentation*
- 13.11 Action taken to call an interpreter under this section and any agreement to be interviewed in the absence of an interpreter must be recorded.

*Note for Guidance*

- 13A *Whenever possible, interpreters should be provided in accordance with national arrangements approved or prescribed by the Secretary of State.*



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*Codes of Practice – Code C Detention, treatment and questioning of persons by police officers*

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**14 Questioning - special restrictions**

- 14.1 If a person is arrested by one police force on behalf of another and the lawful period of detention in respect of that offence has not yet commenced in accordance with PACE, section 41 no questions may be put to them about the offence while they are in transit between the forces except to clarify any voluntary statement they make.
- 14.2 If a person is in police detention at a hospital they may not be questioned without the agreement of a responsible doctor. See *Note 14A*.

*Note for Guidance*

- 14A If questioning takes place at a hospital under paragraph 14.2, or on the way to or from a hospital, the period of questioning concerned counts towards the total period of detention permitted.



**15 Reviews and extensions of detention**

*(a) Persons detained under PACE*

- 15.1 The review officer is responsible under PACE, section 40 for periodically determining if a person's detention, before or after charge, continues to be necessary. This requirement continues throughout the detention period and except as in *paragraph 15.10*, the review officer must be present at the police station holding the detainee. See *Notes 15A and 15B*.
- 15.2 Under PACE, section 42, an officer of superintendent rank or above who is responsible for the station holding the detainee may give authority any time after the second review to extend the maximum period the person may be detained without charge by up to 12 hours. Further detention without charge may be authorised only by a magistrates' court in accordance with PACE, sections 43 and 44. See *Notes 15C, 15D and 15E*.
- 15.2A An authorisation under section 42(1) of PACE extends the maximum period of detention permitted before charge for indictable offences from 24 hours to 36 hours. Detaining a juvenile or mentally vulnerable person for longer than 24 hours will be dependent on the circumstances of the case and with regard to the person's:
- (a) special vulnerability;
  - (b) the legal obligation to provide an opportunity for representations to be made prior to a decision about extending detention;
  - (c) the need to consult and consider the views of any appropriate adult; and
  - (d) any alternatives to police custody.
- 15.3 Before deciding whether to authorise continued detention the officer responsible under *paragraph 15.1* or *15.2* shall give an opportunity to make representations about the detention to:
- (a) the detainee, unless in the case of a review as in *paragraph 15.1*, the detainee is asleep;
  - (b) the detainee's solicitor if available at the time; and
  - (c) the appropriate adult if available at the time.
- See *Note 15CA*
- 15.3A Other people having an interest in the detainee's welfare may also make representations at the authorising officer's discretion.
- 15.3B Subject to *paragraph 15.10*, the representations may be made orally in person or by telephone or in writing. The authorising officer may, however, refuse to hear oral representations from the detainee if the officer considers them unfit to make representations because of their condition or behaviour. See *Note 15C*.







*Codes of Practice – Code C Detention, treatment and questioning of persons by police officers*

- 15.3C The decision on whether the review takes place in person or by telephone or by video conferencing (see *Note 15G*) is a matter for the review officer. In determining the form the review may take, the review officer must always take full account of the needs of the person in custody. The benefits of carrying out a review in person should always be considered, based on the individual circumstances of each case with specific additional consideration if the person is:
- (a) a juvenile (and the age of the juvenile); or
  - (b) suspected of being mentally vulnerable; or
  - (c) in need of medical attention for other than routine minor ailments; or
  - (d) subject to presentational or community issues around their detention.
- 15.4 Before conducting a review or determining whether to extend the maximum period of detention without charge, the officer responsible must make sure the detainee is reminded of their entitlement to free legal advice, see *paragraph 6.5*, unless in the case of a review the person is asleep.
- 15.5 If, after considering any representations, the review officer under *paragraph 15.1* decides to keep the detainee in detention or the superintendent under *paragraph 15.2* extends the maximum period for which they may be detained without charge, then any comment made by the detainee shall be recorded. If applicable, the officer shall be informed of the comment as soon as practicable. See also *paragraphs 11.4 and 11.13*.
- 15.6 No officer shall put specific questions to the detainee:
- regarding their involvement in any offence; or
  - in respect of any comments they may make:
    - ~ when given the opportunity to make representations; or
    - ~ in response to a decision to keep them in detention or extend the maximum period of detention.
- Such an exchange could constitute an interview as in *paragraph 11.1A* and would be subject to the associated safeguards in *section 11* and, in respect of a person who has been charged, *paragraph 16.5*. See also *paragraph 11.13*.
- 15.7 A detainee who is asleep at a review, see *paragraph 15.1*, and whose continued detention is authorised must be informed about the decision and reason as soon as practicable after waking.
- 15.8 *Not used*
- (b) Review of detention by telephone and video conferencing facilities*
- 15.9 PACE, section 40A provides that the officer responsible under section 40 for reviewing the detention of a person who has not been charged, need not attend the police station holding the detainee and may carry out the review by telephone.
- 15.9A PACE, section 45A(2) provides that the officer responsible under section 40 for reviewing the detention of a person who has not been charged, need not attend the police station holding the detainee and may carry out the review by video conferencing facilities. See *Note 15G*.
- 15.9B A telephone review is not permitted where facilities for review by video conferencing exist and it is practicable to use them.
- 15.9C The review officer can decide at any stage that a telephone review or review by video conferencing should be terminated and that the review will be conducted in person. The reasons for doing so should be noted in the custody record.



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*Codes of Practice – Code C Detention, treatment and questioning of persons by police officers*

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See Note 15F

- 15.10 When a review is carried out by telephone or by video conferencing facilities, an officer at the station holding the detainee shall be required by the review officer to fulfil that officer's obligations under PACE section 40 and this Code by:
- (a) making any record connected with the review in the detainee's custody record;
  - (b) if applicable, making the record in (a) in the presence of the detainee; and
  - (c) for a review by telephone, giving the detainee information about the review.
- 15.11 When a review is carried out by telephone or by video conferencing facilities, the requirement in *paragraph 15.3* will be satisfied:
- (a) if facilities exist for the immediate transmission of written representations to the review officer, e.g. fax or email message, by allowing those who are given the opportunity to make representations, to make their representations:
    - (i) orally by telephone or (as the case may be) by means of the video conferencing facilities; or
    - (ii) in writing using the facilities for the immediate transmission of written representations; and
  - (b) in all other cases, by allowing those who are given the opportunity to make representations, to make their representations orally by telephone or by means of the video conferencing facilities.
- (c) *Documentation*
- 15.12 It is the officer's responsibility to make sure all reminders given under *paragraph 15.4* are noted in the custody record.
- 15.13 The grounds for, and extent of, any delay in conducting a review shall be recorded.
- 15.14 When a review is carried out by telephone or video conferencing facilities, a record shall be made of:
- (a) the reason the review officer did not attend the station holding the detainee;
  - (b) the place the review officer was;
  - (c) the method representations, oral or written, were made to the review officer, see *paragraph 15.11*.
- 15.15 Any written representations shall be retained.
- 15.16 A record shall be made as soon as practicable of:
- (a) the outcome of each review of detention before or after charge, and if *paragraph 15.7* applies, of when the person was informed and by whom;
  - (b) the outcome of any determination under PACE, section 42 by a superintendent whether to extend the maximum period of detention without charge beyond 24 hours from the relevant time. If an authorisation is given, the record shall state the number of hours and minutes by which the detention period is extended or further extended.
  - (c) the outcome of each application under PACE, section 43, for a warrant of further detention or under section 44, for an extension or further extension of that warrant. If a warrant for further detention is granted under section 43 or extended or further extended under 44, the record shall state the detention period authorised by the warrant and the date and time it was granted or (as the case may be) the period by which the warrant is extended or further extended.

Note: Any period during which a person is released on bail does not count towards the maximum period of detention without charge allowed under PACE, sections 41 to 44.



## Notes for Guidance

## 15A Review officer for the purposes of:

- PACE, sections 40, 40A and 45A means, in the case of a person arrested but not charged, an officer of at least inspector rank not directly involved in the investigation and, if a person has been arrested and charged, the custody officer.

**C** 15B The detention of persons in police custody not subject to the statutory review requirement in paragraph 15.1 should still be reviewed periodically as a matter of good practice. Such reviews can be carried out by an officer of the rank of sergeant or above. The purpose of such reviews is to check the particular power under which a detainee is held continues to apply, any associated conditions are complied with and to make sure appropriate action is taken to deal with any changes. This includes the detainee's prompt release when the power no longer applies, or their transfer if the power requires the detainee be taken elsewhere as soon as the necessary arrangements are made. Examples include persons:

- (a) arrested on warrant because they failed to answer bail to appear at court;
- (b) arrested under the Bail Act 1976, section 7(3) for breaching a condition of bail granted after charge;
- (c) in police custody for specific purposes and periods under the Crime (Sentences) Act 1997, Schedule 1;
- (d) convicted, or remand prisoners, held in police stations on behalf of the Prison Service under the Imprisonment (Temporary Provisions) Act 1980, section 6;
- (e) being detained to prevent them causing a breach of the peace;
- (f) detained at police stations on behalf of the Immigration Service;
- (g) detained by order of a magistrates' court under the Criminal Justice Act 1988, section 152 (as amended by the Drugs Act 2005, section 8) to facilitate the recovery of evidence after being charged with drug possession or drug trafficking and suspected of having swallowed drugs.

The detention of persons remanded into police detention by order of a court under the Magistrates' Courts Act 1980, section 128 is subject to a statutory requirement to review that detention. This is to make sure the detainee is taken back to court no later than the end of the period authorised by the court or when the need for their detention by police ceases, whichever is the sooner.

15C In the case of a review of detention, but not an extension, the detainee need not be woken for the review. However, if the detainee is likely to be asleep, e.g. during a period of rest allowed as in paragraph 12.2, at the latest time a review or authorisation to extend detention may take place, the officer should, if the legal obligations and time constraints permit, bring forward the procedure to allow the detainee to make representations. A detainee not asleep during the review must be present when the grounds for their continued detention are recorded and must at the same time be informed of those grounds unless the review officer considers the person is incapable of understanding what is said, violent or likely to become violent or in urgent need of medical attention.

15CA In paragraph 15.3(b) and (c), 'available' includes being contactable in time to enable them to make representations remotely by telephone or other electronic means or in person by attending the station. Reasonable efforts should therefore be made to give the solicitor and appropriate adult sufficient notice of the time the decision is expected to be made so that they can make themselves available.

15D An application to a Magistrates' Court under PACE, sections 43 or 44 for a warrant of further detention or its extension should be made between 10am and 9pm, and if possible during normal court hours. It will not usually be practicable to arrange for a court to sit specially outside the hours of 10am to 9pm. If it appears a special sitting may be needed outside normal court hours but between 10am and 9pm, the clerk to the justices should be given notice and informed of this possibility, while the court is sitting if possible.

15E In paragraph 15.2, the officer responsible for the station holding the detainee includes a superintendent or above who, in accordance with their force operational policy or police



*Codes of Practice – Code C Detention, treatment and questioning of persons by police officers*

*regulations, is given that responsibility on a temporary basis whilst the appointed long-term holder is off duty or otherwise unavailable.*

- 15F *The provisions of PACE, section 40A allowing telephone reviews do not apply to reviews of detention after charge by the custody officer. When video conferencing is not required, they allow the use of a telephone to carry out a review of detention before charge. The procedure under PACE, section 42 must be done in person.*
- 15G *Video conferencing facilities means any facilities (whether a live television link or other facilities) by means of which the review can be carried out with the review officer, the detainee concerned and the detainee's solicitor all being able to both see and to hear each other. The use of video conferencing facilities for decisions about detention under section 45A of PACE is subject to regulations made by the Secretary of State being in force.*

**C**





## FOR EDUCATIONAL USE ONLY

## R. v Sparks

Court of Appeal (Criminal Division)

30 July 1990

## Case Analysis

## Where Reported

[1991] Crim. L.R. 128; Guardian, September 13, 1990

## Case Digest

**Subject:** Criminal evidence**Keywords:** Admissibility; Admissions; PACE codes of practice; Police interviews**Summary:** Admissibility; interview; informal conversation with police officer; no caution; whether an interview to which code of practice applied; whether breach of code**Abstract:** Following allegations by V, social workers interviewed S, who admitted "interfering with" V (his step-daughter) since she was six and having sexual intercourse with her since she was 11. Two police officers, one of whom (X) was an acquaintance of S, then arrived. X was unsure whether V wished to make a complaint. He said he was there to sit with S and discover what was happening. During a friendly, informal conversation S made further admissions. X was not the investigating officer and neither cautioned S nor made notes of the conversation.

Held, dismissing S's appeal against conviction on the basis that the other evidence against S was clear, that the conversation with X should have been excluded as unfair under the Police and Criminal Evidence Act 1984 s.78. The conversation was an "interview" to which the Code of Practice applied. There were breaches of the Code's requirements for a caution and the keeping of a proper record. The evidence was not, however, unreliable within s.76 ( R. v Matthews (Sarah) (1990) 91 Cr. App. R. 43, R. v. Absolam [1989] C.L.Y. 549, R. v Maguire (Jason) (1990) 90 Cr. App. R. 115 distinguished; R. v. Keenan [1989] C.L.Y. 735, R. v Canale (Ramon Michael) [1990] 2 All E.R. 187 considered).

## Significant Cases Cited

**R. v Canale (Ramon Michael)**

[1990] 2 All E.R. 187; (1990) 91 Cr. App. R. 1; (1990) 154 J.P. 286; [1990] Crim. L.R. 329; (1990) 154 J.P.N. 45; CA (Crim Div)

**R. v Matthews (Sarah)**

(1990) 91 Cr. App. R. 43; (1990) 154 J.P. 177; [1990] Crim. L.R. 190; (1989) 153 J.P.N. 835; CA (Crim Div)

**R. v Maguire (Jason)**

(1990) 90 Cr. App. R. 115; [1989] Crim. L.R. 815; Times, August 23, 1989; CA (Crim Div)



**R. v Keenan (Graham)**

[1990] 2 Q.B. 54; [1989] 3 W.L.R. 1193; [1989] 3 All E.R. 598; (1990) 90 Cr. App. R. 1; (1990) 154 J.P. 67; [1989] Crim. L.R. 720; (1989) 153 J.P.N. 802; (1990) 87(1) L.S.G. 30; (1990) 134 S.J. 114; Times, May 1, 1989; Independent, May 15, 1989; Daily Telegraph, May 5, 1989; CA (Crim Div)

**R. v Absolam (Calvin Lloyd)**

(1989) 88 Cr. App. R. 332; [1988] Crim. L.R. 748; Times, July 9, 1988; CA (Crim Div)

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**Mentioned by**

Charles v DPP

[2009] EWHC 3521 (Admin); [2010] R.T.R. 34; Official Transcript; DC

**Mentioned by**

Westminster City Council v Cinquemani

[2002] EWHC 179 (Admin); [2002] E.H.L.R. Dig. 4; Official Transcript; DC

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R. v Wyna (Glen Michael)

Official Transcript; CA (Crim Div)

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R. v Customs and Excise Commissioners Ex p. Mortimer

[1999] 1 W.L.R. 17; [1998] 3 All E.R. 229; [1999] 1 Cr. App. R. 81; (1998)



162 J.P. 663; (1998) 95(17) L.S.G. 31; (1998) 142 S.J.L.B. 130; Times, March 12, 1998; DC

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R. v Cox (Rodney William)  
(1993) 96 Cr. App. R. 464; (1993) 157 J.P. 785; [1993] Crim. L.R. 382;  
(1993) 157 J.P.N. 188; Times, December 2, 1992; Independent, January 5, 1993; CA (Crim Div)

**Significant Legislation Cited**

Police and Criminal Evidence Act 1984 (c.60) s.76

Police and Criminal Evidence Act 1984 (c.60) s.78

**Legislation Cited**

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Police and Criminal Evidence Act 1984 (c.60) s.78

**Books**

**Archbold Criminal Pleading Evidence & Practice 2013 Ed.**

Chapter: Chapter 15 - Investigatory Powers; Confessions; Discretion to Exclude Evidence, Etc.

Documents: Section A. - Under Statute

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## FOR EDUCATIONAL USE ONLY

Status: Positive or Neutral Judicial Treatment

Batley v DPP

Divisional Court

20 February 1998

Case Analysis

## Case Digest

**Subject:** Criminal evidence **Other related subjects:** Police**Keywords:** Licensed premises; PACE codes of practice; Police interviews**Summary:** police interviews; PACE codes of practice; questions put to publican regarding after hours drinking constituted interview

**Abstract:** Having entered a public house, police officers, pursuant to their suspicion that after hours drinking was taking place, asked the publican, B, the nature of the arrangements relating to the premises. B was not cautioned until after the conversation took place and a note was subsequently taken of what was said, but the police officers failed to show it to B so that he might verify its accuracy or endorse it as a true record of events, as they did not consider it safe to go back into the public house. B appealed by way of case stated against his conviction of supplying intoxicating liquor contrary to the Licensing Act 1964 s.59, the magistrates having found that the conversation did not constitute an interview under the Police and Criminal Evidence Act 1984 Codes of Practice Code C, that it would have been impracticable for B to check the note made by the police officers and that therefore there had been no breach of the Codes.

Held, allowing the appeal, that the conversation between B and the police officers was an interview within the meaning of Code C since, in answering questions about the arrangements for the public house, B was being asked to incriminate himself with regard to the offence under s.59 and those questions should not have been put to B prior to a caution being administered. The magistrates had erred in concluding that it was impracticable for B to have been shown the note made of the conversation as Code C did not require that the opportunity of verifying the accuracy of the note must be offered immediately or not at all. The record could have been shown to B at a later time and failure to do so caused prejudice to B at his trial.

**Judge:** Kennedy, L.J.; Maurice Kay, J.**Counsel:** For B: John Stobart. For the prosecution: Malcolm Gibney.**Solicitor:** For B: Langleys (Lincoln). For the prosecution: CPS (Eastleigh).

## Key Cases Citing

## Distinguished





Watson v DPP

[2003] EWHC 1466 (Admin); (2004) 168 J.P. 116; (2004) 168 J.P.N. 216;  
Official Transcript; DC

**All Cases Citing**

**Distinguished**

Watson v DPP

[2003] EWHC 1466 (Admin); (2004) 168 J.P. 116; (2004) 168 J.P.N. 216;  
Official Transcript; DC

**Significant Legislation  
Cited**

Licensing Act 1964 (c.26) s.59

Police and Criminal Evidence Act 1984 (c.60)

**Legislation Cited**

Licensing Act 1964 (c.26) s.59

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**Journal Articles**

**Interview? Police question to publican amounted to interview.**

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Pol. J. 1998, 71(3), 265-269

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## PRINCIPLES OF DISCLOSURE

### AN INTRODUCTION

Disclosure is one of the most important - as well as one of the most abused - of the procedures relating to criminal trials.

The overarching principle is that unused prosecution material will fall to be disclosed if, and only if, it satisfies the test for disclosure. Even then, it may not be disclosed under certain circumstances.

Sources:

Criminal Procedure and Investigations Act 1996, ss.1 – 12.

Criminal Procedure and Investigations Act 1996: Code of Practice under Part II.

Attorney-General's Guidelines on Disclosure.

Protocol: Control & Management of Unused Material in the Crown Court.

---

### THE TEST FOR DISCLOSURE

Material which might reasonably be considered capable of either

- undermining the case for the prosecution against the accused, or
- of assisting the case for the accused.

Criminal Procedure and Investigations Act 1996, s

***IF THE TEST IS NOT MET, NO DISCLOSURE!!***

If the test is met, then disclosure unless the material is sensitive and Judge rules we need not disclose (PII).

---



### **WHAT ARE WE LOOKING FOR?**

- i. Any material which may cast doubt on the accuracy of any prosecution evidence.
- ii. Any material which may point to another person, whether charged or not (including a co-accused) having involvement in the commission of the offence.
- iii. Any material which may cast doubt upon the reliability of a confession.
- iv. Any material that might go to the credibility of a prosecution witness.
- v. Any material that might support a defence that is either raised by the defence or apparent from the prosecution papers.
- vi. Any material which may have a bearing on the admissibility of any prosecution evidence, *e.g.* unlawfully obtained *etc.*

### **Disclosure Officers**

#### **DUTIES**

- There must be a Disclosure Officer.
- The investigator must pass to the Disclosure Officer all material obtained in a criminal investigation and which may be relevant to the investigation.





- The Disclosure Officer must retain that material.
- The duty to retain material includes material falling into the following categories:
  - Crime reports (including search records, incident report books or police officer's notebooks);
  - custody records;
  - records taken from tapes of telephone messages (for example, 999 calls) containing descriptions of an alleged offence or offender;
  - final versions of witness statements (and draft versions where their content differs from the final version), including any exhibits mentioned;
  - interview records (written records, or audio or video tapes, of interviews with actual or potential witnesses or suspects);
  - communications between the investigators and experts, reports of work carried out by experts, and schedules of scientific material prepared by the expert for the investigator, for the purposes of criminal proceedings;
  - any material casting doubt on the reliability of a witness;
  - information provided by an accused person which indicates an explanation for the offence with which he has been charged;



- any material casting doubt on the reliability of a confession;
- any material casting doubt on the reliability of a prosecution witness.



## **Schedules**

### **• TWO SCHEDULES:**

- Material which has been retained and which the disclosure officer believes will not form part of the prosecution case, must be listed on one of the two schedules.
- The description of each item on the schedule should make clear the nature of the item and should contain sufficient detail to enable the prosecutor to decide whether he needs to inspect the material before deciding whether or not it should be disclosed.

### **1. Schedule of Non-sensitive Unused Material**

### **2. Schedule of Sensitive Unused Material**

Depending on the circumstances, examples of sensitive material may include the following material:

- Communications between the investigators and solicitors, other investigators, experts, other agencies (*e.g.* Police *etc*)
- relating to national security; or otherwise received from the intelligence and security agencies;
- given in confidence, *e.g.* by informants, anonymous reports *etc* ;
- relating to the identity or activities of informants, or undercover officers, or witnesses, or other persons

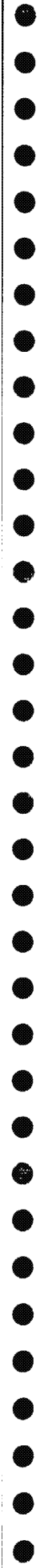


supplying information to the police who may be in danger if their identities are revealed;

- which reveals the location of any premises or other place used for surveillance, or the identity of any person allowing an officer to use them for surveillance;
  - which directly or indirectly reveals techniques and investigatory methods, or which might facilitate the commission of other offences or hinder the prevention and detection of crime, *e.g.*
    - Covert surveillance techniques;
    - Concealed CCTV systems used to detect crime;
    - Covert tracking devices;
    - Financial inquiry methods and organisations (*Experian etc*);
    - Personnel records;
    - RIPA applications and authorisations.
  - relating to the private life of an investigator, witness *etc.*
  - The disclosure officer must give the schedules to the prosecutor.
-









## Visions for the Future

Keir Starmer QC, Director of Public Prosecutions, addressed the London Justices Clerk's Society on 11<sup>th</sup> March 2011.

"The primary function of our criminal courts is, in reality, sentencing, not trials. And that requires us to take a fresh look at how best to conduct business there."

"Whether and when a defendant enters a guilty plea makes a material difference."

"The first court appearance should be the end of the preparation process...not the beginning, as is often the case at the moment."

## The Changing Landscape

CJSSS - Criminal Justice: Simple Speedy Summary - Introduced in 2008.

EGPS - Early Guilty Plea Schemes - Designed to identify appropriate cases at an early stage and expedite the plea and sentence, producing a just, expeditious and cost effective outcome.

Section 41 & Schedule 3 of the Criminal Justice Act 2003 introduced significant changes to the procedure for handling "either way" offences. Those changes came into force on 5<sup>th</sup> November 2012 and include:

- Procedural changes to the plea before venue system in the magistrates' court;
- The abolition of committal for trial proceedings and the introduction of new allocation provisions;
- The consideration of the defendant's previous convictions when deciding venue;
- The option for an adult defendant to seek a limited indication of sentence from the magistrates' court at the plea before venue stage.



### The Combined Effect

In a number of recent cases which have been sent to the Crown Court, standard directions have been issued which seek to identify those in which early guilty pleas could be expected.

### The Actions of the Defence Solicitor.

The Law Society issued guidance to criminal defence solicitors on 6<sup>th</sup> October 2011:-

#### *Criminal Plea in Absence of Full Disclosure.*

##### *4. Meeting your professional obligation*

*If your client is unsure about how to plead to the charge(s) but you require further information in order to meet your professional obligations in providing adequate advice, you should make both the court and your client aware of any problems this may present.*

##### *Providing advice*

*You should advise your client about the sentencing discount they will be entitled to if they plead guilty at the first opportunity.*

*If you advise the client to enter a not guilty plea, or to enter no plea, to protect his or her position due to the lack of information, you should ask the court to make a note of the circumstances and the reasons for pleading so.*

*To help your client retain the maximum credit for any subsequent guilty plea, you should both:-*

- advise your client about the situation;*
- inform the court of the predicament you face due to the lack of disclosure.*

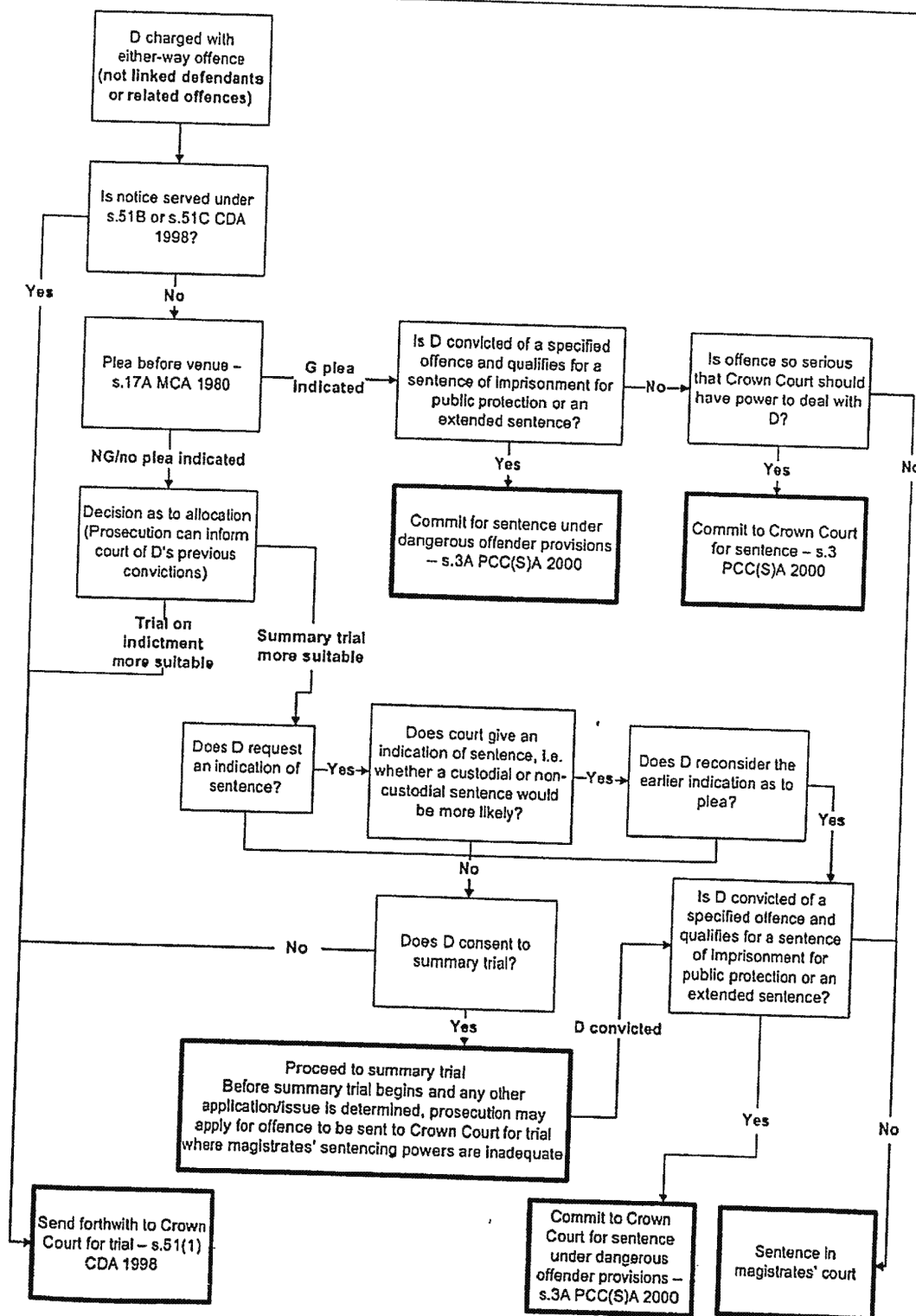
### The Way Forward.

- ⚙ Establishing the points to prove and being clear in interview.
- ⚙ The use of template statements where possible.
- ⚙ Early case preparation to enable full disclosure to be made prior to the first hearing.



## Supporting Materials (Legal Advisers)

## Adult defendants – either-way offences







Coventry Magistrates Court  
Directions for Crown Court hearing

Date: 07/11/2012

**Defendant details**

No.	Name	D.O.B.
1		GRO
2		
3		
4		
5		

**Plea indication and proof in absence**

Has the defendant been advised about credit for indicating a guilty plea at the earliest stage?	Yes
Has the defendant been advised that the case may proceed in his or her absence?	Yes

What pleas have been indicated orally to the court?		
Defendant	Indication	If mixed, specify:
1	No indication	
2		
3		
4		
5		

**Decision / directions** (please put x in appropriate box)

<input type="checkbox"/>	(Adult murder sendings) (Day after next) The matter is listed for a preliminary hearing at Warwick Crown Court at 10am on:
<input type="checkbox"/>	(Cases involving any Youth defendant, Class 1 offences, any other case where indication is that trial at Crown Court may last 4 weeks or more, cases prosecuted by CPS Complex Casework Division) (14 days) The matter is listed for a preliminary hearing at Coventry/Warwick Crown Court at 10am on:
<input type="checkbox"/>	(Other adult sendings - guilty pleas indicated to all) (42 days) The matter is listed for a plea and sentence hearing at Coventry Crown Court at 10am on:
<input type="checkbox"/>	(Other adult sendings - not guilty or mixed pleas or no indication) (14 weeks in custody) The matter is listed for a plea and case management hearing at Coventry Crown Court at 10am on:
<input checked="" type="checkbox"/>	(Other adult sendings - not guilty or mixed pleas or no indication) (16 weeks on bail) The matter is listed for a plea and case management hearing at Coventry Crown Court at 10am on: 04/03/13
<input type="checkbox"/>	(Other adult committals for trial) (7 weeks) The matter is listed for a plea and case management hearing at Coventry Crown Court at 10am on:
<input type="checkbox"/>	(Other adult committals for trial - guilty pleas indicated to all by defence) (28 days) The matter is listed for an early guilty plea hearing at Coventry Crown Court at 10am on:
<input type="checkbox"/>	(Other adult committals for trial - guilty pleas indicated to all by prosecution) (28 days) The matter is listed for an early guilty plea hearing at Coventry Crown Court at 10am on:
<input type="checkbox"/>	(Adult committals for sentence) (3 weeks) The matter is listed for a plea and sentence hearing at Coventry Crown Court at 10am on:



## Standard directions

Latest date

Committals for sentence	
1 If not already done so, prosecution serve case papers within 21 days	28/11/12
2 Probation service to prepare PSR to be served on defence and court within 28 days	05/12/12
Plea and case management hearing after committal for trial	
1 Prosecution to serve primary disclosure within 14 days	21/11/12
2 Defence to serve: defence statement; OR written indication of plea of guilty; OR particularised written application for extension of time to serve defence statement AND any application under s41 Youth Justice and Criminal Evidence Act 1999 within 4 weeks	05/12/12
3 Prosecution and defence to notify Crown Court and all other parties of name of trial advocate and estimate of likely length of trial within 6 weeks	19/12/12
4 Witness Care Unit to notify Crown Court and prosecution of when prosecution witnesses required to attend trial are unavailable with particularised reasons within 6 weeks	19/12/12
5 Defence to notify Crown Court of when defence witnesses required to attend trial are unavailable with particularised reasons within 6 weeks.	19/12/12
Plea and case management hearing after sending for trial	
1 Prosecution to assess the strength of the case against the defendant within 7 days	14/11/12
<i>Where the initial prosecution assessment is that a guilty plea is likely to be forthcoming:</i>	
2 Prosecution to notify defence and the Crown Court that a guilty plea is considered likely within 14 days	21/11/12
3 Prosecution to serve case papers on the defence sufficient to enable defence to assess strength of case against their client within 21 days	28/11/12
4 No more than 7 days after service of these case papers, defence to notify the prosecution and the Crown Court if the defendant does not intend to plead guilty	05/12/12
5 Where notice is given that the defendant does not intend to plead guilty, Prosecution to serve indictment, case papers and primary disclosure within 35 days of such notice	26/12/12
6 Defence to serve: defence statement OR written indication of plea of guilty; OR particularised written application for extension of time to serve defence statement; within 2 weeks of receipt of primary disclosure	30/01/13
7 Defence to give written notice of any application to dismiss the charge or charges (or any one of the charges) and to serve any application under s41 Youth Justice and Criminal Evidence Act 1999 within 4 weeks of receipt of primary disclosure	13/02/13
<i>Where the initial assessment is that a guilty plea is not likely to be forthcoming:</i>	
8 Prosecution to serve indictment, case papers and primary disclosure within 7 weeks	26/12/12
9 Defence to serve: defence statement OR written indication of plea of guilty; OR particularised written application for extension of time to serve defence statement; within 9 weeks	09/01/13
10 Defence to give written notice of any application to dismiss the charge or charges (or any one of the charges) and to serve any application under s41 Youth Justice and Evidence Act 1999 within 11 weeks	23/01/13
<i>In all cases</i>	
11 Prosecution and defence to notify Crown Court and all other parties of name and contact details of trial advocate and estimate of likely length of trial within 13 weeks	06/02/13
12 Witness Care Unit to notify Crown Court and prosecution of when prosecution witnesses required to attend trial are unavailable with particularised reasons within 13 weeks	06/02/13
13 Defence to notify Crown Court of when defence witnesses required to attend trial are unavailable with particularised reasons within 13 weeks	06/02/13
14 Prosecution to serve written response to any defence application to dismiss the charge(s) within 2 weeks of service	

All cases - Standard Directions apply as required by Criminal Procedure Rules 2011 and the Practice Direction issued by the Resident Judge



# Criminal plea in absence of full disclosure

6 October 2011

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## 1. Introduction

### 1.1. Who should read this practice note?

Criminal defence solicitors.

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### 1.2 What is the issue?

Concerns have been raised by criminal defence practitioners following the publication of *Effective Case Management: Applying the Procedure Rules* by the then Senior Presiding Judge for England and Wales.

The document states a requirement for, the defendant's plea to be taken at the first hearing in the Magistrates' Courts, in all but exceptional cases. The court may therefore require your client to enter a plea where relevant and important disclosure of the prosecution case has not yet been made available.

This practice note provides information on advising a client on plea in the absence of full disclosure.

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### 1.3 Professional conduct

The following sections of the SRA Code are relevant to this issue:

**Principle 1** - You must uphold the rule of law and the proper administration of justice.

**Principle 2** - You must act with integrity.

**Principle 3** - You must not allow your independence to be compromised.

**Principle 4** - You must act in the best interests of each client.

**Principle 5** - You must provide a proper standard of service to your clients.





**Principle 6** - You must behave in a way that maintains the trust the public places in you and in the provision of legal services.

### 1.3.1 Legal and other requirements

- [The Criminal Procedure Rules 2010](#)
- [Essential Case Management: Applying the Criminal Procedure Rules](#)

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## 1.4 Status of this practice note

Practice notes are issued by the Law Society for the use and benefit of its members. They represent the Law Society's view of good practice in a particular area. They are not intended to be the only standard of good practice that solicitors can follow. You are not required to follow them, but doing so will make it easier to account to oversight bodies for your actions.

Practice notes are not legal advice, nor do they necessarily provide a defence to complaints of misconduct or of inadequate professional service. While care has been taken to ensure that they are accurate, up to date and useful, the Law Society will not accept any legal liability in relation to them.

For queries or comments on this practice note contact the [Law Society's Practice Advice Service](#).

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## 1.5 Terminology in this practice note

**Must** - A specific requirement in legislation or of a principle, rule, outcome or other mandatory provision in the SRA Handbook. You must comply, unless there are specific exemptions or defences provided for in relevant legislation or the SRA Handbook.

### Should

- Outside of a regulatory context, good practice for most situations in the Law Society's view.
- In the case of the SRA Handbook, an indicative behaviour or other non-mandatory provision (such as may be set out in notes or guidance).

These may not be the only means of complying with legislative or regulatory requirements and there may be situations where the suggested route is not the best possible route to meet the needs of your client. However, if you do not follow the suggested route, you should be able to justify to oversight bodies why the alternative approach you have taken is appropriate, either for your practice, or in the particular retainer.

**May** - A non-exhaustive list of options for meeting your obligations or running your practice. Which option you choose is determined by the profile of the individual practice, client or retainer. You may be required to justify why this was an appropriate option to oversight bodies.

**SRA Code** - SRA Code of Conduct 2011

**2007 Code** - Solicitors Code of Conduct 2007

**OFR** - Outcomes-focused regulation

**SRA** - Solicitors Regulation Authority

**outcome** - outcome

**IB** - indicative behaviour

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## 2. SRA principles

There are ten mandatory principles which apply to all those the SRA regulates and to all aspects of practice. The principles can be found in the [SRA Handbook](#).





When thinking about how to meet the outcomes in principles 1 to 6 in the Code/Handbook, you must consider the principles which apply across the Handbook including the Code. You should always bear in mind what the ten principles are and use them as your starting point when implementing the outcomes.

### 3. The requirement

Paragraph (B) of Effective Case Management: Applying the Procedure Rules paraphrases Rule 3.8(2) (b) of the Criminal Procedure Rules and states:

**B) The first hearing: taking the plea**

At every hearing (however early):

- Unless it has been done already, the court **must** take the defendant's plea [Crim PR 3.8 (2)(b)]. This obligation does not depend on the extent of advance information, service of evidence, disclosure of unused material, or the grant of legal aid.
- If the plea really cannot be taken (exceptions to the rule requiring plea to be taken are rare and **must** be strictly justified), or if the alleged offence is indictable only, the court must find out what the plea is likely to be [Crim PR 3.8(2) (b)].

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## 4 Meeting your professional obligation

If your client is unsure about how to plead to the charge/s but you require further information in order to meet your professional obligations in providing adequate advice, you should make both the court and your client aware of any problems this may present.

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### 4.1 Providing advice

You should advise your client about the sentencing discount they will be entitled to if they plead guilty at the first opportunity.

If you advise the client to enter a not guilty plea, or to enter no plea, to protect his or her position due to the lack of information, you should ask the court to make a note of the circumstances and the reasons for pleading so.

To help your client retain the maximum credit for any subsequent guilty plea, you should both:

- advise your client about the situation
- inform the court of the predicament you face due to the lack of disclosure.

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### 4.2 Preserving credit on receipt of information

On receipt of the missing information you should aim to preserve your client's credit for a guilty plea by:

- taking urgent instruction from your client
- re-advising your client on the issue of their plea in the light of the new information.

If your client decides to plead guilty, you should notify the court as soon as possible, in order to fulfil your duty to actively assist the court to manage the case under the Criminal Procedure Rules 2010. This will also help you to protect your client's rights to the appropriate credit for an early guilty plea.

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## 5. Further products and support

### 5.1 Practice Advice Line

The Law Society provides support for solicitors on a wide range of areas of practice. Practice Advice can be contacted on 0870 606 2522 from 09:00 to 17:00 on weekdays.

Visit the [Practice Advice Service](#) website.

### 5.2 Other

The SRA's [Professional Ethics Helpline](#) for advice on conduct issues.

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### 5.3 Judiciary information

- [Essential Case Management: Applying the Criminal Procedure Rules](#)

### 5.4 Law Society publications

- [Fixed Fees in the Criminal Courts, 2nd edition](#)
- [Criminal Procedure Rules, 2nd edition](#)
- [Criminal Defence](#)

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### 5.5 Acknowledgements

The Law Society wishes to thank the Criminal Law Committee, for assistance in drafting this practice note.

#### 5.5.1 Amendments

This practice note has been amended to refer to sections of the SRA Code.

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