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38. The role of the custody officer

PACE created the role of custody officer, normally a police sergeant. When a person is taken to a police station, the custody officer will apply the provisions of PACE Code of Practice C regarding the recording of his presence, belongings and conditions of detention (these are outlined in chapter 47).

These provisions of PACE Code of Practice C apply to persons who are in custody in a police station. Paragraph 2.1A of PACE Code C states that when a person is brought to a police station (i) under arrest; (ii) is arrested at the police station having attended there voluntarily; or (iii) attends a police station to answer bail, they should be brought before the custody officer as soon as practicable after their arrival at the station or, if appropriate, following arrest after attending the police station voluntarily. When attending a police station you must comply with the PACE Codes of Practice.

Once a person has been served with papers and is detained under Immigration Act powers only certain parts of Pace Code of Practice C apply (sections 8 and 9 of the Code).

If custody officers are requested to serve forms on behalf of the Immigration Service they should be asked to explain the forms fully and informed that they should provide relevant interpreters to achieve this if necessary.

38.1. The right not to be held incommunicado

If a person is held at a police station, section 5 of PACE Code of Practice C will apply. Amongst other things, it provides that a person may, on request, have a person known to him or who is likely to take an interest in his welfare, informed of his whereabouts at public expense as soon as practicable.

In cases in which the IS is involved, details of immigrant welfare organisations should be provided by the IO if the person does not know anyone to contact for advice or support or cannot contact a friend or relative.

38.2. The right to legal advice

On arrival at a police station, the custody officer must advise the person of his right to consult and communicate privately with a solicitor, and of the fact that independent legal advice is available free of charge. Whenever legal advice is requested, the custody officer must act without delay to secure the provision of such advice. Although not required under the PACE Codes of Practice, in cases in which the IS is involved, the person should be advised by the IO that he can contact a representative of an immigrant welfare organisation.

If an IO wants to interview a person about immigration offences at a place other than a police station, the person must be advised that he is entitled to legal representation but that he should arrange this himself and finance it where necessary. Persons attending asylum or other interviews not involving immigration offences are not entitled to legal representation but it is prudent to allow this if the person wishes it.

Every effort should be made to contact a particular solicitor, or firm of solicitors, who have been dealing with the person's immigration situation, unless the person specifies otherwise. Paragraph 6.6 of PACE Code of Practice C (including subparagraphs (a) to (d)) states that a person who wants legal advice may not be interviewed, or continue to be interviewed until he has received such advice unless:

(a) the restriction on drawing adverse inferences from silence because the detainee is not allowed an opportunity to consult a solicitor applies (see Annexes B and C); or

(b) an officer of Superintendent rank or above has reasonable grounds for believing that:

(i) the consequent delay might:

- ◆ lead to interference with, or harm to, evidence connected with an offence; or
- ◆ lead to interference with, or physical harm to, other people; or
- ◆ lead to serious loss of, or damage to, property; or
- ◆ lead to alerting other people suspected of having committed an offence but not yet arrested for it; or
- ◆ hinder the recovery of property obtained in consequence in the commission of an offence.

(ii) when a solicitor, including a duty solicitor, has been contacted and has agreed to attend, awaiting their arrival would cause unreasonable delay to the process of investigation.

In considering whether this applies, the officer should ask the solicitor how long it is likely to be before he arrives and relate this to the time detention is permitted, the time of day and the requirements of the investigation. When a solicitor is on his way or is to set off immediately, it will not normally be appropriate to begin an interview before his arrival. If, however, it seems necessary to begin before a solicitor's arrival, the solicitor should be given an indication of how long the police would be able to wait so there is an opportunity to make arrangements for someone else to provide legal advice.

If the solicitor the person has nominated or selected (i) cannot be contacted; or (ii) has previously indicated that he does not wish to be contacted; or (iii) having been contacted, has declined to attend and the person, having been advised of the availability of a duty solicitor has declined to ask for the duty solicitor, the interview may be started or continued without further delay provided an officer of police inspector rank or above has agreed.

If a person who wanted legal advice changes his mind, the interview may be started or continued without further delay provided that the person has given his agreement in writing or on tape to being interviewed without receiving legal advice, and an officer of police inspector rank or above has inquired about the person's reasons for his change of mind and gives authority for the interview to proceed. An entry should be made on the person's custody record by the custody officer. A record of the person's agreement, his change of mind, the reasons for it (if given) and, unless paragraph 2.6A of PACE Code of Practice C applies, the name of the authorising officer must be recorded in the taped or written interview record.

A solicitor may only be required to leave an interview if his conduct is such that you are unable properly to put questions to a person. If you consider that the solicitor is acting in such a way, you

Enforcement Instructions and Guidance may stop the interview and consult an officer not below the rank of superintendent, if available (or otherwise an officer not below inspector rank who is not connected with the investigation). If that officer, after speaking to the solicitor decides that he should be excluded, the person must be allowed to consult another solicitor before the interview continues and that solicitor will be given the opportunity to be present at the interview. A solicitor is not guilty of misconduct if he seeks to challenge an improper question to his client or the manner in which it is put or if he advises his client not to reply to particular questions or if he wishes to give his client further legal advice. It is the duty of a solicitor to look after the interests of his client and to advise him without obstructing the interview.

Where the same situation occurs in a place other than a police station, consult an Inspector (or CIO if an Inspector is unavailable).

38.3. Communication with and notification to High Commissions, Embassies and Consulates where PACE Codes of Practice apply

PACE Code of Practice C includes a statement of a person's right to communicate at any time with his High Commission, Embassy or Consulate. This applies to citizens of independent Commonwealth countries and nationals of foreign countries including the Republic of Ireland. Such a person must be informed of this right as soon as practicable. He must also be informed as soon as practicable of his right to have his High Commission, Embassy or Consulate told of his whereabouts and the grounds for his detention. If a citizen of a country with which a bilateral consular convention or agreement is in force requiring notification of arrest, the appropriate High Commission, Embassy or Consulate shall be informed as soon as practicable. Consular officers may visit one of their nationals in police detention to talk to them and, if required, to arrange for legal advice. However, notwithstanding this and provisions of Consular Conventions, where the person is a refugee or is seeking asylum, a Consular Officer must not be informed of the arrest of one of his nationals or given access to or information about him except at the person's express request.

If a person is held in a police station, the police will deal with such matters of notification in accordance with PACE Code of Practice C.

38.4. Communication where PACE Codes of Practice do not apply

Chapter 55 of this manual refers to communications with Consulates and High Commissions in cases of detention by the IS. A written report must be retained of any notification made by the IS to a persons' High Commission, Embassy or Consular representative.

38.5. Cautions

As soon as there are grounds to suspect a person of an offence, he must be cautioned. The caution must take place before any questions (or further questions if it is his answers to previous questions which provide the grounds for suspicion) are put to him regarding his involvement or suspected involvement in the offence. Only if he has been cautioned may his answers or his silence (i.e. failure or refusal to answer a question or to answer satisfactorily) be given in evidence to a court in a prosecution. Section 10 of PACE Code of Practice C refers. You need not caution him if questions are put for other necessary purposes, e.g. solely to establish his identity.

Before you caution a person who is not under arrest, whether at a police station or not, tell him that he is not under arrest, he is not obliged to remain but that if he does, he is entitled to legal advice (see chapter 38.2).

If a police officer has previously issued a caution, you must still issue a caution before conducting an interview, to advise the person of his rights. Record the fact that you have issued a caution, either in your notebook or in the interview record.

Use the following caution:

“ 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”

Note: When the restriction on drawing adverse inferences from silence applies a different caution is needed – see paragraph 10.6 of PACE Code of Practice C.

Minor deviations do not constitute a breach of this requirement provided that the sense of the caution is preserved, but you should try to give the caution correctly. If the person does not understand the caution, explain it in your own words. Record in your notebook or interview record that the person has understood the caution.

When there is any break in questioning under caution you should ensure that the person is aware that he remains under caution. If there is any doubt, give the caution again in full when the

interview resumes and make a record of the fact the caution has been given again. Note that the reason for any break in an interview should be summarised on resumption, and the reason should be confirmed with the suspect.

If a person is unclear about the significance of the caution, explain that it is given to advise him that he need not answer any questions or provide any information which might tend to incriminate him, but that if he has an innocent explanation for the matters under investigation he should say so now, otherwise an adverse inference might be drawn either by a court or by the Home Office.

Note: As to adverse inferences from silence, see paragraphs 10.5, 10.6 and annex C to PACE Code of Practice C – there are cases where the restriction on drawing adverse inferences from silence applies.

38.6. Written statements under caution

For interviews to be recorded (written) on form ISCP4 and for those to be taped, see chapters 37.4 and 37.9. Forms ISCP3 and ISCP5 are to be used only on the rare occasion when a suspected offender, of his own volition, indicates that he wishes to make a statement.

When taking a statement with a view to prosecution, always try to ensure the statement is tape recorded or if this is not possible, on appropriate headed notepaper. If, however, you propose administrative action and require corroborative evidence from other people, e.g. from an employer in a case of working in breach, take the statement on the appropriate headed notepaper, on a police witness form where available, or in your notebook. For those IO's who have undertaken arrest training (chapter 31.1) a Visit Report Book (VRB) may also be used.

38.7. Statement written by a person under caution

Invite the person to write down himself what he wants to say. The caution below is to be written prior to commencement of the interview and can be written by either the IO **or** the interviewee. However, if written by the IO the interviewee **must** sign, or make his mark, after the caution to acknowledge his understanding of the caution.

"I make this statement of my own free will. I understand that I need not say anything but it may harm my defence if I do not mention when questioned something which I rely on in court. This statement may be given in evidence."

Allow the person to write his own statement without prompting but you may indicate which matters is material or question any ambiguity.

38.8. Statement written by an IO or a police officer

You may write the statement if a person says that he would like someone to write it for him, but before starting, ask him to sign, or make his mark, to the following:

"I, (name), wish to make a statement. I want someone to write down what I say. I understand that I need not say anything but it may harm my defence if I do not mention when questioned something which I later rely on in court. This statement may be given in evidence."

If you write the statement, take down the exact words spoken by the person making it, do not edit or paraphrase it. If you need to ask questions to make it more intelligible, record the answers contemporaneously on the statement form. When you have finished writing the statement, ask the person to read it and to make any corrections, alterations or additions he wishes. When he has finished reading it, ask him to write and sign or make his mark on the following certificate at the end of the statement:

"I have read the above statement and I have been able to correct, alter or add anything I wish. This statement is true. I have made it of my own free will."

If the person making the statement cannot read, refuses to read it, or to write or sign the above mentioned certificate, the senior officer present should read it over to him and ask him whether he would like to correct, alter or add anything and to put his signature or make his mark at the end. You should then certify on the statement itself what has occurred.

38.9. Persons at risk

(PACE Codes of Practice C and D refer).

The special groups referred to in this section are all recognised as vulnerable and the following paragraphs seek to provide safeguards to protect them and minimise the risk of interviews

producing unreliable evidence. Where such a person is interviewed in a police station, the custody officer will arrange for the "appropriate adult" to be present.

38.9.1. Juveniles and those who are mentally disordered or mentally vulnerable.

For the purposes of the PACE Codes of Practice a person must be treated as a juvenile if he appears to be under 17 and in the absence of clear evidence that he is older.

If you believe that a person may be mentally disordered or mentally vulnerable or if the person is a juvenile, the presence of an "appropriate adult" is required at the interview. "Mental disorder" means "mental illness, arrested or incomplete development of the mind, psychopathic disorder or any other disorder or disability of mind". "Mentally vulnerable" applies to a person who, because of his mental state or capacity, may not understand the significance of what is said, of questions or of his replies.

In the case of a person who is mentally disordered, or mentally vulnerable, "the appropriate adult" means (i) a relative, guardian or other person responsible for his care or custody; or (ii) someone who has experience of dealing with mentally disordered or mentally vulnerable people who is not employed by the police or IS; or (iii) failing any of these, some other responsible adult aged 18 or over who is not employed by the police or IS (such as a representative of an immigrant welfare organisation).

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In the case of a juvenile "the appropriate adult" means (i) his parent or guardian (or, if he is in care, a person representing the relevant authority or organisation); or (ii) a social worker; or (iii) failing these, some other responsible adult aged 18 or over who is not employed by the police or IS (such as a representative of an immigrant welfare organisation).

The parent or guardian of a person who is a juvenile should be the appropriate adult unless he is suspected of involvement in the offence. If the parent is estranged from the juvenile, he should not be asked to act as the appropriate adult if the juvenile objects to his presence.

A solicitor who is present in a professional capacity may not act as the appropriate adult.

The appropriate adult must be informed at the start of an interview that (i) he is not expected to act simply as an observer and (ii) the purpose of his presence is to advise the person being

interviewed, observe whether the interview is being conducted properly and fairly and facilitate communication with the person being interviewed.

If the appropriate adult considers that legal advice should be taken, the appropriate action must be taken straight away (see chapter 38.2); do not delay until the appropriate adult arrives.

If you caution the person in the absence of the appropriate adult, repeat it in the adult's presence. You must not interview a person, either in IS detention or a police station, who is a juvenile or a mentally disordered person or mentally vulnerable or ask him to provide or sign a written statement under caution or record of interview in the absence of the appropriate adult without prior agreement. In IS detention this agreement would be required by an officer of CIO rank or above and in a police station by an officer of superintendent rank or above (unless paragraphs 11.1, 11.15 and 11.18 to 11.20 of PACE Code C apply).

You may only interview a person who is a juvenile at their places of education in exceptional circumstances and then only where the principal or his nominee agrees. Make every effort to notify both the parent(s) and/or other person responsible for the juvenile's welfare and the appropriate adult (if this is a different person) and allow reasonable time for the appropriate adult to attend. . If awaiting the appropriate adult would cause unreasonable delay (and unless the juvenile is suspected of an offence against the place of education) the principal or his nominee can act as the appropriate adult for the purposes of the interview.

Although persons who are juveniles and persons who are mentally disordered or mentally vulnerable are often capable of providing reliable evidence, they may, without knowing or wishing to do so, provide information which is unreliable, misleading or self-incriminating. You must therefore take special care when questioning such a person. Because of the risk of unreliable evidence, it is important to obtain corroboration of any facts admitted whenever possible.

38.9.2. Persons unable to speak or understand English

Unless paragraphs 11.1 and 11.18 to 11.20 of PACE Code C apply, a person must not be interviewed in the absence of an interpreter if:

- ◆ he has difficulty understanding English; or
- ◆ you cannot speak the person's own language; or

- ◆ the person wants an interpreter present.

If interviewed at a police station, the interview will be taped. If the interview is not on tape, ensure the interpreter makes a written record of the interview at the time in the foreign language and certifies its accuracy. You should allow sufficient time for the interpreter to record every question and answer after each is put, given and interpreted. On completion of the interview, ask the person to read the interview record and sign it as correct or indicate the respects in which he considers it inaccurate. You should certify at the end of the interview record that this has been done.

In the case of a person making a written statement in a language other than English, the interpreter must record the statement in the language it is made and the person must be invited to sign it. A translation in English should be made in due course and attached and certified:

"I certify that, to the best of my knowledge and belief, the above is a true and accurate translation of the statement made by (name) on (date) attached hereto."

The certification should be signed, dated and show the name and position of the person making it.

The interview record should show the language used and that the person understood the questions put to him. Any agreement to be interviewed in the absence of an interpreter must be recorded.

38.9.3. The Hard of hearing, blind or visually handicapped

If the person appears to be blind or visually handicapped or is unable to read, ensure that his solicitor, relative, other representative, the appropriate adult or some other person likely to take an interest in him is available to help in checking any documentation.

If the person appears to be deaf or there is doubt about his hearing or speaking ability, do not interview without an interpreter unless he agrees in writing to be interviewed without one **or** paragraphs 11.1 and 11.18 to 11.20 of PACE Code C apply. A written record of the interview should be made in addition to a tape recording. You must ensure the interpreter is allowed to

read the interview record and certify its accuracy. (Note also paragraph 13.5 of PACE Code C in this respect).