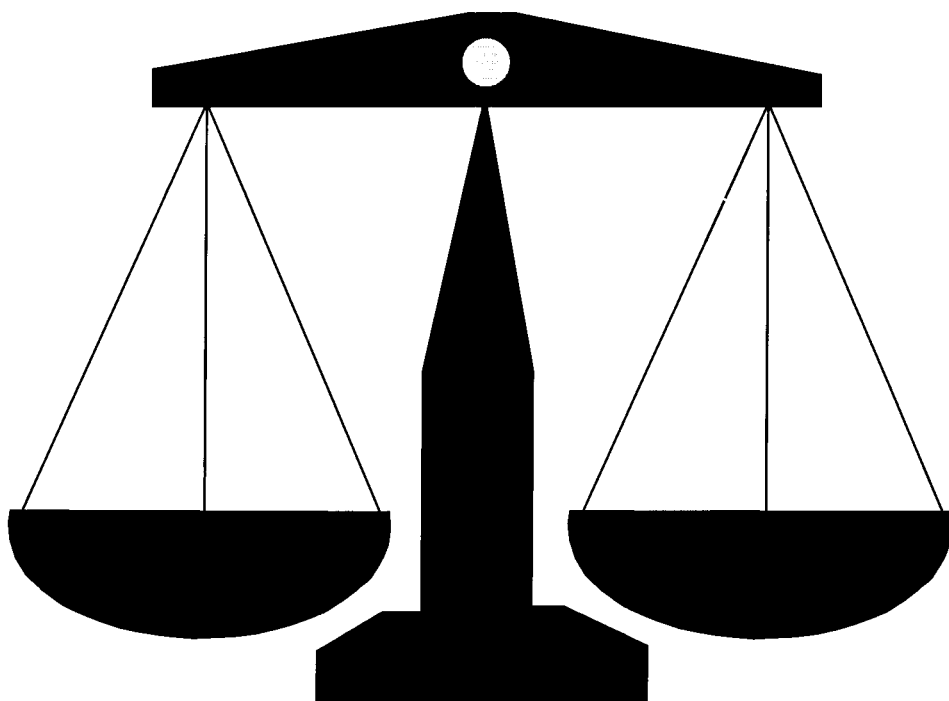


THE POLICE AND CRIMINAL EVIDENCE ACT 1984

EXTRACTS FOR GUIDANCE



Investigating offences

It is important to realise that the collation of evidence, the process of the investigation and the need to recognise, the rights and liberties of others must be addressed in order to ensure you comply with legislation when investigating any offence.

The basis for an investigation is supported by the Police and Criminal Evidence Act 1984 (PACE), the Codes of Practice and the Rules of Evidence, the importance of these areas cannot be overlooked.

Does PACE apply to you?

Part VI, Police and Criminal Evidence Act 1984 (Codes of Practice) S67 (9) states;

“Persons **OTHER** than Police Officers who are charged with the duty of investigating offences or charging offenders **SHALL** in the discharge of that duty have regard to **ANY** relevant provision of the code”

S67 (10)(b) states however,

“A failure on the part of **ANY** person **OTHER** than a Police Officer who is charged with the duty of investigating offences or charging offenders, to have any relevant provisions of such a code in the discharge of that duty **SHALL** not of itself render him liable to any civil or criminal proceedings.”

The question being then, why bother?

S67 (11) states;

“In **ALL** Criminal and Civil proceedings **ANY** such code **SHALL** be admissible in evidence and if **ANY** provision of the code appears to the court or tribunal conducting the proceedings, to be relevant to any questions arising in proceedings, it **SHALL** be taken into account in determining that question”

The failure to apply the code of practice in your investigation could lead to your evidence being ruled as inadmissible. This could of course lead to your evidence being ruled as inadmissible. This could have a detrimental effect to you and have serious consequences in relation to your professionalism and adverse media attention.

The question is how do you incorporate this into your working practice. One of the aims of the training is to identify how you may implement PACE into your procedures.

When conducting an investigation, when does a caution become relevant?

Para 10 of the Code of Practice states;

“A person whom there are grounds to suspect of an offence MUST be cautioned before any questions about it are put to him regarding his involvement or suspected involvement in that offence if his answers or his silence may be given in evidence to a court in prosecution.”

Ask yourself this question, “At what point do I have reasonable grounds to suspect?”

Reasonableness, should be reasonable suspicion, as opposed too just a hunch, reasonableness being in short, what the average person would consider as being reasonable.

It is not necessary to caution if;

1. You do not have reasonable grounds to suspect, try and negate any statutory defences first, this will establish your degree of suspicion.
2. To identify a person, his address, relationship to others etc.
3. Where questions are put to obtain information in accordance with any statutory requirement.

Giving a Caution

The caution **SHALL** be given 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.

A minor deviation will not constitute a breach of the code as long as the sense of the caution is preserved.

Once you have given a caution you should make contemporaneous notes of what was said, at the time, or as soon as is reasonably practicable to do so in any official documentation that you use. Ensure that you record both the date and time of the caution, if this matter goes to court and a not guilty plea is entered your notes may be scrutinised by the defence.

Your notes will provide the basis of your Statement of Evidence, that is the written evidence of the investigating officer.

You can conduct what is termed as a doorstep prosecution, however, it would be prudent to collate what evidence you can and then interview the alleged offender in a controlled environment.

Conducting an interview under PACE 84

If you have tape recording facilities you should refer to the section within this document on tape recorded interviews and training is available in that respect if required. However, you may conduct a hand written interview, it is good practice to produce pre printed sheets in this respect. The interview should take the following format (refer to your handouts on interviewing witnesses)

“ I am (name) and I am an (position) with (organisation) and present during this interview are (enter names of those present, not the alleged offender). I am making enquiries into (specify section and offence) which occurred between/on the (enter dates) are you (name and address) the parent, carer or guardian of (name). Your attendance at these offices is voluntary and you are free to leave if you so wish, however, I would like to put some questions to you (in respect of which offence) but before I ask you any questions I must first caution you (enter the caution)(enter the time)

Await and record any reply and then say;

Do you want to consult with a solicitor or representative at this time?

If he replies **“YES”** you must terminate the interview and allow him/her the opportunity to do so and arrange an alternative date if necessary.

If he replies **“NO”** ask him/her if he/she is happy to proceed with the interview, you may now move into the question and answer stage of the interview.

Record every question and answer contemporaneously and record who asked the question if other than you, record the times of any breaks interruptions or cautions.

Ask you questions in a controlled and polite manner and once you are satisfied that you have exhausted all your questions you will need to say one of three things.

1. **“I am now terminating this interview but I may need to see you again in the future”**

This will allow you the opportunity of making further enquiries if necessary, or clear up any ambiguity that have arisen. If you then have to interview again at a later date repeat the above format other than you would say **“I have to remind you that you are still under caution in that etc”**

2. **“I am now terminating this interview as I am satisfied as to your explanation of the facts and intend no further action”**
3. If you are satisfied that the person should be reported for a prosecution say the following:

“With what you have just told me and the evidence I have in my possession I am reporting you for a prosecution to be considered for (state the offence) contrary to (state the section and statute) and in doing so I must further caution you in that (repeat the caution). Do you wish to make a written statement.

If he replies “NO” ask him to read over the record of interview and sign each page of the notes, this includes anyone else present, including you.

If he replies “YES” then a statement should be recorded under caution.

RECORDING STATEMENTS UNDER CAUTION

What to do next?

“Would you like to write it yourself or would you like someone to write it for you, if you would like someone to write it for you who would you like to write it”

Unlike a section 9 statement there is not a format for a statement under caution however, the attached examples have been tried and tested. You should have these available as and when required.

More often than not if they elect to make a written statement they will either write it themselves or ask you to write it, or a friend present or their solicitor.

Two formats exist the first being writing it themselves, the second being another person.

1. If a person wants to make a statement and write it himself you must ask him to write in his own hand the following declaration;

“I make this statement of my own free will. I understand that I do not have to 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.”

He/she will be allowed to then write down what he wants to say without any prompting except that an investigating officer may indicate which matters are material or question any ambiguity in the statement. At the end of the statement he/she should append his/her signature or mark immediately after **the last word**.

2. If a person wants someone else to write it, the investigating officer shall, before starting, ask him to append his mark to the following declaration:

“ I (enter his name) wish to make a statement. I want someone to write down what I say. I understand that I do not have to 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”

The exact words spoken must be taken down you cannot edit or paraphrase it, any questions that are necessary to, i.e make it more intelligible and the answers given must be recorded contemporaneously on the statement.

Once the statement is finished the officer should ask him/her to read over the statement and to make any corrections, alterations or additions to the statement. You should then ask him to write the following commencing directly after the last word on 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.

Ensure that he signs the statement directly after the last word of the declaration.

If a person cannot read, refuses to read it or write the above mentioned declaration at the end or to sign it, the senior investigating officer shall read it to him and ask him if he wishes to correct alter or add anything and to put his signature at the end or make his mark. The officer should record this event on the statement.

You may enter the following declaration:

“The above statement was recorded by me at (place, date, time) at (enter his/her name) dictation, on completion of which the statement was read over to him/her and he/she was given the opportunity to correct alter or add anything and append his/her signature or mark at the end”

When these statements are being compiled, they should flow as one continuous document, do not leave any gaps, lines etc between the declarations and the written statement. Examples of statements under caution are attached. Further in depth training can be provided upon request.

Accused wants someone to write it himself

STATEMENT UNDER CAUTION

Case Reference:.....

“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”

I make this statement of my own free will. I understand that I do not have to 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. Dated theof1999 John Smith. He/she starts the statement here

..

At the end of the statement he/she signs John Smith

Accused requests someone to write the statement for him/her

STATEMENT UNDER CAUTION

Case Reference:.....

“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”

I John Smith wish to make a statement. I want someone to write down what I say. I understand that I do not have to 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. Dated theof1999 John Smith Start the statement here

At the conclusion 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. John Smith

Other Issues for Consideration

Mental Disorder

Para 1.4

“if an officer has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or mentally handicapped, or mentally incapable of understanding the significance of questions put to him or his replies, then that person shall be treated as a mentally disordered or a mentally handicapped person for the purposes of the code.

Mental Disorder is a generic term used throughout the code. Mental disorder under s1(2) of the Mental Health Act 1983 is described as “mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind”

Mental disorder and mental handicap are different although the two are similarly dealt with throughout the Code of Practice. Where you have any doubt as to the mental capacity of a person, an appropriate adult should be called. R v Aspinall (Paul James) (1999) 96(7) LSG 35

Under the Age of 17

Para 1.5

“If anyone appears to be under the age of 17 then he shall be treated as a juvenile for the purposes of the code in the absence of clear evidence to show that he is older”

Blind, visually handicapped, deaf, reading, speech

Para 1.6

“If a person appears to be blind or seriously visually handicapped, deaf, unable to read, unable to speak or has difficulty orally because of a speech impediment, he shall be treated as such for the purposes of this code in the absence of clear evidence to the contrary”

Appropriate Adult

Para 1.7

In this code the “appropriate adult means”;

(a) in the case of a juvenile:

- (i) His parent or guardian (or, if he is in care, the care authority or voluntary organisation. The term “in care” is used in this code to cover all cases in which a juvenile is “looked after” by the local authority under the terms of the Children Act 1989.)
- (ii) A social worker
- (iii) Failing either of the above, another responsible adult aged 18 or over who is not a police officer or employed by the police.

(b) in the case of a person who is mentally disordered or mentally handicapped;

- (i) relative, guardian or other person responsible for his care or custody.
- (ii) someone who has experience of dealing with mentally disordered or mentally handicapped people but who is not a police officer or employed by the police (such as an approved social worker as defined by the Mental Health Act 1983 or specialist social worker)
- (iii) failing either of the above, another responsible adult aged 18 or over who is not a police officer or employed by the police.

Accessing information

Para 1.8

Whenever this code requires a person to be given certain information he does not have to be given it if he is incapable at the time of understanding what is said to him or is violent or likely to become violent or is in urgent need of medical attention, but must be given it as soon as practicable.

Accessing Legal Advice

Para 6.1

“all people must be informed that they may at any time consult and communicate privately, whether in person, in writing or by telephone with a solicitor”

Para 6.4

“No person [investigating officer] shall at any time do or say anything with the intention of dissuading the suspect from obtaining legal advice”

Solicitors present during interviews

Para 6.8

“Where a person has consulted a solicitor the solicitor must be allowed to be present while he is interviewed”

Cautions

Para 10.1

As outlined above some case law is available for consideration;

- *R v James (Colin Richard) [1996] CLR 650*
- *R v Raphael (Daniel) [1996] CLR 812*
- *R v Nelson (Sonia) [1998] 2 Cr. App R 339*
- *Bately v DPP Times 20th February 1998 QBD*

Para 10.3 – Cautions upon arrest

Para 10.4 – Words of the caution (above)

NB – Para 10C

“If it appears that a person does not understand what the caution means, the officer who has given it should go on to explain it in his own words”

Caution – Breaks in Questioning

Para 10

“ When there is a BREAK IN QUESTIONING under caution the interviewing officer must ensure that the person being questioned is aware that he/she remains under caution. If there is any doubt the caution should be given in full when the interview resumes”

As a rule of thumb it is not necessary to give the caution in full after a short break, it is suffice to say, “you are still under caution”. If the break lasts for more than 30 minutes the full caution should be given. “I must remind you that you are still under caution in that etc.....”

You may have to satisfy the court that the accused knew he/she was under caution.

Cautions – Juvenile and Mentally Ill

Para 10.6

“if a juvenile or a mentally disordered person or mentally handicapped is cautioned in the absence of the appropriate adult, the caution must be repeated in the adult’s presence”

Cautions – Recording

Para 10.7

“A record shall be made when a caution is given under this section, either in the officer’s pocket – book or in the interview record as appropriate”

Cautions – Interviewing

Para 11.1A

“An Interview is the questioning of a person regarding his involvement in a criminal offence or offences which by virtue of paragraph 10.1 of code C is required to be carried out under caution”

Oppression

Para 11.3

“No officer may try to obtain answers to questions or elicit a statement by the use of oppression”

Caution – Grounds to bring a prosecution

Para 11.4

“As soon as an officer who is making enquiries of any person about an offence believes that a prosecution should be brought against him and there is sufficient evidence for it to succeed, he should ask the person if he has anything further to say. If the person indicates that he has nothing more to say the officer shall without delay cease to question him about that offence.

Cautions – Records of Interview