



THE
CRIMINAL BAR
ASSOCIATION
OF ENGLAND & WALES

Bar Council and Criminal Bar Association response to the PACE codes C, D and H consultation paper

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) and the Criminal Bar Association to the Home Office consultation paper entitled PACE codes C,D and H.¹
2. The Bar Council represents over 15,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

Overview

4. The proposed amended Codes C, D and H are very largely uncontroversial and consequent upon changes in primary legislation. Accordingly we make no observations on these. There remain however a few areas in which the substance of the Codes might be improved to coincide with best practice or where the wording of the provisions might be altered to provide greater clarity.

Code C

Juveniles

5. We agree with the amendments, reflecting the revision of s37(15) of the Police and Criminal Evidence Act 1984 which, for the purposes of the Codes, extends the application of the juvenile provisions from those under the age 17 to those under the age of 18.

¹ <https://www.gov.uk/government/consultations/revising-pace-codes-c-d-and-h>

Appropriate adults

6. By the proposed new paragraph Code 11.17A there is a power to suspend an interview if an appropriate adult is considered to be behaving in a way which improperly obstructs the interview. This can be done by a senior officer 'after speaking to the appropriate adult'. We think that the guidance may be more helpful, and perhaps in some cases lead to a continuation with the appropriate adult, if there was first a requirement that the appropriate adult was reminded of his / her role under 11.17 and that the role did not allow the obstruction of proper questioning.

7. The wording of the final sentence erroneously means that if the senior officer decides that the interview should **not** continue **without** the attendance of **that** (ie obstructive) appropriate adult another appropriate adult must be obtained. This can be remedied either by the deletion of 'not' or its replacement by 'continue without the attendance of that appropriate adult'.

Live link interpretation

8. There are no objections in principle to interpretation for non-English speakers in circumstances where the interpreter is not physically present at a police station provided the interpretation is equally efficacious. In that respect we have the following observations.

9. The ambit of paragraph 13.12 is not entirely clear. Whereas 13.12(a) applies to interviews, 13.12(b) appears to be of application only to PACE formalities such as informing the suspect of the reasons for detention and obtaining samples or requests for personal identification and consents. If so then there is no provision within this paragraph for live link communication between solicitor and client such as is necessary under paragraph 13.9 pursuant to paragraph 6.1 and is recognised in Annex B3(c). This might conveniently be remedied by a further subparagraph requiring live link which enables effective communication between the suspect and the legal representative and, for that matter, the appropriate adult.

10. Further, paragraph 13.13 places an obligation on Chief Officers to ensure accurate and secure communication in their force areas. However once again no provision appears to be made for this obligation to apply to communication between the suspect and his legal adviser and / or appropriate adult.

Essential document translation

11. Commonly, prior to interview of a person suspected of committing a serious and / or complex offence, the suspect is given 'pre-interview disclosure': written disclosure of a more detailed summary of the allegations than the bare bones of the potential charge permits, usually including at least parts of the substance of the evidence. Sometimes this will include documentary material. Such disclosure is made pursuant to paragraph 11.1.A. (It is generally also a benefit for an investigator in directing the suspect's focus to particular issues and matters of evidence on which he /she will be interrogated.)

12. We regard such documents as essential to a suspect's right to understand the nature of the charge and exercise his / her right of defence under Article 3 of Directive 2010/64, at that stage by being able to engage in an informed discussion with a lawyer.

13. It is our view that Annex M in its current form is incomplete in failing to recognise such a document as essential. Moreover it is potentially discriminatory were a non English speaker to be denied access to disclosure that was or would be available to an English speaker. Pre-interview documentary disclosure should be included with the table of essential documents.

Code D

14. Under paragraph 3.2(b) we regard it as prudent to add to the first sentence as follows (in italics): '*Care should be taken not provide the eye-witness with any information concerning the description of the suspect and not to direct the eye-witness's attention ...*'

15. We agree with the additional content of the recognition procedure in paragraph 3.35. However we would add, in order to meet exactly the substance of the complaint which was upheld in *R v Deakin*, a further prohibition along the following lines: '(b)(iv) is not given any indication as to the identity of the suspect'.

Code H

16. No observations beyond those already made applicable to this code.

Bar Council
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