

Appendix 3

Police and Criminal Evidence Act (PACE)

The Police & Criminal Evidence Act 1984 (PACE) seeks to strike a balance between the needs of investigators and the rights of suspects. It sets out rules to determine the admissibility of evidence and provides the courts with powers to exclude otherwise admissible evidence where, in the circumstances, it has been deemed unfair to submit it.

PACE as it affects investigating officers covers:

- Gathering of Evidence
- Protection of Evidence
- Evidence Audit Trails
- Code B Searches
- Formal Interviewing and Caution

For full details, reference should be made to Police & Criminal Evidence Act 1984, Codes of Practice Revised 2005 Edition. It is worth checking to ensure that you are referring to the latest version of the Codes of Practice. The latest version can be found on the Home Office website

<http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/pace-code-intro/>

A brief overview of certain aspects relating to obtaining evidence is given below, for full details on each aspect see the codes of practice

Criminal Procedure and Investigations Act 1996 (S.23 (1)) Code of Practice

NB: Breaches of the code may lead to exclusion of evidence, this includes lack of access to legal advice, failure to caution, inadequate documentation.

Obtaining Evidence

"Interview" - when the officer moves into criminal investigation mode and questions suspects about their own involvement in offences.

- 1 Is the interviewee fit for interview, ie. not under the influence of drugs, alcohol or otherwise unable to proceed?
- 2 Is the interviewee under age or mentally handicapped? If so, is an appropriate adult present?
- 3 Does the interviewee speak English? If not, is an interpreter present (also may be required where interviewee is hard of hearing)?
- 4 Has the interviewee been advised of their right to legal advice?
- 5 **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."**

Go on to explain the caution.

Offer and read the explanation: "You have a right not to say anything if you don't want to. Anything you say may be given in evidence. This means if the matter goes to court, the court can be told what you have said. If there is something

you do not tell us today when we ask you questions and you later decide to tell the court, or if you choose to answer our questions today and should this matter go to court, and you change your answers, the court maybe less likely to believe you.”

“Do you understand the caution?”

- 6 Prior to questioning ensure interviewee is aware that they are not under arrest and that they can leave at any time.
- 7 Record of interview:
 - a) If taped, follow Taped Interview instructions.
 - b) If written, record date, time, place, time record made, any breaks, names of all present, signed by officer. Read and signed by persons interviewed.
- 8 A contemporaneous set of notes to record what is said should be made or, in exceptional circumstances, a record of why one could not be made, should be set down.
 - Should be verbatim or an adequate and accurate summary.
 - The interviewee should have a chance to read the record.

Note: Hearsay evidence may not be admissible. Unless the court has an opportunity to cross-examine, the weight of evidence will be reduced.

Searching of Premises and Seizure of Property and Searches Under Warrant

Procedure

- 1 Lay information before Magistrate under oath.
- 2 Clerk of Justices examines information and warrant for legality.
- 3 Court retains information (copy required).
- 4 Original held as controlled evidence authorised copy given to responsible person at site before search commenced - duly noted.
- 5 Warrant executed normally only with police support.

Note: Warrant not necessary when acting within powers granted by legislation.

Computer Records

Ensure the computer was functioning properly during the relevant period and that there are no reasonable grounds for believing inappropriate use of the computer took place.

Photographic Evidence

This must be accompanied by a statement indicating when the photograph was taken, by whom, the location and direction of shot.

Relevant PACE codes

Code B - Power to search premises

Code C - The code of practice for the detention, treatment and questioning of persons by Officers.

Code E - The code of practice on audio recording interviews with suspects.