APPROPRIATE ADULTS

A COMPREHENSIVE OVERVIEW OF CORE LEGAL KNOWLEDGE & SKILLS
Core Legal Knowledge and Skills for staff members acting as
Appropriate Adults

Role of Appropriate Adult

‘Where the appropriate adult is present at an interview, he should be informed that he is not expected to act simply as an observer and also that the purposes of his presence are, first, to advise the person being questioned and to observe whether or not the interview is being conducted properly and fairly, and secondly to facilitate communication with the person being interviewed.’
Code C paragraph 11.16

Role of Appropriate Adult

- Code 3.18 provides that the custody officer must advise the detainee that
- The duties of the appropriate adult involve giving advice and assistance
- They can consult privately with the appropriate adult at any time
- Appropriate adult must be present during interview except for the most limited and exceptional cases of urgent interviews
- Appropriate adult must also be present at other key points where suspects’ rights are affected – charging, intimate searches
- Providing consent to taking an intimate sample
- Appropriate adult’s views must be consulted before a decision to extend detention by a superintendent
- Ensure that the detainee’s rights are complied with
- Ensure that any evidence gained is not compromised by failing to follow the Codes of Practice
- Ensure that the special needs of the vulnerable person are taken account of

Justify Detention in a Police Station

S.37(1)
Custody Officer’s duty to determine whether ‘he has before him’ sufficient evidence to charge.

May detain x at the police station for ‘such period as is necessary to enable him to do so’.

S.37 (2)
If the custody officer determines that there is not sufficient evidence before him to charge x shall be released (with or without bail) unless:

The custody officer has reasonable grounds for believing that x’s detention with or without being charged is necessary to secure or preserve evidence relating to an offence for which x is under arrest or to obtain such evidence by questioning x.
S.37 (4) **Custody Record** – where custody officer authorises detention as soon as practicable must make a written record of grounds for detention. Record made in the presence of x who shall be informed of the grounds for detention unless x is incapable of understanding what is said to him, is violent or likely to be violent, or is in urgent need of medical attention.

S.37 (9) If x is not in a fit state to be charged or released, he/she may be kept in custody until he/she is.

**Detention Clock** starts ticking when the person first arrives at the police station whilst under arrest (relevant time). Counted down against the normal maximum period of detention without charge i.e. 24 hours. Period of extension may be granted by a superintendent or magistrate.

**Review Clock** starts ticking at the point when the person’s detention is first authorised by a custody officer. This decision is subject to time-bound reviews by a review officer.

**Review Officers**

Before charge – officer of at least the rank of inspector.
After charge – custody officer.
Key question for review officer: ‘Does this person still need to be in police detention?’
Reviews by telephone (where necessary) now permitted under CJA 2003.

**Review officers’ checklist**

- Inquire into reasons for detention
- Determine if there is sufficient evidence to charge
- Determine if detention is still necessary
- Remind the detainee of right to legal advice
- Allow representations to be made
- Note any comments
- Record decision in presence of detainee/appropriate adult

**Timing of Reviews**

- First review – not later than 6 hours after detention was authorised
- Second review – not later than 9 hours after the first review
- Subsequent reviews at intervals of no more than 9 hours

**Maximum 24 Hour Periods of Detention**

Investigation Time – maximum period of detention without charge is 24 hours from the arrested person arriving at the police station, or the person helping with enquiries being arrested.
If there is insufficient evidence available to charge after 24 hours the person must be released unless an extension of detention is authorised.

Traveling time – a maximum amount of traveling time permissible to transfer a detainee between any two police areas within England and Wales.

Where a person is suspected of the commission of offences in more than one police area – each police force is allowed up to 24 hours investigation time in addition to maximum of 24 hours traveling time between force areas.

S.38 (1) Duty to Release x After Charged Unless:

- Name and address cannot be ascertained or the custody officer has reasonable grounds for doubting his name and address.
- Custody officer has reasonable grounds for believing that detention is necessary for x’s own protection or to prevent him from causing physical injury to any other person or from causing loss or damage to property.
- Custody officer has reasonable grounds for believing that if x were released he/she will fail to appear in court to answer bail.
- Custody officer has reasonable grounds for believing x’s detention is necessary to prevent him/her from interfering with the administration of justice or with the investigation of offences or of a particular offence.

If a juvenile:
Custody officer has reasonable grounds for believing that x ought to be detained in his own interests.

Extending Periods of detention without Charge Sections 40 – 47

Extension by Superintendent – Section 42 PACE
In the case of an arrestable offence where an officer of, or above rank, of superintendent with responsibility for the police station at which the suspect is detained believes that:
- Detention of the person is necessary to secure or preserve evidence relating to the an offence for which he is under arrest or to obtain such evidence by questioning him and
- The investigation is being conducted diligently and expeditiously
May authorise detention for a period expiring at 36 hours after the ‘relevant time’.
Authorisation may not be given after the 24 hour period has expired or before the second review detention.

Home Office Circular 60/2003:
‘Detaining a juvenile or a mentally vulnerable person for longer than 24 hours without charge will only normally be justified where the offence is a serious arrestable offence’.

Code of Practice
Detaining a juvenile or a mentally vulnerable person beyond 24 hours – regard must be had to
a) special vulnerability
b) legal obligation to receive views of the suspect’s legal representative
c) the need to consult and consider the views of any appropriate adult
d) any alternatives to custody
In short the superintendent must be certain that the decision to extend is justifiable and proportionate

In Cases of Serious Arrestable Offences Extension by Magistrates Court May be made by Warrants of further detention (S.43 PACE)

Two further periods of extension may be granted by a Magistrates Court – both for maximum periods of 36 hours.

Total possible period of detention without charge is therefore 96 hours.

Application is in open court to at least two JP’s
Detained person must attend.
Is entitled to legal representation.

**Right Not to be Held Incommunicado S.56 (1)**
- ‘When a person has been arrested and is being held in custody in a police station or other premises, he shall be entitled, if he so requests, to have one friend or relative or other person who is known to him or who is likely to take an interest in his welfare, told, as soon as practicable except to the extent that delay is permitted by this section, that he has been arrested and is being detained there.

Maximum delay is 36 hours.
Authorisation for delay required by Superintendent.

Grounds - serious arrestable offence and where there are reasonable grounds for believing that exercising the right will lead to:
- Interference with or harm to evidence
- Physical injury to another person
- Alerting of other suspects
- Hinder recovery of property
- Detained person is held for a drug trafficking offence, and the recovery of proceeds of trafficking will be hindered
- Recovery of assets may be hindered

**Fingerprints: Section 61(3)**

Pre-Charge
Fingerprints of a detained person may be taken without consent if-
- he is detained in consequence of his arrest for a recordable offence
- and
- he has not had his fingerprints taken in the course of the investigation for the offence by the police

After Charge
- Where x has been charged or cautioned for a recordable offence
- And
- x’s fingerprints have not already been taken in the course of the investigation
Non-Intimate Samples  
S.65 (2) Non-Intimate Sample Means:
- Sample of hair (other than pubic hair)
- Nail or sample taken from under the nail
- Swab taken from any part of the person's body including the mouth - but not any other body orifice
- Saliva
- A footprint or similar impression of any part of a person's body other than a part of his/her hand

Code D Note 5C
'Where hair samples are taken for the purpose of DNA analysis (rather than for other purposes such as making a visual match) the suspect should be permitted a reasonable choice as to what part of the body he/she wishes to be taken from. When hairs are plucked they should be plucked individually unless the suspect prefers otherwise and no more should be plucked than the person taking them reasonably considers necessary for a sufficient sample.'

A non-intimate sample may be taken without consent in the case of:
- Person in police detention with authority of an Inspector or above.
- Person has been charged with a recordable offence and has not provided a non-intimate sample (or sample has proved unsuitable/insufficient for analysis).
- Person has been convicted of a recordable offence.

Grounds for Taking a Non-Intimate Sample
Inspector must have reasonable grounds for
- Suspecting the involvement of the person from whom the sample is to be taken in a recordable offence
  And
- For believing that the sample will tend to confirm or disprove the person's involvement in the offence

Intimate Samples  
Section 65 (2) defines intimate sample as
- Sample of blood
- Sample of semen or any other tissue fluid, urine or pubic hair
- Dental impression
- Swab taken from a body orifice other than the mouth
- An intimate sample can only be taken with the consent of an officer of the rank of Inspector or above
  - Consent of the person affected
  - In the case of a young person aged 14 but under 17 the consent of the young person and of his/her parents or guardian.
  - In the case of a young person under 14 the consent of his/her parent or guardian
Mentally Disordered or Vulnerable Person Consent and the Appropriate Adult

- Code D, Para 2.12
- If any procedure in this Code requires a person's consent, the consent of a mentally disordered or otherwise mentally vulnerable person will only be valid if given in the presence of the appropriate adult.

Grounds for Taking an Intimate Sample

- Inspector must have reasonable grounds for - suspecting the involvement of the person from whom the sample is to be taken in a recordable offence
  And
- For believing that the sample will tend to confirm or disprove the person’s involvement in the offence
- No power to take an intimate sample by force

Taking an Intimate Sample

- Dental impressions may only be taken by a registered dentist
- Intimate samples other than urine may only be taken by a registered medical practitioner

Taking an Intimate Sample

In circumstances where clothing needs to be removed:

- No person of the opposite sex may be present (other than a medical practitioner or nurse)
- Only people whose presence is necessary to enable the sample to be taken should be present
- In the case of a mentally disordered person, an appropriate adult of the opposite sex may be present if specifically requested by the person and the person is readily available
- In case of a juvenile, clothing may only be removed in the absence of an appropriate adult if the person signifies (in the presence of the appropriate adult that he/she prefers his/her absence and the appropriate adult agrees)
  Paragraph 5.12 Code D

Searches - Three Forms

- Searches that do not involve the removal of more than the detained person's outer clothing (Routine Search)
- Strip Searches
- Intimate Searches

Section 54

- Arrested and brought to the station
- Committed to police custody by order of the court
- Arrested at the station
- Detained after surrendering to bail
- Arrested after failing to surrender to bail

- Custody officer must also consider what property the detained person might have in his/her possession for an unlawful or harmful purpose while in custody.
- May assist in an escape
- May be evidence relating to an offence
- The safekeeping of any property taken from the detained person is the responsibility of the custody officer

Custody officer may authorise:
Searches that do not involve the removal of more than the detained person's outer clothing

Strip Searches
A strip search (involving the removal of more than the detained person's outer clothing)
e.g. removal of shoes and socks

- Cause harm to himself/herself or others
- Damage property
- Effect an escape
- Might be evidence of an offence

And

That if such an item were found it would be necessary to remove it.

Where clothing is seized replacement clothing of a reasonable standard of comfort and cleanliness (Code C Para 8.5) must be provided and the dignity of the individual must be considered.

It may be appropriate to arrange the collection and supply of another set of clothes from person's home.

An interview may not take place before replacement clothing has been supplied.

Code C Para 11:

Conduct of Strip Searches
- A police officer carrying out the search must be of the same sex as the person searched
- The search shall take place in an area where the person being searched cannot be seen by anyone who does not need to be present, nor by any member of the opposite sex (except an appropriate adult who has been specifically requested by the person being searched)
- Except in cases of urgency, where there is a risk of serious harm to the person detained or to others, whenever a strip search involves the exposure of intimate parts of the body, there must be at least two persons present other than the person searched, and if the search is of a juvenile or a mentally disordered person or mentally handicapped person, one of the people must be the appropriate adult.

Code C Para 11:

Conduct of Strip Searches
- Except in urgent cases (as above) a search of a juvenile may take place in the absence of the appropriate adult only if the juvenile signifies in the presence of the appropriate adult that he/she prefers the search to be done in his/her absence and the appropriate adult agrees.
- The presence of more than two people other than the appropriate adult shall only be agreed in the most exceptional cases.
- The search shall be carried out with proper regard to the sensitivity and vulnerability of the person in these circumstances and every reasonable effort shall be made to secure the person's co-operation and minimise embarrassment.

Code C Para 11:

Conduct of Strip Searches
- People who are searched should not normally be required to have all their clothes removed at the same time.
- Where necessary to assist the search the person may be required to hold
his or her arms in the air or to stand with his or her legs apart and to bend forward so that a visual examination may be made of the genital and anal areas provided that no physical contact is made with any body orifice.

- If during a search articles are found, the person shall be asked to hand them over. If articles are found within any body orifice other than the mouth and the person refuses to hand them over, their forced removal would constitute an intimate search.

Code C Para 11:

Conduct of Strip Searches
- A strip search shall be conducted as quickly as possible and the person allowed to dress as soon as the procedure is complete.

Intimate Searches
- Searches that involve the physical examination of a person’s body orifices other than the mouth.
- Can only be undertaken with authority of an Inspector for only two purposes
  - That an article which could cause physical injury to the detained person or others at the police station has been concealed
  - That the detained person has concealed a Class A drug which he/she intended to supply to another or to export
- The Inspector must have reasonable grounds for believing that one or both of these grounds are satisfied
- And believe that an intimate search is the only practicable means of removing an item

Photographs S.64A PACE
An officer may photograph a detainee at a police station:
(a) with their consent; or
(b) without their consent if it is withheld or it is not practicable to obtain consent

Welfare
Code C Para. 12.2 – Required Rest Period
- In any period of 24 hours a detained person must be allowed a continuous period of at least 8 hours for rest, free from questioning, travel or any interruption by police officers in connection with the investigation concerned.
- This period should normally be at night.

Welfare
- The period of rest may not be interrupted or delayed, except at the request of the person, his/her appropriate adult or his/her legal representative, unless there are reasonable grounds for believing that it would:
  - involve a risk of harm to persons or serious loss of, or damage to, property, or
  - delay unnecessarily the person’s release from custody; or
  - otherwise prejudice the outcome of the investigation
- This 24-hour period runs from the time the person is arrested – not from his/her arrival at the police station

Complaint Made to Custody Officer that D Has Been Treated Improperly Code C, Para 9.1
- A report must be made as soon as practicable to an officer of the rank of Inspector or above who is not connected with the investigation.
- If the matter concerns a possible assault or the possibility of the unnecessary or unreasonable use of force then the police surgeon must also be called as soon as practicable.
If a detained person requests a medical examination the police surgeon must be called as soon as practicable. He/she may in addition be examined by a medical practitioner of his/her own choice at this/her own expense.

Use of Restraints
- No additional restraints shall be used within a locked cell unless absolutely necessary and then only restraint equipment approved for use in that force by the Chief Officer
- If a detainee is deaf, mentally disordered, or otherwise mentally vulnerable, particular care must be taken when deciding whether to use any form of approved restraints

Use of Cells for Vulnerable Persons
- Question for custody officer: ‘Is a police cell or detention room the most appropriate for such an individual?’
- Could a cell door be left unlocked and a watch placed on the cell as an alternative?

Use of Cells for Juveniles
- A juvenile shall not be placed in a locked cell unless no other secure accommodation is available and the custody officer considers that it is not practicable to supervise him if he is not placed in a cell or the custody officer considers that a cell provides more comfortable accommodation than other secure accommodation.
- He may not be placed in a cell with a detained adult
- (Use of a cell should be regarded as a temporary measure)

Right to a Fair Trial
Section 58 Right of Access to a Solicitor
- Almost inalienable right – capable of only being delayed for maximum of 36 hours

Section 58 Right of Access to a Solicitor
- Denial of access only capable of authorisation by Superintendent or above – on the grounds that – serious arrestable offence and where there are reasonable grounds for believing that exercising the right will lead to:

Tactics
- Refusal of Appropriate Adult to Be Present in Interview in the Absence of a Solicitor

Suspect Has Not Asked for a Solicitor?
- Code C, Annex B, Para 3: Access to a solicitor may not be delayed on the grounds that he/she has been asked to attend the station by someone else
- Suspect must be told that the lawyer has come to the station and asked to sign the custody record to signify whether he/she does or does not want legal advice

Interview has Already Started
- Access to a solicitor may not be delayed on the grounds that he/she has been asked to attend the station by someone else

Suspect No Longer Wants a Solicitor
If lawyer is advised to this effect he/she should
- Consult the custody record for verification
- Confirm that the suspect has been informed of his/her arrival
- Confirm that he/she has been asked whether he/she wishes to see a lawyer

**Appropriate Adult Insists on a Lawyer the Suspect Does Not**
- Code C Para. 3.13
  - ‘If, having been informed of the right to legal advice under paragraph 3.11, either the appropriate adult or the person detained wishes legal advice to be detained then the provisions of Section 6 of code apply.’
  - Section 6.6 ‘A person who wants legal advice may not be interviewed or continue to be interviewed until he has received it.’ (unless exception provisions apply)
  - Appropriate adult may be the lawyer’s client

**Suspect Wants Another Lawyer**
- Right of the suspect on which lawyer may best represent him/her – appropriate adult may enquire (in private as to choice) and whether this has been affected by police advice

**The Interview**

**What is an Interview**

‘The questioning of a person regarding his involvement or suspected involvement in a criminal offence or offences which… is required to be carried out under caution.’

Code C Para 11.1A

**Fitness for Interview: Code C Para 11.18 (b)**
- A person who at the time of the interview appears unable to
- Appreciate the significance of questions and their answers
- Understand what is happening because of the effects of drink, drugs, or any illness, ailment or condition

**Urgent Interviews**
- Lead to interference with or harm to evidence connected with an offence or interference with or physical harm to other people
- Lead to the alerting of other people suspected of having committed an offence but not yet arrested for it
- Hinder the recovery of property obtained in consequence of the commission of an offence

Urgent Interviews
- Urgent interviews as above can only be authorised by an officer of at least the rank of Superintendent and are only to be conducted in cases of exceptional need

**Location of Interview**
- Once a decision has been taken to arrest a person he/she may not be interviewed until he/she has been taken to a police station and their detention authorised by a custody officer unless the delay in interviewing would be likely to lead to the above.

**When Should an Interview End?**
- *When an officer considers that there is sufficient evidence to prosecute a detained person, and that there is sufficient evidence for a prosecution to succeed, and that the person has said all that he wishes to say about the offence, he shall without delay bring him to the custody officer who shall then be responsible for determining whether or not he should be charged*
Once Charged...
- Prevent or minimise harm to some other person or to the public
- To clear up some ambiguity in a previous answer or statement
- In the interest of justice that the person should have questions put to him/her and have an opportunity to comment on information concerning the offence which has come to light since he/she was charged or informed that he/she might be prosecuted.

Requirements to Tape
- Code E – all interviews concerning triable either-way or indictable offences
- The Code allows custody officer not to tape when it is not reasonably practicable to tape record the interview because of:
  - Failure of the equipment
  - Non-availability of a suitable interview room or recorder
  - The custody officer considers on reasonable grounds that the interview should not be delayed until the failure has been rectified or a suitable room or recorder becomes available
  Or
  - It is clear from the outset that no prosecution will ensue

Note Taking
- Keep notes that maintain an accurate account of the interview

Interview Conditions (Code C Para 12.2)
- In any period of 24 hours, the suspect must be allowed a continuous period of 8 hours’ rest, normally at night, free from interviewing or interruption, subject to limited exceptions
- Suspect must be fit to be interviewed
- Interview should, so far as practicable, take place in an interview room in which must be adequately heated, lit and ventilated, and the suspect must not be required to stand during the interview
- There must be breaks in interviewing at recognised meal times, and also, short breaks for refreshment at intervals of approximately 5 hours.

Home Office Circular 22/1992 principles of investigative Interviewing
- The police interviewer is not bound to accept the first answer given. Questioning is not unfair merely because it is persistent.
- Even when the right of silence is exercised by a suspect, the police still have a right to put questions.

- When conducting an interview, police officers are free to ask questions on order to establish the truth; except for interviews with child victims of sexual or violent abuse which are to be used in criminal proceedings, they are not constrained by the rules applied to lawyers in court.
- Vulnerable people, whether victims, witnesses, or suspects, must be treated with particular consideration at all times.

- Code C Para. 11.4
  No police officer may try to obtain answers to questions or to elicit a statement by the use of oppression.'

Section 76 (2) PACE Oppression
- A confession is inadmissible in evidence if the prosecution cannot prove that it was not obtained by oppression
- Oppression is defined to include:
Torture
Inhuman or Degrading Treatment
The use of threat or violence

Conclusion of Interview
- Careful note of time the interview ended and departure from room of parties
- Note of any conversation
- Clarify how the investigation is now to proceed
- Clarify issues of charge and bail
- Ensure any welfare issues are clearly dealt with and recorded

Drug Testing
- A sample of urine or a non-intimate sample may be taken from a person in police detention for the purpose of ascertaining whether he has any specified Class A Drug in his body if.
  - (a) he has been charged with a trigger offence
  - (b) he has been charged with an offence and a police officer of the rank of Inspector of above, who has reasonable grounds for suspecting that the misuse by him of any specified Class A Drug has contributed to the offence, has authorised the taking of the sample
- (Minimum age = 14)
- No power to take the sample by force - but refusal to consent without reasonable cause is an imprisonable offence
- Appropriate adult must be present when:
  - Request for sample is made
  - Warning of failure to consent implications is given
  - Sample is actually taken
- Maximum period of detention after charge to enable sample to be taken is 6 hours