



**ASSOCIATION OF
CHIEF POLICE OFFICERS**

National Policing Position Statement:

Pre-Interview Briefings

**With Legal Advisers and Information to be
Supplied to Unrepresented Detainees**

National Investigative Interviewing

Strategic Steering Group (NIISSG)

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Introduction

This position statement has been revised to take account of the changes to the PACE Codes required by the implementation of the EU Directive 2012/13. The EU Directive creates a right for suspects whether legally represented or not to be informed of their rights to information from the onset of criminal proceedings.

Pre interview briefings for legal advisers should be viewed as a recognised working practice, the nature and content of which may be subject of comment in court at a later date. This document sets out to provide guidance on the content, preparation and service of pre-interview briefings for legal advisers.

This guidance is intended to assist investigators in exercising their decision making regarding such pre-interview briefings in a way that promotes fair and effective criminal investigations, including consistency across investigators and also to reduce the scope for legal challenges to either the investigative process or the application of adverse inferences at court.

Background

The purpose of a pre-interview briefing is to provide sufficient information to a suspect's legal adviser in respect of the circumstances of their client's arrest/voluntary attendance and the allegation that has been made against them so that they can provide effective legal advice prior to the interview taking place. Within this context, pre-Interview briefings should not be given to unrepresented suspects because doing so has the potential to affect the fairness of the investigation and any subsequent prosecution.

Pre-interview briefings to legal advisers are different from and separate to the requirements for provision of documents and materials relevant to the arrest and detention under PACE Codes C and H as amended by the EU Directive 12/13.

PACE Codes C and H – Provision of Information

PACE Codes C and H requires the Custody Officer, to give the suspect and/or their legal representative access to materials and documents which are essential to effectively challenge the lawfulness of their arrest and detention for any such offences. In most cases this will mean access to the Custody Record and

information contained therein. It is important to note that this should not include evidence which is going to be used in any subsequent interview. For a detained person to challenge their arrest and detention they only need to establish if there are any documents or information which undermines the arrest/detention.

The National Policing Position

Content of Pre-Interview Briefing

The content of pre-interview briefings can be a complex area that requires careful consideration in order to maximise the investigative/evidential significance of the interview. In serious and complex cases and in major crime investigations, consideration should be given to obtaining assistance from an interview adviser.

Pre-interview briefings should not mean automatic disclosure of everything, nor an automatic refusal to disclose anything, but rather a judgement to be exercised in each case. Legally the police do not have to disclose anything other than what is recorded on the suspect's custody record. PACE requires only that the grounds for detention are recorded on the custody record (i.e. to secure or preserve evidence relating to an offence for which the suspect is under arrest or to obtain such evidence by questioning them). It does not require that the investigative material giving rise to reasonable suspicion is recorded on the custody record.

However, consideration should be given to the following:

- Too little disclosure may unfairly prevent the suspect providing a reasonable account.
- Too much disclosure may prevent the investigator from testing the veracity of the suspect's account and may allow the suspect to develop their responses on the basis of the disclosure rather than on the basis of their own recollection of the events.

PACE Codes C and H 11.1A are clear that the information provided prior to interview must be sufficient for the person to understand the nature of any offence; this does not require the disclosure of details at a time which might prejudice the criminal investigation. It further states that the decision about

what information to provide rests with the Investigating Officer who has sufficient knowledge of the case to make that decision.

If tested, the courts will consider whether the pre-interview disclosure was reasonable and sufficient to enable the legal advisor to properly advise their client. Under the Criminal Procedure and Investigations Act 1996 the investigator is under no obligation to reveal the prosecution case to the suspect or their legal representative before questioning begins. However, the Court of Appeal has held in *R v Argent* [1997] 2 Cr App R 27, *R v Imran and Hussain* [1997] Crim LR 754 CA and *R v Roble* [1997] Crim LR 449 that if the police disclose little or nothing of the case against the suspect, so that a legal advisor cannot usefully provide advice to their client, then this may be a good reason for the legal adviser to advise the suspect to remain silent. The right of silence is there for all suspects and is explicit within the wording of the caution given on arrest and before all interviews.

It is recommended that the interviewing or investigating officer should disclose sufficient information to enable the suspect to understand the nature and circumstances of their arrest/voluntary attendance. There is no requirement for the police to present a prima facie case before questioning the suspect or to give the legal adviser a full briefing before questioning the suspect. This is explained in *R v Imran and Hussain* [1997] Crim LR 754 CA and *R v Farrell* [2004] All ER (D) 432.

If the investigator feels that it is necessary to withhold information from the legal adviser during a pre-interview briefing they should be able to explain clearly the reasons supporting this approach in any future proceedings. For example, it may not be appropriate to reveal the existence or nature of investigative material (forensic analysis, an itemised telephone bill, a witness account with a clear and positive identification etc.) that indicates there is a link between the suspect and a crime scene prior to the interview because they might be tempted to develop a response to it rather than to provide an untainted account of their movements and associations. PACE Code G Note for Guidance 3 can assist in providing the rationale this decision making process.

The content of the briefing will be different in each case and will depend on the objective of the interview, the investigative material available and the interview tactics decided upon.

In some cases, by providing very little information prior to the interview, it allows the interviewers to obtain an account which can later be tested against the known facts. It also allows the suspect the opportunity to give their account based upon their own recollections free from the detail of the victim, witnesses or other intelligence sources, all of which might be mistaken, inaccurate or even contradictory.

Phased disclosure is the gradual and carefully planned release of information to the solicitor in a series of briefings in between and during a number of interviews. This enables the gradual testing of the suspect's account and is useful in complex or lengthy interviews. In some cases a more full initial disclosure is preferable, particularly when there is a very strong case against the suspect. However, care should be taken using this tactic and it is unlikely to be commonplace.

Timing of Pre-Interview Briefing

Depending upon the circumstances of the investigation, disclosure may occur before the interview, during the interview in between interviews or, in rare cases, not at all.

Preparing the Document

The pre-interview briefing for the legal advisor should be documented so as to ensure there is a proper and accurate record and this can be referred to in the future. The briefing document should be seen as an opportunity to properly and accurately advise the legal advisor so they can brief the suspect. This process should encourage an account from the suspect that could help interviewers to achieve the objectives for the interview. If a well considered briefing is provided it may strengthen a future legal argument in respect of adverse inferences.

Documents must be carefully worded to ensure that they do not mislead the legal adviser by over-stating the strength of the evidence against their client.

Any account provided may be excluded at court if it can be shown that the briefing was inaccurate or intentionally misleading.

Serving the Document

Briefings can be typed or written and the legal adviser should be asked to sign a copy as a receipt for it being served. Recording the process is an option which can ensure that all questions and any responses cannot be disputed at a later stage. The briefing document is disclosable under the provisions of the Criminal Procedures and Investigation Act.

Court Preparation

It is important that the Crown Prosecution Service and Prosecution Counsel are made aware of any pre-interview briefings that have been provided to a legal representative prior to interview. This can be done using the MG6A form. Where the MG6A has not been used the briefing document should be included in the unused material and referred to on the MG6.

Where interviewing officers are called to court to give evidence in respect of the interview this evidence should include the content of the pre-interview briefing.

Unrepresented Suspects

It is strongly advised that serving pre-interview briefings on unrepresented suspects should NOT occur for two reasons:

1. Legal advisers are experts in law and are, therefore, in a position to properly advise their clients about the strength and significance of any investigative material that is referred to in the briefing document prior to an account being provided. An unrepresented suspect could be easily misled when reading the same document;
2. If the suspect has any questions relating to the information in the briefing document there is a possibility that this might lead to a situation in which they get confused between the process of disclosure at the pre-interview stage and the investigative interview itself.

The details of the allegation and any investigative material should be revealed during the interview itself.

Although (with regard to the provision of pre-interview information, documents or materials) PACE Codes C and H do not make a distinction between

represented and un-represented suspects, the ACPO position is that there is a clear difference contained in PACE. PACE requires that the provision of information does not prejudice the investigation but by giving information to an unrepresented suspect it may do just that due to them misunderstanding the strength of the evidence or seeking to begin an interview during the briefing phase.

PACE Code G Guidance Note 3 states the following:

An arrested person must be given sufficient information to enable them to understand they have been deprived of their liberty and the reason they have been arrested, as soon as practicable after the arrest, e.g. when a person is arrested on suspicion of committing an offence they must be informed of the nature of the suspected offence and when and where it was committed. The suspect must also be informed of the reason or reasons why arrest is considered necessary. Vague or technical language should be avoided. When explaining why one or more of the arrest criteria apply, it is not necessary to disclose any specific details that might undermine or otherwise adversely affect any investigative processes. An example might be the conduct of a formal interview when prior disclosure of such details might give the suspect an opportunity to fabricate an innocent explanation or to otherwise conceal lies from the interviewer.

Legal Advisors and Clients

The serving of pre-interview briefing on legal advisors in company with the suspect should **NOT** occur. It is the responsibility of the police to brief the legal adviser and for the legal adviser to brief their client. A joint briefing must not be used to ensure that the legal adviser passes on the full briefing to their client.

Acknowledgement

The original position statement was prepared by DI Ian Tremble, an ACPO Approved Interview Adviser from the Metropolitan Police Service.

The 2014 revisions were prepared by T/Superintendent Steve Pont, National Investigative Interviewing Strategic Steering Group.

In the event of any queries about this position statement please contact either Gary Shaw at gary.shaw@nca.pnn.police.uk or Kevin Smith at kev.smith@nca.pnn.police.uk