

A Complete Guide

Voluntary Police Interviews & *The Law*



The police conduct approximately 145,000 voluntary interviews per year, questioning suspects on a wide variety of offences - from minor assaults to serious sexual offences. In every case, the investigating officer was bound by the law set out in the Police and Criminal Evidence Act 1984 (PACE).

An additional section was added to the Act in 2018 to deal specifically with voluntary interviews (s.3.21A). It sets out the procedure that the police must follow when conducting these interviews and it is designed to safeguard your rights. The Home Office also created a 'remember your rights' document, which is supposed to be handed to every suspect before interview, although officers rarely do so. A copy of this document can be found at the end of this guide.



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What Is a Voluntary Interview?

If you are interviewed voluntarily, generally you will not be arrested.

You will be told that you are free to leave at any time, albeit the police will warn that they may arrest you if you do so. In practice, however, this is moot point because if you do not consent the officer has the power to arrest for a 'prompt and effective investigation' (Code G).

Pre-interview Procedure & PACE

Before a voluntary interview takes place, you must be informed of several important aspects (PACE 3.21A). It must be made clear that the purpose of the interview is to question you about your alleged involvement in a criminal offence and you have the right to obtain free and independent legal advice. You must also be told that the interview is audio-recorded or visually recorded with sound.

Perhaps most importantly, PACE dictates that you have the right to be given 'disclosure' about the allegation before the interview, to enable you to understand the nature of the offence and why you are suspected of committing it. Unfortunately, this is an area which is often neglected by interviewing officers, who prefer to reveal as little as possible about the allegation to test your account.

Under PACE, the officer is not required to disclose details 'which might prejudice the criminal investigation'. This gives them 'wiggle room' to disclose very little. Nevertheless, given the importance of pre-interview disclosure, every effort must be made to obtain as much information as possible from the officer, before the interview takes place.

The Process of a Voluntary Interview

Cautions

Many of the same rights and entitlements apply regardless of whether you are in custody (under arrest) or at the police station voluntarily. These include the right to free legal advice via the duty solicitor scheme, and the provision of an appropriate adult for vulnerable suspects. You are also entitled to stop the interview at any time in order to receive further legal advice.

All interviews must be conducted under caution – which is as follows:

"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".

The caution conveys three important aspects:

- 1) You do not have to answer the questions – whether you do so is entirely your choice.
- 2) It warns that if certain details of a defence are not put forward, then in some circumstances it could harm your defence in court. For example, if an important aspect of a defendant's defence is not mentioned during the interview but is later put forward at trial – the prosecution can ask that an 'adverse inference' is drawn.
- 3) If you do say anything then this can be presented in court as evidence.

Section 11.4 of PACE dictates that the officer must put to the suspect any 'significant statement' at the beginning of the interview. This is a statement or comment, which appears capable of being used in evidence against you. Often it will take the form of an alleged comment that an officer noted down in their pocketbook, during an earlier interaction with you. Naturally, this aspect will not be relevant in every case.

The Law Around False Confessions

In order to try to prevent false confessions, PACE prescribes that in section 11.5 that no officer may try to 'obtain answers or elicit a statement by the use of oppression'.

The section also makes it clear that 'no interviewer shall indicate, except to answer a direct question, what action will be taken by the police if the person being questioned answers questions, makes a statement or refuses to do either'.

This provision is intended to prevent officers from enticing confessions ("if you admit the offence, we'll offer you a caution"). In cases where officers have breached these sections of PACE, the remedy is to make an application under s.76 or 78 of PACE to have the evidence excluded.

Outcomes of a Voluntary Interview

At the end of the interview, the suspect should be handed a notice regarding the arrangements for access to the recording (Code E para.4.12). If the suspect is charged or informed that they will be prosecuted, they are entitled to access the recording of the interview.

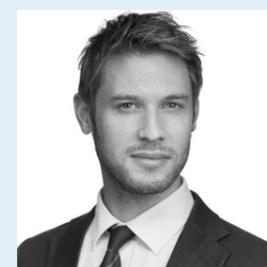
However, under Code E para. 7.13, if the suspect is not charged, they will only be given access upon agreement with the police or via a court order. Another avenue is to request the interview recording via data protection law.

Conclusion

It is important to be aware of the law that underpins the interview process and the rights that you have at the police station. Knowledge of the specific sections of PACE allows us to challenge the police with confidence, ensuring that our client's rights are always respected. This is especially important because the police or CPS decide whether to prosecute a matter after the voluntary interview has taken place.

If the police contact you and ask you to attend a voluntary interview, we strongly recommend that you seek professional advice. We can liaise with the officer, making sure the interview is conducted at a convenient time, and we will obtain as much disclosure from the officer as possible. We can also arrange a conference in advance of the interview to ensure that you are fully prepared for it. This can make a significant difference to the prospects of your being charged with a crime.

About the Author



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Nathan Seymour-Hyde is a Partner and Solicitor, specialising in criminal defence. He is regularly instructed to represent suspects in voluntary interviews across London and the South East.



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