

# **Summary Notes – Criminal Litigation**

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Solicitors Qualifying Examination – SQE

### 1. Detention at the Police Station Under PACE 1984

PACE 1984 and Codes C, D and G of the Codes of Practice provide a detailed legal framework that governs a suspect's detention at the police station.

If the police fail to act in accordance with the substantive provisions of PACE 1984 or the relevant Code(s) of Practice, evidence obtained in breach of these provisions may be excluded at a later criminal trial under s. 78 of PACE 1984, where the admission of evidence would have 'an adverse effect on the fairness of proceedings', or s. 76 if a suspect made incriminating admissions. This in turn may also lead to the prosecution being unable to discharge its legal and evidential burdens of proof which can result in the defendant's acquittal.

#### *The Procedure Following Arrest*

The suspect's detention enables the police to make enquiries about the alleged offence such as taking the suspect's fingerprints, have the suspect available for a video or an identification parade and interview the suspect about their possible involvement and knowledge of the offence under investigation.

After arriving at the designated police station, the suspect will be taken 'as soon as practicable' to the custody suite for 'booking-in' by the custody officer.

#### *The Custody Officer's Role*

The custody officer, who is usually a sergeant:

- is independent and impartial of the investigation
- should not question the suspect about their involvement in the alleged offence
- will search the suspect on their arrival at the police station
- compiles the suspect's custody record
- informs the suspect of their legal rights; and
- will undertake a risk assessment of the suspect to assess their physical and mental health.

**Some of these important duties are considered in more detail below.**

#### **(1) Compiling the custody record**

A custody record must be opened by the custody officer as soon as is reasonably practicable after the suspect is brought to a police station. The record provides a detailed account of all aspects of the suspect's detention including:

- the time and location of the suspect's arrest;
- the reason for the suspect's detention;
- authorisation of search procedures or continued detention;

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- requests for legal advice/medical advice;
- reviews of the suspect's detention;
- details of meals and refreshments.

The suspect's solicitor can inspect and take notes from the custody record at any time while the suspect is in police detention. In the case of a vulnerable suspect such as a young offender or a person suffering from a mental disability, the person is entitled, in addition to their solicitor, to have an appropriate adult present at the police station. The appropriate adult is usually the suspect's parent or guardian, social worker or a friend.

### **(2) Informing the suspect of their legal rights under PACE 1984 and the Codes of Practice**

The custody officer must explain to the suspect that they have the general right to:

- inform someone of their arrest
- consult privately with their solicitor
- consult the Codes of Practice.

The custody officer is also required to risk assess the suspect's health and welfare. Where required, the suspect is entitled to medical treatment from a qualified practitioner. Where they have difficulty understanding English, the suspect is entitled to have an interpreter.

### **(3) Searching the suspect**

The custody officer will make a record of the suspect's property when they are brought into custody. The suspect's property and clothing may be seized and retained if they could cause injury or damage to persons or property or could be used to assist an escape from lawful custody.

However, a strip search, which involves the removal of more than the suspect's outer clothing, requires special authorisation. A strip search is not usually carried out unless the officer reasonably believes that the suspect might be concealing an article which a detainee would not be allowed to keep such as a weapon, or the search is necessary to prove or disprove that the suspect has a mark or tattoo that would confirm or disprove their involvement in the offence under investigation and the suspect refuses to confirm his identity.

### **(4) Deciding whether there is sufficient evidence to charge the suspect**

The custody officer must decide if there is sufficient evidence to charge the suspect with the offence for which they have been arrested.

If the custody officer (including after consultation with the CPS) believes that there is sufficient evidence to charge, the suspect must be charged immediately. After being charged, the suspect may either be released on police bail or remanded in custody to a police cell to be taken to the magistrates' court for their first court appearance.

If there is insufficient evidence to charge and the police wish to continue to detain the suspect, the suspect can be kept at the police station without charge on the grounds and for the periods of detention that are explained later on.

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### *Detaining the Suspect Without Charge*

A suspect can be detained at the police station without charge where the custody officer decides that there is insufficient evidence to charge the suspect and the suspect's continued detention without charge is necessary:

- to secure or preserve evidence relating to an offence for which the suspect is under arrest; or
- to obtain evidence by questioning the suspect.

The reasons for detaining the suspect without charge must be noted in the custody record.

### **How long can the suspect be detained without charge?**

The police can only detain a suspect without charge subject to strict time limits imposed by PACE 1984. Unauthorised detention beyond the permitted time is unlawful.

Detention time limits run from the '**relevant**' time. The 'relevant' time is the time the arrested person *first arrives at the designated police station*, or in rare incidences, 24 hours after the time of that person's arrest, whichever is the earlier. The 'relevant' time must be noted in the custody record.

The relevant time is different for a person who attends **voluntarily** at a police station, or accompanies a constable to a police station without having been arrested, and is arrested at the police station. The relevant time will then be the time of the arrest.

The significant periods of time that a suspect can be detained without charge are 24 hours, 36 hours, 72 hours and 96 hours. The permissible length of their detention without charge is based on the classification of the criminal offence the suspect has been arrested in connection with and the purpose of detaining the suspect at the police station.

- (1) Detention up to 24 hours** – all arrested suspects can be detained at the police station without charge for 24 hours from the 'relevant' time provided the detention grounds are met, under s. 41 of PACE 1984.

Generally, at the end of the 24-hour period the suspect must either be charged or released unconditionally or on bail subject to the position explained at (2) below.

- (2) Detention beyond 24 hours** – the basic period of 24 hours' detention without charge can be extended up to 36 hours from the 'relevant' time for an indictable offence, which could be tried in the Crown Court and therefore includes those offences which are classified as either-way offences or indictable only offences (so it does not apply to summary offences such as common assault or battery), where:

- a senior officer, of at least the rank of superintendent, authorises the suspect's continued detention; and
- the officer has reasonable grounds for believing that it is necessary to detain the suspect without charge to secure or preserve evidence or to obtain evidence by questioning the suspect; and

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- the investigation is being conducted diligently and expeditiously.

Where these conditions apply, the suspect can be detained for an additional period of up to 12 hours, making a total of **36 hours from the relevant time**. The reasons for extending the suspect's detention must be noted on the custody record.

At the end of the 36-hour period the suspect must either be charged or released unconditionally or on bail unless detention without charge is further extended.

- (3) **Detention without charge beyond 36 hours** – if the police wish to detain the suspect without charge beyond 36 hours an application to the magistrates' court for a warrant of further detention will be required. An application for continued detention can only be made in relation to an indictable offence, including either-way offences.

Where the police persuade the court that the suspect should be detained for a further period without charge, the court may authorise detention for a further period of up to 36 hours, making a total of **72 hours from the relevant time**.

At the end of 72 hours, where the police wish to hold the suspect further without charge, a second application for an extension of the warrant of further detention must be made to the magistrates' court. Provided the court is again satisfied that there are reasonable grounds for believing that the further detention is justified, it can extend detention for a further 24 hours, making a total of 96 hours from the relevant time.

At the end of 96 hours, the suspect must either be charged or released unconditionally or on police bail.

### *Reviewing the Suspect's Detention*

The police, through the rank of at least an inspector, must carry out reviews of the suspect's detention to ensure that the suspect's continued detention is lawful. The details and timings of the review must be noted in the custody record.

The first detention review must be made no later than six hours after the detention was first authorised by the custody officer. The second and subsequent reviews must be carried out no later than every nine hours after the previous review. The purpose of the review is to ensure that the reasons for detaining the suspect continue to apply.

Reviews are mandatory and if the review is not carried out the detention will be unlawful until the review does take place (*Roberts v Chief Constable of the Cheshire Constabulary* [1999]).

### *The Suspect's Other Legal Rights at the Police Station*

A suspect's legal rights at the police station include:

#### **Suspect's Right to Inform Someone of Their Arrest**

After arrest, a suspect is entitled, as soon as is reasonably practicable, to have a friend, relative or another person who is likely to be interested in that person's welfare informed of the arrest.

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However, the right to inform someone of the arrest under s. 56 of PACE 1984 is not an absolute right and can be suspended by the custody officer where:

- the suspect has been arrested in connection with an indictable offence (including an either-way offence); and
- an officer of at least the rank of inspector authorises the delay on the basis that the officer has reasonable grounds for believing that telling the suspect's relative, friend or other person likely to take an interest in the suspect's welfare of the arrest will:
  - (a) lead to interference with or harm to evidence connected with an indictable offence; or
  - (b) lead to interference with or physical injury to other persons; or
  - (c) lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
  - (d) hinder the recovery of any property obtained as a result of such an offence.

The reason for the delay must be noted in the custody record and, if justified, may **not exceed 36 hours** from the time the suspect arrived at the designated police station.

### The Suspect's Right to Legal Advice

The suspect's right to free legal advice is one of the most important protections against the abuse of the suspect's legal rights at the police station. The general rule is that s. 58 of PACE 1984 allows the suspect to consult a solicitor privately at any time.

The suspect's right to legal advice is not absolute and may be delayed under s. 58(8) of PACE 1984 where:

- the suspect has been arrested in connection with an indictable offence (including an either-way offence); and
- an officer of at least the rank of superintendent authorises the delay on the ground that the officer has reasonable grounds for believing that if the suspect was permitted to exercise his right to receive legal advice it will:
  - (a) lead to interference with or harm to evidence connected with an indictable offence or interference with or physical injury to other persons; or
  - (b) lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
  - (c) hinder the recovery of any property obtained as a result of such an offence.

The reason for the delay must be noted in the custody record and, if justified, may **not exceed 36 hours** from the time the suspect arrived at the designated police station.

### Funding Legal Advice at the Police Station

Legal representation at the police station is free to all suspects irrespective of their financial means under the Police Station Advice and Assistance Scheme administered by the Legal Aid Agency, unless the suspect chooses to instruct their own solicitor and pay privately.

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Legal *advice* will be restricted to *telephone advice* provided by Criminal Defence Direct if the suspect is: detained for a non-*imprisonable* offence; arrested on a bench warrant *for failing to appear in court* and is being held for production before a *court*; *arrested* on suspicion of driving with excess alcohol; *failure to provide a specimen, driving while unfit*; detained in relation to breach of police or court bail conditions. The solicitor may be justified in attending the police station in these cases if the client is vulnerable or is complaining of ill-treatment by the police or is about to be interviewed or is required for an identification procedure.

### *The Treatment of Vulnerable Suspects*

Annex E of Code C provides a detailed summary of the important provisions in relation to detainees under the age of 18, the mentally disordered or mentally vulnerable suspect. The risk assessment which the custody officer must undertake at the beginning of the suspect's detention in relation to all detainees should identify those detainees who might be 'vulnerable'.

A key right in protecting the vulnerable suspect is access to an appropriate adult. The custody officer must inform an appropriate adult as soon as possible about the detention and request the appropriate adult to attend the police station as soon as practicable. The appropriate adult's role is to protect the vulnerable person's interests and to ensure that his legal rights are respected by the police. The right of access to an appropriate adult is additional to the right to legal advice. No interview of a vulnerable person should be undertaken in the absence of the appropriate adult.

However, police interview of a vulnerable suspect is permitted without an appropriate adult being present where an officer of the rank of superintendent or above considers delaying the interview will lead to:

- interference with or harm to evidence connected with an indictable offence or
- interference with or physical injury to other persons; or
- the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
- hinder the recovery of any property obtained as a result of such an offence

### *The Legal Status of a Volunteer at the Police Station*

A **volunteer** who is helping the police with their enquiries also has extensive legal rights under PACE 1984 including:

- the right to legal representation;
- to be cautioned before being questioned; and
- the right to be informed they are not under arrest and can leave police custody at any time.

The volunteer is free to leave the police station at any time. If the police wish to formally detain a person who is helping with their enquiries, the person must be arrested. If they are arrested their legal status changes to a suspect.

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### *Practical Aspects of the Defence Solicitor's Role*

A key part of effective police station representation is that the solicitor should keep detailed and accurate contemporaneous notes about their involvement in the case from the moment they are contacted.

On arrival at the police station, the solicitor should first speak with the custody officer and then carefully review the suspect's custody record. From the custody record the solicitor should check the time of the arrest, the reason for the arrest, the suspect's time of arrival at the police station and the reasons for their detention without charge. The custody record will also indicate whether any risk assessments have been undertaken, if the necessary authorisations have been given to continue the suspect's detention without charge and whether any complaints have been made by the suspect about their treatment.

After taking detailed notes from the custody record, the solicitor should then speak with the investigating officers. Ideally the officers would disclose all the evidence they have against the suspect as the extent of the police disclosure as well as the strength of the evidence against the suspect is a significant factor in determining the advice the solicitor will give to the suspect and whether the suspect should answer questions in the police interview.

The decision about what needs to be disclosed to the defence solicitor at this stage rests with the investigating officer who has sufficient knowledge of the case to make that decision. The solicitor must be given sufficient information to enable them to understand the nature of any such offence, and why they are suspected of committing it and in order to allow for the effective exercise of the rights of the defence.

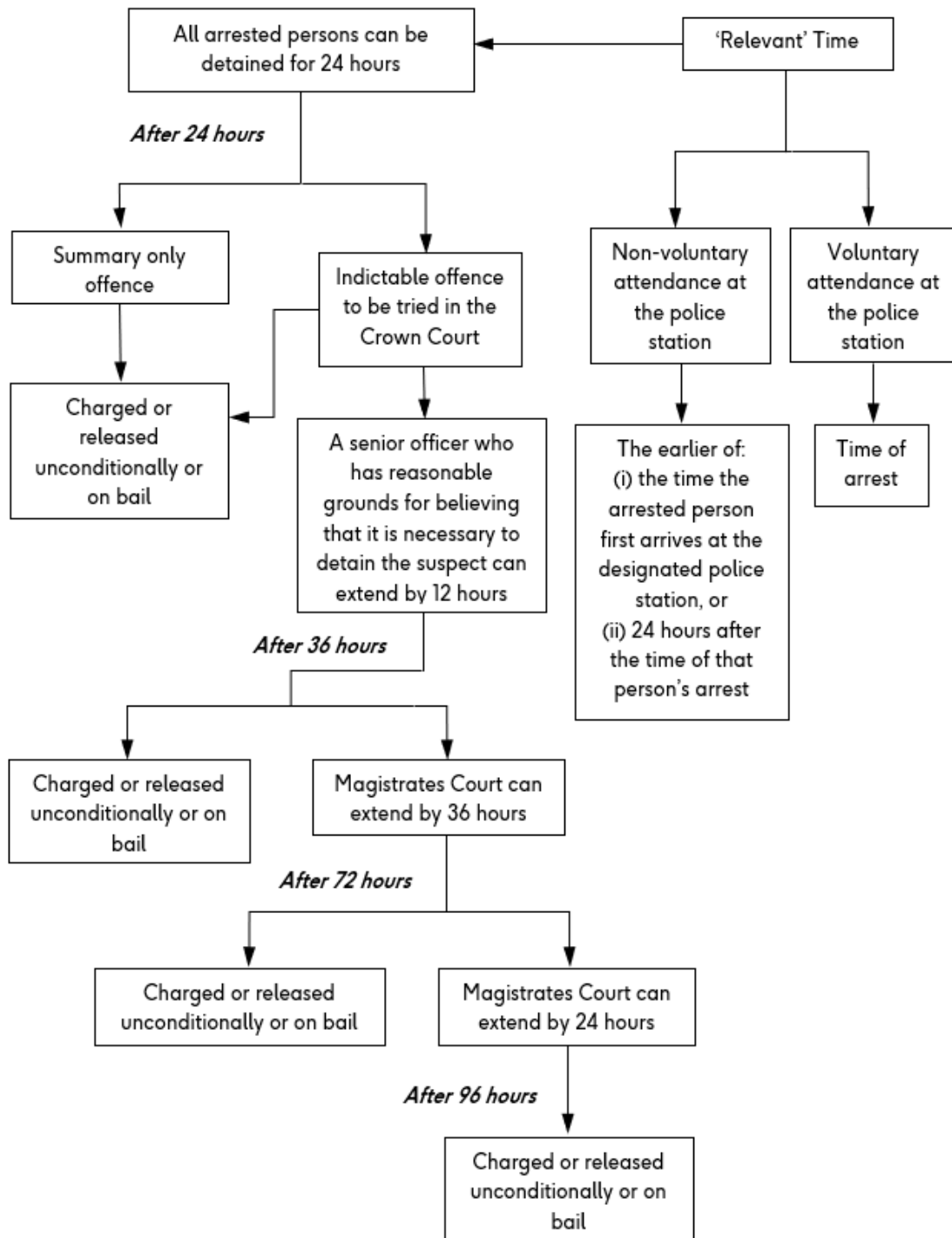
The solicitor should keep a careful note of what they are told. If the evidence that has been disclosed to the solicitor by the police is inadmissible or is weak or open to challenge about the way the evidence was obtained, these are important factors that will influence the advice that will be given to the client about what they should do in the police interview.

Having collated all of the necessary information and having reflected upon the strength and weaknesses of the evidence against their client, the solicitor is now in a position to interview the client.



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### Detention of a Suspect by the Police Without Charge (Sections 41-44 PACE 1984)



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### Police Investigation

