



8th March 2017 Niall Murphy KRW Law LLP
'The Role of the Solicitor at the Police Station'

Queen's University Belfast
Institute of Professional Legal Studies

HISTORY OF PACE

The Police and Criminal Evidence Act 1984 was brought in following recommendations set out by the Royal Commission on Criminal Procedure. The purpose of the Police and Criminal Evidence Act 1984 was to unify police powers under one code of practise and to carefully balance the rights of the individual against the powers of the police. The equivalent provision in this jurisdiction is the 1989 Order¹.

PACE mandated audio recording of all suspect interviews, the right to legal representation for suspects and limits on detention before charge. PACE resulted from growing judicial and public criticism of police conduct when dealing with suspects, most notably arising from the mid-1970s cases of the Birmingham Six and Guildford Four whose confessions formed the basis of cases against them, and which were later found to have been coerced by physical and psychological abuse. Eventually, the convictions were quashed. The reforms were borne of the fact that the system didn't want to accept that the police misbehaved in such cases, because, first of all, that would mean that you couldn't trust the police, and secondly, it would mean that the real offenders were still out there.

There are codes of practise that accompany the Act to further clarify to police officers the extent of their powers. Sections 60 and 66 Police and Criminal Evidence Act 1984 require the Secretary of State to issue codes of practice in connection with the exercising of various powers. So far, eight such codes have been issued.

CODES OF PRACTICE

PACE Code A: deals with the exercise by police officers of statutory powers to search a person or a vehicle without first making an arrest. It also deals with the need for a police officer to make a record of such a stop or encounter.

PACE Code B: deals with police powers to search premises and to seize and retain property found on premises and persons.

¹ Police and Criminal Evidence (Northern Ireland) Order 1989 (SI 1989/1341).

PACE Code C: sets out the requirements for the detention, treatment and questioning of people in police custody by police officers. It replaced the Judges' Rules in England and Wales.

PACE Code D: concerns the main methods used by the police to identify people in connection with the investigation of offences and the keeping of accurate and reliable criminal records.

PACE Code E: deals with the tape recording of interviews with suspects in the police station.

PACE Code F: deals with the visual recording with sound of interviews with suspects.

PACE Code G: deals with statutory powers of arrest.

PACE Code H: deals with the detention of terrorism suspects.

A suspect detained at the police station is entitled to free legal advice and to be represented. This right is not means tested, every citizen is entitled to free legal aid whilst detained under PACE.

The solicitor role at the police station is to protect and advance the legal rights of their client (Code C Para 6) confidentiality.

PACE TELEPHONE ADVICE AND ASSISTANCE

The initial telephone call may happen at any time from the custody officer advising a suspect has been arrested and needs a solicitor. He can only give you the suspects name and offence committed. You MUST speak to the client:

- Advise the client to confine his conversation to Yes/No answers in response to your questions.
- Confirm he wants you to represent him
- Advise any advice given is free.

DO NOT ALLOW CLIENT AT THIS STAGE TO GIVE HIS VERSION OF EVENTS!

You are entitled to a specific payment for PACE telephone advice of £23.70 for PACE calls from 0800-1900 and £31.60 for PACE calls out of hours. You will also require to make calls to the client's family and also to the Custody staff which can be claimed at rates of £4.02 and £5.36 (unsocial). Calls such as enquiries re whether or not

- The client is fit for detention
- The client has seen the FMO
- The client is fit for interview
- Interviewing police are ready for interview
- Interviewing police are specifically in attendance...

Tell client:

1. When you'll be attending and what you'll do.
2. Not to talk to anyone about the case.
3. Not to agree to be interviewed or sign anything, not to give samples or take part in an identification parade without you being there.

The solicitor **MUST** attend the station immediately if:

- The offence is serious
- And interview or samples need to be taken straight away.
- The client is vulnerable.
- The client complains of being mistreated.
- Representations need to be made about the client's detention.
- The client needs to speak to the solicitor in confidence.

Other steps that need to be taken:

1. Check the law: check the legal elements of the offence the suspect has been accused of so you're aware of what needs to be proven to prosecute your client.
2. Check previous files: in case your firm has represented the client before and what was the outcome of those proceedings and if it's of the same type of offence. This will also reveal if clients vulnerable.
3. When checking previous engagement with the practice, check whether or not the client is subject to a suspended sentence or indeed a deferred sentence, as this may have an impact on the decision to be made at the conclusion of the process as to whether or not he will be released, pending charge to court, or recognisance to return to the police station. Similarly check whether or not the client is on bail for any extant offences.

On arrival at the police station

The custody officer is the first person you speak to, giving you basic information about the circumstances. You should also view the custody record and detention log (Code C para 2.4) recording all significant events since the client's arrival. Use the custody record to obtain your client's basic info and:

1. The alleged offences for which the client has been arrested.
2. Time of detention and reason for authorisation (Delay).
3. Any significant comments made whilst at the station.
4. Any samples which may have already been taken.
5. Any identification procedure taken place.
6. Any interview already taken place.
7. Client under any physical/mental disability requiring appropriate adult.
8. Any illness client suffering from or requires medical attention. Or suffering from the effects of alcohol or drugs.
9. Any significant items found on client's person or premises.

Once you have obtained the basic info you need to speak to the investigating officer to obtain:

- The facts of the offence.
- Disclosure
- Significant statements.
- The next step in the investigation.
- Previous convictions.
- Any witnesses & if they gave statements and likely to attend court.

The client

- The solicitor needs to identify himself to the client and his role and provide free advice and has no connection with the police but to protect his rights. And anything he is told by client will remain confidential.
- Inform the client of what you're been told about the offence the client has allegedly committed. As well as informing the client of the substantive law and what the police need to obtain a conviction.
- The clients instructions; getting his version of events.
- The next step the police intend to take. Usually to take part in a recorded interview.
- Prepare the client for interview. Whether to answer questions or not or simply prepare a written statement if client is to give a 'no comment' interview.

The solicitor must aim to:

1. Investigate the prosecution case.
2. Obtain info to assist in the conduct of the defence.
3. Avoid client giving evidence which might strengthen their case.
4. Influence the police not to charge or
5. Create a favourable position for the client.

THE NECESSITY TEST Code G 2.9²

The criteria are that the arrest is necessary:

- (a) to enable the name of the person in question to be ascertained (in the case where the constable does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his name is his real name)
- (b) correspondingly as regards the person's address: an address is a satisfactory address for service of summons if the person will be at it for a sufficiently long period for it to be possible to serve him or her with a summons; or, that some other person at that address specified by the person will accept service of the summons on his/her behalf.
- (c) to prevent the person in question:
- (i) causing physical injury to him/herself or any other person;
 - (ii) suffering physical injury ;
 - (iii) causing loss or damage to property;
 - (iv) committing an offence against public decency (only applies where members of the public going about their normal business cannot reasonably be expected to avoid the person in question); or
 - (v) causing an unlawful obstruction of the highway
- (d) to protect a child or other vulnerable person from the person in question
- (e) to allow the prompt and effective investigation of the offence or of the conduct of the person in question. This may include cases such as:
- (i) Where there are grounds to believe that the person:
 - has made false statements;
 - has made statements which cannot be readily verified;
 - has presented false evidence;
 - may steal or destroy evidence;
 - may make contact with co-suspects or conspirators;
 - may intimidate or threaten or make contact with witnesses; or
 - (ii) when considering arrest in connection with an indictable offence, there is an operational need to:
 - enter and search any premises occupied or controlled by a person search the person
 - prevent contact with others
 - take fingerprints, footwear impressions, samples or photographs of the suspect.
- (f) to prevent any prosecution for the offence from being hindered by the disappearance of the person in question. This may arise if there are reasonable grounds for believing that:
- if the person is not arrested he or she will fail to attend court
 - street bail after arrest would be sufficient to deter the suspect from trying to evade prosecution.

² <https://www.justice-ni.gov.uk/sites/default/files/publications/doj/pace-code-g-2015-.pdf>

PACE Interview

1 Pre Interview Disclosure. Code C 11(1)a

This is when information about the allegations is provided by the police to the solicitor, without the client present. Before a person is interviewed, they and, if they are represented, their 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 in order to allow for the effective exercise of the rights of the defence. However, whilst the information must always be sufficient for the person to understand the nature of any offence³, this does not require the disclosure of details at a time which might prejudice the criminal investigation. In fact, well trained officers will use this to their advantage, purposely withholding information to ambush the client with new evidence, either later during the recorded interview or afterwards in court. The solicitor will try to ask questions of the interviewing officer during disclosure, but will often only be able to get limited information. With this in mind, an attitude of caution should be present in the solicitor's advice to the client about whether to make any comment in interview at all.

2 Consultation

The second stage of the interview process consists of the solicitor and client being allowed time in a private consultation room in the police station to discuss what the solicitor knows about the allegations and what the client's answer to the allegations is. This conversation is confidential and does not need to be disclosed to the police. The solicitor cannot advise the client to put forward a false story in the recorded interview with officers, but can advise the client to make no comment. It is during

³ **Pre Interview Disclosure - Code C Guidance Note 11ZA** The requirement in paragraph 11.1A for a suspect to be given sufficient information about the offence applies prior to interview and whether or not they are legally represented. What is sufficient will depend on the circumstances of the case, but it should normally include, as a minimum, a description of the facts relating to the suspected offence that are known to the officer, including the time and place in question. This aims to avoid suspects being confused or unclear about what they are supposed to have done and to help an innocent suspect to clear the matter up more quickly.

this stage that the solicitor and client will decide whether the client should answer questions during the interview, give a prepared written statement, or make no comment.

The interview itself is tape recorded and takes place with one or two officers, the defence solicitor and the suspect present. First of all, the police should warn the suspect of the right to silence, and that the contents of the interview can be used against him or her as evidence in a criminal court. This introduction is the Caution, and contains the following information:

- You have a right to silence
- Whatever you say can be used against you in a criminal case in court
- If you don't mention something now which you mention later a court might ask why you didn't mention it at the first opportunity

The police will usually put the main allegations to the suspect in quite a conversational way. There has been a move away from the more aggressive type of interview that was prevalent in the 1980s and 1970s (when suspects would often leave arrive in court the next morning with physical injuries - a practice that is rarer now) to a more sophisticated type of interview, where a police officer will often attempt to befriend the suspect and encourage him or her to talk.

PACE Interviews

The suspect will have four options as to how he or she responds to the interview questions.

1 Accept Guilt

It is an established fact that the trial process can be deemed to commence in the police station. It is not an over exaggeration to state that the advice given by the solicitor at that embryonic stage can be as crucial as the closing remarks to the jury by a QC.

For example in the case of the Attorney General's Reference (Number 1 of 2006), McDonald, McDonald and Maternaghan⁴ it was held that the maximum benefit for a plea of guilty was reserved for an early plea, which in this case was held to be in the police station

[19] To benefit from the maximum discount on the penalty appropriate to any specific charge a defendant must have admitted his guilt of that charge at the earliest opportunity. In this regard the attitude of the offender during interview is relevant. *The greatest discount is reserved for those cases where a defendant admits his guilt at the outset. None of the offenders in this case did that. All either refused to answer or denied guilt **during police interview**.* On no basis, therefore, could any of them expect to obtain the maximum reduction for their belated guilty pleas. We wish to draw particular attention to this point. In the present case solicitors acting on behalf of two of the offenders appear to have advised them not to answer questions in the course of police interviews. Legal representatives are, of course, perfectly entitled to give this advice if it is soundly based. Both they and their clients should clearly understand, however, that the effect of such advice may ultimately be to reduce the discount that might otherwise be available on a guilty plea had admissions been made at the outset.

⁴ Attorney General's Reference (Number 1 of 2006), McDonald, McDonald and Maternaghan [2006] NICA 4 http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2006/2006%20NICA%204/j_j_KERF5498.htm

2 No Comment?

There is a possibility that the defence case may be damaged as a result of making no comment. However, the danger of worse damage being done by answering questions in an interview is often much greater. During interview, the client and solicitor do not usually know the full details of the allegations or the exact evidence in the case, so for the client to chain himself down to a story at this stage can be premature. Even if the client makes a mistake in the interview, this can look like a lie later on in court, and it was all because the client was caught off guard with a question he or she didn't expect.

Forensic evidence in serious cases is not usually ready by the time of the interview. If a client makes a comment denying his or her presence at a scene and later in the case DNA evidence comes to light which proves that person was there, then that can seriously damage the client's case. Even if there was another reason that the client lied earlier, a lie which has been exposed can be as damaging as a confession.

In many cases, the police do not even have enough evidence to charge a suspect before the interview, but the suspect fills in the missing pieces and allows the police to charge him or her just by confirming that he was at the scene of the alleged crime. In that situation, if the client simply answered 'no comment' to all questions, the case may not proceed for lack of evidence.

That said, and cognisant of the fact that the advice at the police station can map out the shape of a pending criminal trial, the solicitor should be acutely conscious of the inferences from silence to the various cautions which may be administered to the client.

Adverse Inferences from Silence - Criminal Evidence Order 1988

ARTICLE 2(4) A person shall not be committed for trial, have a case to answer or be convicted of an offence solely on the basis of an adverse inference from a refusal to speak or to testify-a protection.

The touchstone to everything is that the police need **evidence**. An accused cannot be convicted on Adverse Inference alone and an Adverse Inference can only be drawn in circumstances where there is evidence which calls for an account. In those circumstances the skill which will be attained by a successful solicitor is to know exactly how to weigh *what is evidence* when assessing whether or not there is a police case which requires an account, and this will only be accrued through experience.

What police need is some evidence and a high degree of evidence at that and then the adverse inference can be engaged if the defendant remains silent in order to drag the case over the line or tip the scales in favour of a guilty conviction.

ARTICLE 3 If you fail to mention matters in interview and then choose to rely upon them at trial the court can draw an adverse inference from your failure to mention them in interview. Question is would it have been reasonable to mention them in the interview in the face of the evidence being put to you in interview.

ARTICLE 4 Failure to testify at court without good cause.

If you choose to do that then the court can draw an adverse inference that the only reason you will not testify is that you have no explanation and added to the evidence the adverse inference can result in a conviction.

ARTICLE 5 Failure to account for any object mark or substance found on/around the accused at the time of arrest

ARTICLE 6 Failure or refusal to account for your presence at a particular place at or about the time of the offence

Ostensibly these 4 cautions and the adverse inferences that can flow from them have changed the dynamic of the criminal justice process.

Case of R v Shivers and Duffy [2012] NICC 1⁵ provide a good working illustration as to how Article 3 (failure to mention in interview what you later rely on at court) and Article 4 (failure to give evidence at trial) operate.

Both accused were arrested for the murder of soldiers at Massereene Barracks. The soldiers had ordered pizza and a call came from the security Sangar that the pizzas had arrived, whereupon the soldiers went out and approached two delivery cars. Then another car arrives, 2 men get out and fire a total of 63 rounds from AK47's. After the incident the car drives off in the direction of Randalstown and was later recovered by police after an unsuccessful attempt to burn the vehicle.

Mr Duffys DNA was alleged to be found on a fingertip portion of a latex glove and also on a metal tongue of front passenger belt buckle. Mr Duffy made a no comment interview and refused to give evidence at trial.

Mr Shivers DNA was found on 2 matches found inside the car in the area where attempt was made to set fire to the car and also a third match found adjacent to the car on the road. Also some evidence that his DNA found on the outside of a mobile phone which was found inside the car. In interview Mr Shivers gave two short written statements in answer to police questions. At trial he gave evidence and referred to a number of matters in support of his defence which he had not mentioned in interview.

Re Mr Duffy and interplay with a4. Para 55 and 56 and 58 of judgement.

Case where a4 inference drawn but not sufficient to get the case over the line.

"I am satisfied that the only sensible explanation for his silence is that he has no answer, or no answer that would stand up to examination, when questioned about the presence of his DNA

⁵ http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2012/%5B2012%5D%20NICC%201/j_i_HAR8394Final2.htm

on the latex tip and on the seat belt buckle. However, whilst his failure to give evidence provides some additional support for the prosecution case, I must not find Duffy guilty only, or mainly, because he did not give evidence."

The judge concluded the case against Duffy at paragraph [58] of his judgment as follows:

"Having considered all of the evidence against Duffy I am satisfied that at some stage between the purchase of the Cavalier and the attack on Masserene Barracks he was present in the Cavalier whilst wearing latex gloves in order to avoid leaving any traces in the car that might identify him, and in doing so he must have known that the Cavalier was going to be used by others in the commission and furtherance of a criminal act. The prosecution must, however, prove more than that because they must go on to prove beyond reasonable doubt that the criminal act Duffy contemplated was an attack on soldiers at Masserene Barracks. There must be strong suspicion that Duffy did know what was going to happen and that that is why he has refused to give evidence. However, suspicion, no matter how strong, is not sufficient by itself to establish guilt beyond reasonable doubt, and is not an acceptable substitute for facts from which guilt can be properly proved. I consider that there is insufficient evidence to satisfy me beyond reasonable doubt that whatever Duffy may have done when he wore the latex glove and handled or touched the seat belt buckle meant that he was preparing the car in some way for this murderous attack, and I therefore find him not guilty on each count."

Re Mr Shivers involves engagement of A3.

The judge said he was satisfied that Shivers lied about his actions and whereabouts on 7 March between 6.30 pm and his return to his home sometime after 10.00 pm. He reached this conclusion for the following reasons:

- The account Shivers gave in Court could not be reconciled with his statement to the police in his first interview when he claimed to be home all night only leaving to go to a nearby Chinese restaurant;

- Shivers did not give this detailed account to the police during any of his interviews. It only emerged when a defence statement was filed during the second week of the trial.

The judge found it inconceivable that if Shivers' account of his movements on the evening of 7 March was true, he was unable to recall the details until 2 years and 5 months after he was first questioned about the events. **He was satisfied that these are facts that Shivers could reasonably have been expected to mention at the time he was questioned, and considered that he should draw an adverse inference against him from his failure to give those details at that time and that the reason why these facts were not mentioned was because they had since been invented by Shivers.**

3 Giving a Prepared Statement

This is an alternative to making no comment in which a client discloses his or her defence without risking being ambushed by a police officer who throws him or her off guard with an unexpected question. This can be useful depending on the circumstances. It is preferable to answering questions as they arise in open interview, but the police can still ambush the client later in the interview with evidence they have withheld which contradicts the client's prepared statement. This means that a prepared statement can be some protection against surprise questions from a police officer, but it is by no means always a safe option.

My own personal preference in the vast majority of interviews is a pre-prepared handwritten statement as this permits the accused to present his defence whilst controlling the interview and not exposing the client to multitudes of questions.

However, it is imperative to have sufficient detail in your written statement.

In serious arrests police tend to drip feed the evidence and you can be in a police station for a very considerable time, what is referred to as the Advanced Cognitive Technique, or Phased Interview Strategy.

The best approach is to wait until all material is put to the accused, with you as solicitor, distilling what is evidence which calls for an account, and what is intelligence or circumstantial facts. Bear in mind that the accused can then submit further written defence statements as and when the need arises. What is key is to back up this approach where required with representations on the custody record and also on the taped interview as a measure of protection for both the client and you for the approach that you have taken.

R v Knight [2003] EWCA Crim 1977 ⁶

Arrested for indecent assault on a female. Submitted a written statement and then refused to answer questions. Gave evidence entirely in line with his written statement. Court of Appeal said this was fine but care was needed because defendant needed to make sure he included all relevant details in his statement because if not included in statement then an adverse inference could be drawn if he later mentioned it at court.

R v Seaton [2010] EWCA Crim 1980⁷

Defendant was charged with murder. At trial the defendant gave evidence which in various respects differed from the contents of 2 written statements, prepared by his solicitor which he had given to the police. The explanation he had given at trial for this was that the solicitor had made a mistake when preparing the statements. Essentially solicitor hadn't included everything in written statement. The defendant's solicitor was not called to give evidence.

On appeal it was argued by defence that all communications between solicitor and client were covered by privilege and there had been no waiver of that when the defendant gave evidence and said that the solicitor had made a mistake.

⁶ <http://www.bailii.org/ew/cases/EWCA/Crim/2003/1977.html>

⁷ <https://www.criminallawandjustice.co.uk/clj-reporter/R-v-Seaton-2010-EWCA-Crim-1980>

Held-that in saying that he had not changed his account and that his solicitor had made a mistake that did constitute a waiver of privilege.

Legal advisers need to be very careful. You will require to get your client signed up to an authority that they have been advised as to the law and their options. Such an authority will require to be explained to the client's level of intelligence and comprehension and drafted in such terms as is necessary to ensure that he understands. The solicitor will require to keep yourself right as well as client.

4 Answering Questions?

Answering questions as the police officer puts them to you in interview should only be considered in very few circumstances. Where the allegation is very simple, and the client's denial is clear and very obvious, this may be a good idea. But this should be approached with extreme caution, and is not usually a good idea for situations in which there is so much as a grain of truth to the allegations and the client is hoping to plead not guilty. By putting him or herself in the interview and allowing the police to control the situation by asking the questions they choose, the client is playing a dangerous game. The police are trained in interviewing suspects, and are often very skilled at making them make mistakes which convict them in court later.

Where the evidence is absolutely overwhelming, it is sometimes a good idea for the client to answer all questions and admit what has happened. Such occasions are rare, however, because they prevent the defence from seeing if they can negotiate later down the line in court. Even where the evidence is strong, if the prosecution does not have a confession from the client in their papers when the case reaches court, they may often be prepared to reduce the charges or the seriousness of the allegations, i.e. with regards to whether or not there was intent to commit an offence.

CONTENTIOUS INTERVIEWS - CODE C 6.8 - 6.11 and Guidance Notes 6C-E⁸

Very often, the police may adopt a contentious approach to the defence solicitor at interview. An oft used approach is to attempt to undermine the solicitor's advice in interview, by advising the detained person, that it is not the solicitor that has been cautioned, and that the solicitor won't have to account for himself at court, that the advice is simply that, advice, and can be ignored. It is incumbent upon the solicitor in those circumstances to reinforce their advice to the client and to ensure that the client is confident and understands the advice given. The solicitor should further record such objections to the custody record and indeed on tape, as same may be relevant if the case was to reach court. Code C of the Codes of Practice provides for the approach which must be adopted in circumstances

CODE C - 6.8 - 6.11

6.8 The solicitor may only be required to leave the interview if their conduct is such that the interviewer is unable properly to put questions to the suspect. See Notes 6C and 6D.

6.9 If the interviewer considers a solicitor is acting in such a way, they will stop the interview and consult an officer not below superintendent rank, if one is readily available, and otherwise an officer not below inspector rank not connected with the investigation. After speaking to the solicitor, the officer the interview continues and that solicitor given an opportunity to be present at the interview. See Note 6D.

6.10 The removal of a solicitor from an interview is a serious step and, if it occurs, the officer of superintendent rank or above who took the decision will consider if the incident should be reported to the Law Society. If the decision to remove the solicitor has been taken by an officer below superintendent rank, the facts must be reported to an officer of superintendent rank or above who will similarly consider whether a report to the Law Society would be appropriate.

6.11 In this Code 'solicitor' means a solicitor qualified to practice in accordance with the Solicitors (Northern Ireland) Order 1976 or the Solicitors Act 1974.

⁸ <https://www.justice-ni.gov.uk/sites/default/files/publications/doj/16-06-pace-code-c-2015.pdf>

CODE C Notes for Guidance

6C A detainee has a right to free legal advice and to be represented by a solicitor. The solicitor's only role in the police station is to protect and advance the legal rights of their client. On occasions this may require the solicitor to give advice which has the effect of the client avoiding giving evidence which strengthens a prosecution case. The solicitor may intervene in order to seek clarification, challenge an improper question to their client or the manner in which it is put, advise their client not to reply to particular questions, or if they wish to give their client further legal advice. Paragraph 6.8 only applies if the solicitor's approach or conduct prevents or unreasonably obstructs proper questions being put to the suspect or the suspect's response being recorded. Examples of unacceptable conduct include answering questions on a suspect's behalf or providing written replies for the suspect to quote.

6D An officer who takes the decision to exclude a solicitor must be in a position to satisfy the court the decision was properly made. In order to do this they may need to witness what is happening.

6E Subject to the constraints of Annex B, a solicitor may advise more than one client in an investigation if they wish. Any question of a conflict of interest is for the solicitor under their professional code of conduct. If, however, waiting for a solicitor to give advice to one client may lead to unreasonable delay to the interview with another, the provisions of paragraph 6.5(b) may apply.

APPLICATION FOR EXTENSIONS OF DETENTION

Articles 41-45 Police and Criminal Evidence (Northern Ireland) Order 1989

The maximum period a detained person can spend in police custody without charge is 4 days, i.e. 96hrs from the relevant time, which is the time that Custody Sergeant has authorised detention. After 24 hours, a Superintendent can authorise for a further 12 hours, thereafter if the detention is to be extended, same must be reviewed and authorised by a District Judge. Initially a DJ can authorise a further 36 hours, with a further 24 hours available to be extended by the Judge on foot of a second application.

- the original 24hrs;
- plus the superintendent's 12hrs;
- plus the Magistrates 36hrs;
- plus the Magistrates final 24hrs.

Extended Detention: During 2015/16⁹ there were 63 persons who were detained in police custody for more than 24 hours and released without charge.

Magistrate's Warrants: There were 39 applications to Magistrates Courts for warrants of further detention, all of which were granted.

- 7 of these applications were for 24 hours or less,
- 5 were for between 25 and 35 hours and
- the other 27 were for a period of 36 hours.
- Of the 39 applications to Magistrates Courts for warrants of further detention 5 of these were for a second warrant of further detention.

Of the 34 persons subject to a warrant of further detention, 8 spent less than 24 hours under its authority, while 22 spent between 24 hours and 36 hours and the remaining 4 persons were detained over 36 hours under the authority of these warrants. 22 of the 34 persons were subsequently charged, which means that 12 were released without charge.

Intimate Searches: There were no intimate searches carried out by a suitably qualified person during 2015/16.

⁹ <https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/police-and-criminal-evidence/2016/may/pace-statistics-report-2015.16.pdf>

BAIL or CHARGE

Article 48 Police and Criminal Evidence (Northern Ireland) Order 1989

- After the police have been afforded the opportunity of presenting their case, there is then the decision to release on bail to permit police to conduct further enquiries, or secure and preserve further evidence by way of additional witness statements or forensic enquiries. Bail in these circumstances can often take months.
- Police are able to impose conditions on bail, as such as a curfew, a requirement to reside at a particular address or to stay away from a particular address.
- There is a power to arrest in circumstances where the bailed person has not attended in answer to his bail.
- The re-commencement of the PACE clock is NOT engaged when the person attends to sign bail.
- Article 38(7) obliges the custody officer to determine whether or not he has before him sufficient evidence to charge the person arrested with the offence for which he was arrested, where after the person arrested—
 - (a) shall be charged; or
 - (b) shall be released without charge, either on bail or without bail.

At this stage the final representations of the solicitor can be made, assessing the weakness (or strength) of the police case, and then balancing same with the presumption in favour of bail.

If there is considered to be a risk of further offences, a risk of interference with witnesses, a risk of flight or a failure to attend court, then the detained person can be charged to appear at court with 24 hours.