

# [This serious arrestable offence; and (b) if an](https://assignbuster.com/this-serious-arrestable-offence-and-b-if-an/)

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This assignmentwill comment and critically evaluate the circumstances of which a suspect canbe interviewed when legal representation has been withheld. As well, this assignmentwill analyse whether questions can be repeated during investigative interviewsor whether such interview techniques should be challenged. Finally, thisassignment will highlight the dangers of the defence submitting a pre-preparedstatement.

Relevant legislations, case law and the PACE Codes of Practise willbe referred to support all arguments and comments made.  Section 58 allowsa suspect to be interviewed whilst legal representation is being withheld. Section 58 (6) states: Delay in compliance with a request is only permitted -(a) in the caseof a person who is in police detention for a serious arrestable offence; and(b) if anofficer of at least the rank of superintendent authorises it.’The purpose ofthis section is to have legal access delayed for the suspect. An officer ofrank equal to or higher than superintendent must be present, with a number ofcriteria, which must be fulfilled before the delay is to be granted. However, legaladvice can only be withheld up to 36 hours.

Once this time period has beencompleted, the defendant must be granted legal access, regardless of what thecircumstances are. UnderAnnex B of PACE Code C, if thereis to be delay in legal advice, the authorising officer ranking at leastsuperintendent has to ensure he or she has reasonable grounds for believing theconsequent delay is necessary under s. 58 of the PACE Act 1984.

The first reasonis if the officer believes the consequent delay might: (b)  (i)·        leadto interference with, or harm to, evidence connected with an offence; ·         lead to interference with, or physical harmto, other people; ·         lead to serious loss of, or damage to, property·         lead to alerting other people suspected ofhaving committed an offence but not yet arrested for it; Codes of practice –Code C Detention, treatment and questioning of persons by police officers 23 ·        hinderthe recovery of property obtained in consequence of the commission of anoffence. In the case of Rv Samuel, the defendant was arrested on suspicion of robbery. He wasinterviewed on four different occasions. The offences were robbery and twoburglaries but had denied all offences.

During the second interview, thedefendant requested a solicitor but was denied legal advice and access to oneunder section 58 of the PACE Act. The Police Superintendent, to whom thedefendant had requested a solicitor to, refused him because the offences wereserious arrestable offences and granting access to a solicitor will lead toother suspects involved would be warned. During the third interview, thedefendant confessed. During trial, the defendant argued that the confession should not be admissible as he wasdenied a solicitor upon request and that the Superintendent did not have reasonablegrounds to believe that access would lead to other suspects being alerted. However, the trial judge held that there was no breach of code and the superintendent’sbeliefs were justified. The defendant was convicted. The defendantappealed, stating legal advice can only be delayed if the defendant had yet notbeen charged.

However, the defendant was charged after his confession, heshould have then been given access to a solicitor. The appeal was held.   (c)  Ifthe solicitor the detainee has nominated or selected from a list: (i)           cannotbe contacted; (ii)          has previously indicated they do not wish tobe contacted; or (iii)         having been contacted, has declined to attend;·        andthe detainee has been advised of the Duty Solicitor Scheme but has declined toask for the duty solicitor; •·         in these circumstances the interview may bestarted or continued without further delay provided an officer of inspectorrank or above has agreed to the interview proceeding.  The final reasona consequent delay for legal advice is(d) the detaineechanges their mind about wanting legal advice or (as the case may be) aboutwanting a solicitor present at the interview and states that they no longerwish to speak to a solicitor. In these circumstances, the interview may bestarted or continued without delay. This reason ison for the defendant to decide. Many suspects may not be satisfied with thelegal presence they have been provided with and therefore decide to carry onwith interviews with their own  In the case of Rv McGovern, the defendant was a woman of limited intelligence and unable tounderstand the caution. She confessed to a murder, whilst being denied legaladvice.

Because of the circumstances of the situation, the court found the defendant’sconfession inadmissible as s. 58 PACE was violated. A second interview wasgranted, this time the defendant was provided with legal advice. The defendantonce again, confessed to the murder. However, her legal representation arguedin court, that the first interview had an impact on the second interview andtherefore, the court once again denied and not admissible in court.

https://www. ukessays. com/essays/law/circumstances-suspect-can-be-interviewed-without-legal-representation-law-essay. php http://www.

hrcr. org/safrica/arrested\_rights/R\_Samuel. htmhttps://www. gov. uk/government/uploads/system/uploads/attachment\_data/file/364707/PaceCodeC2014.

pdf Investigation is a core duty of policing. Investigativeinterviewing is used to gather accounts of crime from victims and witnesses. The Home Office 1992 published a set of guidelines on thesubject of investigative interviewing. These guidelines are created to exist alongsidethe Human Rights legislations. This ensures the techniques used by the policeservice do not violate an individual’s fundamental rights. According to the PACE Act, there is no limitation on thequestions asked by the police investigator. However, there are seven principlesused to conduct interviews. Each one has a crucial role and therefore importantto the process of investigation.

The second principle is “ Investigators must act fairly when questioning victims, witnesses orsuspects. They must ensure that they comply with all the provisions and dutiesunder the Equality Act2010 and the Human RightsAct 1998.” Investigators must use common sense, judgements and actualfacts to assess the accuracy of what an individual is saying. An investigator isnot allowed to be prejudice and The fourth principle is “ Investigators are free to ask a wide range of questions in an interviewin order to obtain material which may assist an investigation and providesufficient evidence or information.

“ Police investigators are able to ask a wide range ofquestions to ensure they obtain any material needed to investigate a crime. Investigatorsneed to provide sufficient evidence and information to then carry out arrestsand make charges. Investigators are not bound by the same rules that lawyerssuch as solicitors must abide by. However, although investigators have the freedom to asksuch questions, the interviewing style used must not be unfair or oppressive. ThePACE codes of practise, as well the PACE act 1984 needed to be acted inaccordance.

The sixth principle is “ The police interviewer is not bound to accept the first answer given. Questioning is not unfair merely because it is persistent” (college. policing. uk). An investigative officer needs to ensure he obtainsaccurate and reliable information. Many victims and witnesses are not alwaysforthcoming with accounts. It is important that the police have the truthbefore arrests or charges can occur. Victims, witnesses and suspects may notalways provide the complete truth.

The police service are entitled to beingsceptic, in the interest of fairness. When there is reason for doubts on whatan individual is saying, the police are able to be persistent on those grounds. Furthermore, the investigating officer may believe an individual has notprovided them with all the information.

Careful and continued question willensure all the information is provided. In 1976, Stefan Kizko was given a life sentence for themurder of Lesley Meed. Lesley was an 11-year-old girl who murdered and sexuallyassaulted.

Kizko was falsely accused and found guilty. Kizko was a man with thementality of a child, who was unable to understand the situation he was in. Theinvestigating officers of this case questioned Kizko for the 2 days with nosolicitor present. He then confessed to the crime, believing that if he did so, he would be able to go home. Kizko was imprisoned for 32 years, this caused hismental health to further deteriorate. There is a risk of persistent questioning. Persistentquestioning is likely to turn into oppressive questioning.

Oppressivequestioning can lead to evidence being disregarded in court and considered an inadmissible, such as confessions obtained. In the R v Paris 1992, also known as the case ofthe Cardiff three, the defendant (Tony Paris) took part in a 13-hour interview. Paris confessed to the crime after first denying his guilt at least 300 times. Noviolence was used but the interview style was deemed as oppressive.         During a break in the interview, the solicitor reads out apre-prepared statement. A pre-prepared statement is a written copy of the detailsof the case from the point of view of the defence.

This is usually done at thebeginning of a suspect’s interview. It may be used during or after aninvestigative interview. There is no statutory basis for pre-preparedstatements, it is mainly an accepted defence tactic. This defence tactic isused to lower the risk of a defendant being cross examined.

It provides asafety net as many suspects have a lack of knowledge of procedures and policeinterviewing techniques. However, there are many circumstances as to whypre-prepared statements may not always benefit suspects and in some casesactually cause them harm. Pre-prepared statements can be dangerous to a defendant asadverse inference can be drawn. Section 34(1)(a) of the Criminal Justice and Public Order Act1994(CJPOA) states’Where, in any proceedings against a person for an offence, evidence isgiven that the accused-(a)  at anytime before he was charged with the offence, on being questioned under cautionby a constable trying to discover whether or by whom the offence had beencommitted, failed to mention any fact relied on in his defence in thoseproceedings. Inconsistencies between the prepared statement and thedefence at trial may be regarded as a lie from the defendant when previously creatingthe statement. In the case of R v Knight 2003, it was proven that adverseinference is drawn from failing to answer questions from information alreadystated in the pre-prepared statement and not drawn from just failing to answerquestions.

The conclusion from this case was that “ We wish to make itcrystal clear that of itself the making of a pre-prepared statement gives noautomatic immunity against adverse inferences under section 34′” (R v Knight 2003 EWCA 1977, Laws LJ)In many cases, defendants will completely rely on theinformation they provided in their pre-prepared statements, refusing to answerany further questions from the police investigators. However, in somecircumstances, this does not benefit the individuals, as vital but basicinformation could be missed out or forgotten that could help oneself at trial. R v Bourgass is an example of when all relevant information was not provided. Thepolice were looking for an individual relating to terrorism. They were providedwith a passport picture, as well as a search warrant. The defendant picked up aknife and wounded 3 officers and killed another. The defendant was thenconvicted for murder.

In his pre-prepared statement, he stated he tried to escapethe building and that he armed himself with the knife with the intention ofscaring the officers. In the statement, he stated he did not cause the officerserious or who he caught with the knife. However, he missed out vitalinformation such as why he needed to escape and how the police showed noaggression towards him.

Due to the defendant refusing to answer questions, thestatement was the only defence he had and therefore convicted.