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arrestable offence;
and (b) if an

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

Relevant legislations, case law and the PACE Codes of Practice will be referred to support all arguments and comments made. Section 58 allows a 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 case of a person who is in police detention for a serious arrestable offence; and (b) if an officer of at least the rank of superintendent authorises it. The purpose of this section is to have legal access delayed for the suspect. An officer of rank equal to or higher than superintendent must be present, with a number of criteria, which must be fulfilled before the delay is to be granted. However, legal advice can only be withheld up to 36 hours.

Once this time period has been completed, the defendant must be granted legal access, regardless of what the circumstances are. Under Annex B of PACE Code C, if there is to be a delay in legal advice, the authorising officer ranking at least superintendent has to ensure he or she has reasonable grounds for believing the consequent delay is necessary under s. 58 of the PACE Act 1984.

The first reason is if the officer believes the consequent delay might: (b) (i) lead to interference with, or harm to, evidence connected

with an offence; · lead to interference with, or physical harm to, other people; · lead to serious loss of, or damage to, property · lead to alerting other people suspected of having committed an offence but not yet arrested for it; Codes of practice – Code C Detention, treatment and questioning of persons by police officers 23 · hinder the recovery of property obtained in consequence of the commission of an offence. In the case of *Rv Samuel*, the defendant was arrested on suspicion of robbery. He was interviewed on four different occasions. The offences were robbery and two burglaries but had denied all offences.

During the second interview, the defendant requested a solicitor but was denied legal advice and access to one under section 58 of the PACE Act. The Police Superintendent, to whom the defendant had requested a solicitor to, refused him because the offences were serious arrestable offences and granting access to a solicitor will lead to other suspects involved would be warned. During the third interview, the defendant confessed. During trial, the defendant argued that the confession should not be admissible as he was denied a solicitor upon request and that the Superintendent did not have reasonable grounds 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's beliefs were justified. The defendant was convicted. The defendant appealed, stating legal advice can only be delayed if the defendant had yet not been charged.

However, the defendant was charged after his confession, he should have then been given access to a solicitor. The appeal was held. (c) If the solicitor the detainee has nominated or selected from a

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list: (i) cannot be contacted; (ii) has previously indicated they do not wish to be contacted; or (iii) having been contacted, has declined to attend; and the detainee has been advised of the Duty Solicitor Scheme but has declined to ask for the duty solicitor; • in these circumstances the interview may be started or continued without further delay provided an officer of inspector rank or above has agreed to the interview proceeding. The final reasonable consequent delay for legal advice is (d) the detainee changes their mind about wanting legal advice or (as the case may be) about wanting a solicitor present at the interview and states that they no longer wish to speak to a solicitor. In these circumstances, the interview may be started or continued without delay. This reason is on for the defendant to decide. Many suspects may not be satisfied with the legal presence they have been provided with and therefore decide to carry on with interviews with their own. In the case of *Rv McGovern*, the defendant was a woman of limited intelligence and unable to understand the caution. She confessed to a murder, whilst being denied legal advice.

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

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

The second principle is “ Investigators must act fairly when questioning victims, witnesses or suspects. They must ensure that they comply with all the provisions and duties under the Equality Act 2010 and the Human Rights Act 1998.” Investigators must use common sense, judgements and actual facts to assess the accuracy of what an individual is saying. An investigator is not allowed to be prejudiced and The fourth principle is “ Investigators are free to ask a wide range of questions in an interview in order to obtain material which may assist an investigation and provide sufficient evidence or information.

“ Police investigators are able to ask a wide range of questions to ensure they obtain any material needed to investigate a crime. Investigators need to provide sufficient evidence and information to then carry out arrests and

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make charges. Investigators are not bound by the same rules that lawyers such as solicitors must abide by. However, although investigators have the freedom to ask such questions, the interviewing style used must not be unfair or oppressive. The PACE codes of practice, as well as the PACE Act 1984, need to be acted in accordance.

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 obtains accurate and reliable information. Many victims and witnesses are not always forthcoming with accounts. It is important that the police have the truth before arrests or charges can occur. Victims, witnesses and suspects may not always provide the complete truth.

The police service are entitled to be sceptic, in the interest of fairness. When there is reason for doubts on what an individual is saying, the police are able to be persistent on those grounds. Furthermore, the investigating officer may believe an individual has not provided them with all the information.

Careful and continued questioning will ensure all the information is provided. In 1976, Stefan Kizko was given a life sentence for the murder of Lesley Mead. Lesley was an 11-year-old girl who was murdered and sexually assaulted.

Kizko was falsely accused and found guilty. Kizko was a man with the mentality of a child, who was unable to understand the situation he was in. The investigating officers of this case questioned Kizko for 2 days with no solicitor present. He then confessed to the crime, believing that if he did
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so, he would be able to go home. Kizko was imprisoned for 32 years, this caused his mental health to further deteriorate. There is a risk of persistent questioning. Persistent questioning is likely to turn into oppressive questioning.

Oppressive questioning can lead to evidence being disregarded in court and considered inadmissible, such as confessions obtained. In the R v Paris 1992, also known as the case of the 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. No violence was used but the interview style was deemed as oppressive. During a break in the interview, the solicitor reads out a pre-prepared statement. A pre-prepared statement is a written copy of the details of the case from the point of view of the defence.

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

It provides a safety net as many suspects have a lack of knowledge of procedures and police interviewing techniques. However, there are many circumstances as to why pre-prepared statements may not always benefit suspects and in some cases actually cause them harm. Pre-prepared statements can be dangerous to a defendant as an adverse inference can be drawn. Section 34(1)(a) of the Criminal Justice and Public Order Act 1994 (CJPOA) states 'Where, in any proceedings against a person for an offence, evidence is given that the accused-(a) at any time before he was

charged with the offence, on being questioned under caution by a constable trying to discover whether or by whom the offence had been committed, failed to mention any fact relied on in his defence in those proceedings. Inconsistencies between the prepared statement and the defence at trial may be regarded as a lie from the defendant when previously creating the statement. In the case of *R v Knight* 2003, it was proven that adverse inference is drawn from failing to answer questions from information already stated in the pre-prepared statement and not drawn from just failing to answer questions.

The conclusion from this case was that “ We wish to make it crystal clear that of itself the making of a pre-prepared statement gives no automatic immunity against adverse inferences under section 34” (*R v Knight* 2003 EWCA 1977, Laws LJ) In many cases, defendants will completely rely on the information they provided in their pre-prepared statements, refusing to answer any further questions from the police investigators. However, in some circumstances, this does not benefit the individuals, as vital but basic information 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. The police were looking for an individual relating to terrorism. They were provided with a passport picture, as well as a search warrant. The defendant picked up a knife and wounded 3 officers and killed another. The defendant was then convicted for murder.

In his pre-prepared statement, he stated he tried to escape the building and that he armed himself with the knife with the intention of scaring the officers. In the statement, he stated he did not cause the officers serious or who he

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caught with the knife. However, he missed out vital information such as why he needed to escape and how the police showed no aggression towards him.

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