

# Admissibility of confessions



**ASSIGN  
BUSTER**

**Discuss a challenge to the admissibility of confessions on the basis of oppression seems to require a high degree of police impropriety thus will rarely be established.**

Confessions made during questioning are seen as powerful indications of guilt and characteristically lead to conviction; 98% of cases in which suspects confess result either in a guilty plea or a conviction following trial. As such, legal representatives of suspects who have confessed are unlikely to secure acquittal unless the confession is excluded from the evidence before the court. Issues of inadmissibility are determined prior to trial in both magistrates' and Crown courts and must be based on sections 76 or 78 of the Police and Criminal Evidence Act 1984 (PACE).

Section 76 of PACE concerns the admissibility of potentially unreliable confession evidence in criminal proceedings and section 76(2) states that confession evidence is inadmissible if it was obtained by oppression or in circumstances that are likely to make it unreliable.

Section 76(8) defines 'oppression' as including 'torture, inhuman or degrading treatment, and the use or threat of violence'. The courts have required high degrees of impropriety by the police before ruling confessions inadmissible due to oppression. One such case was the Cardiff Three who were convicted of murder on the basis of the confession of one suspect, Stephen Miller, after protracted periods of police questioning described by the Court of Appeal as 'hostile and intimidating'. Given the severity of wrongdoing required before the courts will find that oppression induced the confession and moves towards less aggressive questioning techniques by the police, it is difficult to use section 76(2)(a) to exclude a confession.

The ground identified in section 76(2)(b) is more fertile for rendering confessions inadmissible as the courts have identified a range of procedural failures that will be regarded as ‘circumstances likely to make a confession unreliable’. Any breach of the rules concerning the questioning of suspects will form the basis of a challenge to the admissibility of a confession, even genuine confessions of guilt. As such, procedural failures concerning the location, timing, duration and recording of an interview will potentially render any confession inadmissible under section 76(2)(b) as will failure to caution. As research suggests that 10% of police interviews are conducted in breach of PACE requirements, close scrutiny of the behaviour of the police may elicit a basis for the exclusion of a confession if mistakes have been made or liberties taken with the procedural rules. This also includes situations in which the suspect is offered an inducement such as the promise of bail in return for a confession. Care must be taken in asserting such a ground as the basis for the exclusion of a confession as research indicates that such inducements are may be difficult to prove and the courts have taken the view that ‘very few confessions are inspired solely by remorse’ so that other motives such as the desire to be released on bail or the hope of a lighter sentence cannot be used to exclude confessions unless there is clear evidence of misconduct on the part of the police despite evidence that suspects may confess for a variety of reasons other than guilt such as desperation to expedite release to obtain drugs if they are addicts or to protect others.

Section 78 confers discretion upon the court to exclude any evidence, including confessions, if reliance upon it would lead to unfairness to the

suspect. Given the emphasis on procedural failures in section 76(2)(b), there is inevitably a fair degree of overlap between these two sections as breaches of PACE as the basis for the exclusion of evidence on the basis of unfairness under section 78. As such, procedural failures give rise to a dual basis for an attack on the admissibility of confession evidence. However, section 78 goes beyond procedural rights and deals with broader issues of fairness so provides a basis upon which an unfairly obtained confession could be rendered inadmissible. For example, a confession made following a deceptive statement by the police that the suspect's fingerprints had been found at the scene of the crime was excluded on the basis that it was unfairly obtained although confessions made to other prisoners in a bugged cell were not excluded although the practice was heavily criticised by the courts.

Both magistrates (in magistrates' courts) and judges (in Crown courts) have the power to exclude confession evidence as inadmissible on the basis of section 76 and 78. The question of admissibility of evidence will be determined at a separate hearing to ensure that evidentiary matters are resolved prior to the commencement of the trial. Section 8A of the Magistrates Court Act 1980 empowers a magistrates' court to rule on the admissibility of any evidence at a pre-trial hearing if both the prosecution and defence have been given an opportunity to make representations on the issue. At Crown Court, the matter of admissibility will be resolved by a *voire dire*, a trial within a trial in the absence of the jury, to determine whether the confession can be relied upon as evidence. Once the issue of inadmissibility has been raised by the defence, the onus is on the

prosecution to establish that the grounds of exclusion under section 76 and 78 are not established.

Overall, a challenge to the admissibility of confessions on the basis of oppression seems to require a high degree of police impropriety thus will rarely be established. The procedural grounds raised by section 76(2)(b) provide a more viable basis for challenge and, since the incorporation into domestic law of the rights guaranteed by the European Convention on Human Rights, the emphasis on fairness in section 78, which raises the right to a fair trial guaranteed by Article 6, may also be a sound basis upon which to challenge the admissibility of a confession. However, it is important to remember that the court may be reluctant to exclude confession evidence, particularly if the procedural breach is insignificant in relation to the severity of the offence thus satisfying the statutory requirements is not a guarantee that the confession will be excluded especially in relation to serious crimes such as rape and murder.

#### Case List

*R v. Bailey* [1993] 3 All ER 513

*R v. Crampton* (1991) 92 Cr App R 369

*R v. Fulling* [1987] 2 All ER 65

*R v. Mason* [1988] 1 WLR 139

*R v. Paris, Abdullahi and Miller* (1992) 97 Cr App R 99

*R v. Roberts* [1997] 1 Cr App R 217

#### Bibliography

<https://assignbuster.com/admissibility-of-confessions/>

Baldwin, J., ' Police Interview Techniques: Establishing Truth or Proof?' (1993) *British Journal of Criminology* 325

Clarke, C. and Milne, R., (2001) *National Evaluation of the PEACE Investigative Interviewing Course* , London: Home Office

Davies, M., (2005) *An Introduction to the Criminal Justice System in England and Wales* , Harlow: Longman Publishing

Dennis, I., (2002) *The Law of Evidence* , London: Sweet & Maxwell

Hunter, M., ' Judicial Discretion: Section 78 in Practice' [1994] *Criminal Law Review* 558

Maguire, M., Morgan, R. and Reiner, R., (2002) *Oxford Handbook of Criminology* , 3rd ed., Oxford: Oxford University Press

May, R., ' Fair Play at Trial: an Interim Assessment of Section 78 of the Police and Criminal Evidence Act 1984' [1988] *Criminal Law Review* 723

McConville, M., (1993) *Corroboration and Confessions: the Impact of a Rule Requiring that No Conviction Can Be Sustained on the Basis of Confession Evidence Alone* , London: The Stationery Office

Sprack, J., (2004) *A Practical Approach to Criminal Procedure* , 10th ed., Oxford: Oxford University Press