



The Law
Society



Joint Interim Interview Protocol between the National Police Chiefs Council, Crown Prosecution Service, Law Society, the Criminal Law Solicitors' Association and the London Criminal Courts Solicitors' Association
Version 5 – January 2023

This Protocol applies to all detainees in police custody

Purpose of guidance

1. This guidance is intended to assist investigators and prosecutors in deciding whether suspects should be interviewed as part of a police investigation when dealing with suspected COVID-19 cases. This guidance has been reviewed regularly since 1st April 2020 and will continue to be kept under review.
2. This latest guidance is the next phase of an aspiration to withdraw this protocol as national restrictions have now ceased, recognising that its withdrawal can only be achieved and maintained while prevailing conditions remain safe to do so.
3. In line with the national removal of COVID-19 restrictions this protocol reflects the wider return to business as usual and supports the return of all parties to police stations. The anticipation is that suspect interviews will be completed 'in-person' when police meet the expectations expressed in this protocol (page 3). If police meet the expectations as expressed below, then legal advice will be expected to be provided in person at a police station and in interview.
4. The position will remain under review, and in the event the Government announces changes to the response to COVID 19 and/or imposes or advises any restrictions or precautions to be taken; this protocol will be reviewed against those changes.
5. With effect from the date of this protocol, the default position should be that advice is provided by legal representatives in person as the country returns to normality. This protocol allows for remote advice in much more limited circumstances as set out below. These circumstances are detailed in the expectations section of the protocol.

Introduction

6. The Covid-19 outbreak presented an unprecedented challenge for the Criminal Justice System in England and Wales.
7. The spread of Covid-19 and its effect on the numbers of police officers, prosecutors and defence solicitors available for work has required careful consideration of what new offences are brought into the system and how those offences are investigated by the police and progressed through the CJS.
8. This protocol (version 5) replaces all previous versions of the protocol and is effective from the **Tuesday 3rd January 2023** in England and Wales.

Police interviews; a reasonable line of enquiry

9. The Criminal Procedure and Investigations Act 1996 provides that investigators must pursue all reasonable lines of enquiry, including those which point towards and away from the suspect. In most cases "reasonable lines of enquiry" will require an interview.
10. An interview is generally a reasonable line of enquiry because without it:
 - The suspect does not have a proper opportunity to provide a full account

- Common defences including self-defence and reasonable excuse are not addressed;
- A guilty plea may be anticipated wrongly and anticipating plea generally is more difficult;
- The opportunity to draw an adverse inference from silence is lost;
- Without admissions in interview, points to prove have to be addressed through other evidence increasing the burden on investigators;
- The opportunity to address potential defences by further investigation, and to investigate reasonable lines of enquiry which point away from the suspect, are lost.

However, it is recognised that for public health reasons, interviews may need to be postponed or even dispensed with. If there is a genuine and pressing need for an interview with all parties present it must be carried out in accordance with government advice.

Police interviews with COVID positive / suspected positive suspects

11. Government guidance, Health and Safety and Covid control measures will affect police interviews with suspects, whether in custody or elsewhere. Interviews with suspects will often involve the presence of non-police staff including solicitors, legal representatives, appropriate adults and interpreters.
12. The police will have their own guidance about the steps they take to ensure the health and safety of officers, and the suspects / witnesses they deal with. The police have a duty to ensure that all reasonably practicable steps are taken to protect essential visitors to the custody suite, including legal representatives, from infection with Covid-19. This includes effective cleaning routines, good hand hygiene and issuing Personal Protection Equipment (PPE) where appropriate, including instructions for its use, even where the detainee is not symptomatic.
13. Legal advice for suspects should take place at a police station while this protocol continues to operate, and in accordance with PACE code C. In the exceptional cases where remote advice is provided, this can be over the telephone (for legal advice) and by video link for interviews with suspects. This may depend on the police facilities and devices available. Any existing facilities for links used for interpreters or for remote interviewing by police officers should be considered for use by police officers and defence representatives.
14. In some circumstances a video link will not be possible and the parties involved may be able to facilitate an interview with a legal representative attending via audio link. In these circumstances, and where all parties agree, **the informed consent of the suspect is required**. Where an interview proceeds with any party attending via audio link, this interview should be visually recorded by the police. Providing remote legal advice via video link is always preferable to audio only. Video link remote advice enhances communication compared to audio only by including non-verbal communication. Audio only remote advice should only be used in exceptional circumstances. If audio only remote advice is used, the reasons for this should be recorded on the custody record.
15. When it is not possible to arrange a suspect interview as above then the issues below should be considered. When a suspect cannot be interviewed consideration should also be given to the use of the steps set out in **Annex B** for a written statement under caution from a suspect in response to a list of questions provided by the interviewing officer.
16. In police premises that are equipped with secure interview rooms with screens that allow for social distancing, those rooms should be utilised for consultations and interviews (using either fixed or portable recording devices approved for interviews).

Expectations

17. If the elements of this section are met, then it is expected that legal advice for interviews will be provided in person at a police station in line with PACE Code C.
18. All those who work and attend a police custody suite can expect continued enhanced cleaning regimes and infection control measures. It is also expected that visitors themselves will practice safe infection control measures, for example "good hand hygiene".
19. Police will have considered if an interview is required now (annex A).
20. Police will have considered if a written statement under caution is appropriate (annex B).
21. Police and all who work in the custody environment, including visitors, will be expected to follow the current national PPE Guidance (provided by [Coronavirus \(COVID-19\): personal protective equipment \(PPE\) hub - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/personal-protective-equipment-ppe-hub) subject to medical exemptions. PPE will be provided to all who attend a custody suite free of charge. In situations where social distancing cannot be achieved, such as in a smaller interview room, police will be able to demonstrate how this risk has been addressed (for example, via a formal risk assessment or consideration to remove the number of officers in the interview to allow more social distancing).

Default Position - Providing Legal Advice in Person

22. When the expectations above are met, the default position **should** be that legal advice is provided at the police station in person. Further, in the following cases (23. And 24.), it is expected that legal advice **will** be provided in person even if exemptions apply:
23. If the detained person is a child (under the age of 18), or an adult who is vulnerable. This will be the case for all detainees who require an appropriate adult but may also include detained persons who do not have an appropriate adult present. For example, if there are any concerns that a detainee will not be able to communicate effectively or interact with a digital interface fully (such as remote legal advice), then this would include a vulnerability where advice will be sought in person. In such cases, the use of an appropriate adult should also be considered if it has not already.
24. If the detained person is in custody on suspicion of committing a serious offence. This includes indicatable only offences, cases where the investigating officer may be seeking a remand in custody.

Exceptions to providing legal advice in person

25. This protocol remains in place to keep all who work and attend custody safe. It is accepted that in the following circumstances the use of remote advice should be used for a detainee unless one of the default positions apply. In all cases the informed consent of the detainee should be sought to proceed with a remote interview.

- a. Exception 1 – the detainee is confirmed or believed to be Covid positive. It is ultimately the responsibility of the Custody Officer, (who is responsible for the welfare and health & safety for all who attend the custody suite) to make a judgement having considered all of the available information including detainee consent and any defence representations. Then record the decision and reasons (including any information made available to them) on the Custody Record.
- b. Exception 2 – the detainee exercises their right to speak to a named legal representative/firm or Duty Solicitor (where the Duty Solicitor is unable to make alternative arrangements for another representative to attend) and the legal representative/Duty Solicitor is confirmed Covid positive. In this situation the informed consent of the suspect is required to accept the advice of this legal representative by remote means, rather than seek a different representative who can attend the police station in person.
- c. Exception 3 – some other exceptional reason applies where, in consultation with all relevant parties it is the belief of the Custody Officer, (who is responsible for the welfare and health & safety for all who attend the custody suite) that due to those exceptional reasons it would not be practical, possible, or desirable for an in person attendance by the legal advisor in that individual case to safely take place, having regard to any relevant health or safety issues arising, or likely to arise. Where this is the case, remote advice should be used where the suspect also consents. If the legal representative raises this exception and the Custody Officer disagrees, then the legal representative can appeal this decision with an officer not below the rank of Superintendent. This should be, unless not possible in the circumstances, by way of simultaneous representations by both the Custody Officer and legal representative so that both parties have the opportunity to hear and respond to the other's representations. Once a decision has been made and any appeal heard, then the Custody Officer is to record the decision and reasons (including any information made available to them) on the Custody Record.
- d. Exception 4 – where in consultation with all relevant parties, the Custody Officer, (who is responsible for the welfare and health & safety for all who attend the custody suite) agrees that the police in the individual case concerned are unable to meet their obligations set out in paras 19-21 above. If the legal representative raises this exception and the Custody Officer disagrees, then the legal representative can appeal this decision with an officer not below the rank of Superintendent. This should be, unless not possible in the circumstances, by way of simultaneous representations by both the Custody Officer and legal representative so that both parties have the opportunity to hear and respond to the other's representations. Once a decision has been made and any appeal heard, then the Custody Officer is to record the decision and reasons (including any information made available to them) on the Custody Record.

Recording Rationale

1. The detained person will be consulted with in every case. If the consideration is made, in exceptional circumstances, to use remote legal advice, then the informed consent of the detained person will be required to proceed. This is to ensure that interviews conducted using this protocol are fair to the detained person.
2. However, there may be situations in which an agreement on how to proceed cannot be reached by all parties. In such circumstances it will be the decision of the custody officer, after consulting with all relevant parties, to decide how legal advice will be provided. If the legal representative or the detained person disagrees with the custody officer's decision, then they can appeal the decision of the Custody Officer with an officer not below the rank of Superintendent. This should be, unless not possible in the circumstances, by way of simultaneous representations by both the Custody Officer and/or legal representative/detained person so all parties have the opportunity to hear and respond to the other's representations. Once a decision has been made and any appeal heard, then the Custody Officer is to record the decision and reasons (including any information made available to them) on the Custody Record.



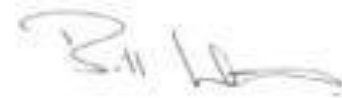
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Annex A

Does the suspect need to be interviewed now?

Custody Officer's decision - Interviews will not be required when:

- There is credible and reliable evidence to prove the identity of the suspect; **and**
- There is credible and reliable evidence covering each point to prove for the offence and negating any defence that can reasonably be anticipated; **and**
- **The offence is:**
 - Summary only; or
 - A simple offence against the state (possessing weapons/drugs, public order); or
 - Drink or drug driving; or
 - Shoplifting (regardless of value)
 - Criminal damage under £5000

This does not affect the need to seek CPS advice in anticipated not guilty plea cases.

YES

NO

Has the detainee requested legal advice?

YES

NO

Consider
Bail/RUI

Seek charging advice as per normal guidance.

When determining anticipated plea – consider any unsolicited comments made by the suspect such as denials.

If remote advice will be provided, then disclosure and Custody Record to be provided by email or telephone/video link, and consultation to be conducted by telephone or video link.

Custody Officer to determine how interview will be conducted.

CPS request interview before making charge

Police charged case or CPS agree charge without interview.

Annex B

Written Statements under Caution

