

Appropriate adults: Non-PACE detentions

Issue

Police custody is regularly used for a wide range of non-PACE detentions. PACE Code C is ambiguous as to whether the police are required or expected to apply the appropriate adult safeguard to any or all such detentions. There is a lack of data concerning current practice, although there are indications that this is variable. The Courts have not ruled on this question. If AAs are not required, there are some significant gaps in the safeguards for children and vulnerable people in custody. If they are required, we may have a significant challenge in terms of supply and demand, and guidance is required for police and AAs to protect rights and procedures.

Analysis

Prevalence

[PACE 1984 s.118](#) defines who is in 'police detention'. Clearly there are many circumstances in which people are held in police detention for other reasons than for a criminal investigation under PACE¹. One force estimates non-PACE detentions to be 20% of custody demand.

Applicability of Code C

Code C 1.10 states the Code applies to people in custody at police stations (whether or not they have been arrested) and those removed to a police station as a place of safety under the MHA 1983 except:

- Code C Section 15 (reviews and extensions) applies solely to people in 'police detention', e.g. those brought to a police station under arrest or arrested at a police station for an offence after going there voluntarily.
- Code C doesn't apply to the people defined in Code C 1.12

Code C 1.12 says Code C does not apply to people:

- i. arrested by officers under the Criminal Justice and Public Order Act 1994, section 136(2) on warrants issued in Scotland, or arrested or detained without warrant under section 137(2) by officers from a police force in Scotland. In these cases, police powers and duties and the person's rights and entitlements whilst at a police station in England or Wales are the same as those in Scotland;
- ii. arrested under the Immigration and Asylum Act 1999, section 142(3) for fingerprints;
- iii. whose detention has been authorised under Schedules 2 or 3 to the Immigration Act 1971 or section 62 of the Nationality, Immigration and Asylum Act 2002;
- iv. who are convicted or remanded prisoners held in police cells on behalf of the Prison Service under the Imprisonment (Temporary Provisions) Act 1980;
- v. detained for searches under stop and search powers except as required by Code A.

¹ For example: Mental Health Act 1983 (e.g. s.135/136 detention for assessment); Immigration Act; Bail Act 1976 (e.g. breach of bail, warrant not backed for bail); Recall to prison; Breach of the peace; Breach of court orders and injunctions (some go before the magistrates court and others the civil courts); Breach of DVPNs and DVPOs (breaches go before the magistrates courts but are a civil process); Prison lockouts, recall to prison and prison productions; Detainee's lodged (accommodated) on behalf of HMCTS; Persons remanded to police custody (3 day lay downs and other powers such as a S.152 for internal drug concealment recovery); Persons detained under Scottish Law; Extradition

But that, *“The provisions on conditions of detention and treatment in sections 8 and 9 must be considered as the minimum standards of treatment for such detainees”* for such people.

Finally, Code C 1.11 says that Code C doesn’t apply in terrorism and national security cases covered by Codes H and I respectively. However, these Codes broadly mirror Code C.

Professor Zander² quotes a 1985 Home Office Circular as stating that, *“...the Code of Practice on detention etc. will apply so far as in common sense it is applicable including, possibly, the opening of a custody record as an administrative convenience”*. Zander also reports that, in reference to a situation which does not require investigate interviewing (detention in connection with extradition proceedings), the circular said that although Pt IV of the PACE Act didn’t apply, *“a fugitive offender should be properly treated as far as practicable”* and that they should *“continue to be treated in many respects like any other person suspected of a serious offence”*.

Applicability of the appropriate adult safeguard

Code C 1.4 states, *“If at any time an officer has any reason to suspect that a person of any age may be vulnerable (see paragraph 1.13(d)), in the absence of clear evidence to dispel that suspicion, that person shall be treated as such for the purposes of this Code...”*. This implies a broad application of concept of a ‘PACE vulnerable’ person (and by extension the AA role).

However, it continues, *“...and to establish whether any such reason may exist in relation to a person suspected of committing an offence (see paragraph 10.1 and Note 10A), the custody officer in the case of a detained person, or the officer investigating the offence in the case of a person who has not been arrested or detained, shall take, or cause to be taken, (see paragraph 3.5 and Note 3F) the following action:”* (the actions being related to identifying, recording, and sharing information about that person’s possible vulnerability. This implies that officers only have to consider ‘PACE vulnerability’ if someone is a suspect.

Code C 1.13(d) begins, *“‘vulnerable’ applies to any person who, because of a mental health condition or mental disorder (see Notes 1G and 1GB)”*. However, it continues: *“(i) may have difficulty understanding or communicating effectively about the full implications for them of any procedures and processes connected with: their arrest and detention; or (as the case may be) their voluntary attendance at a police station or their presence elsewhere (see paragraph 3.21), for the purpose of a voluntary interview; and the exercise of their rights and entitlements”*. (Note the ‘and’ rather than ‘or’).

Code C Section 3 (Initial action) (A) Detained persons - normal procedure paragraph 3.1 states *“When a person is brought to a police station under arrest or arrested at the station having gone there voluntarily, the custody officer must make sure the person is told clearly about”* (their continuing rights). The requirement for a rights and entitlements notice (in 3.2) requires that it mentions *“the circumstances in which an appropriate adult should be available to assist the detainee...”*. The R&E notice is obviously set up for people detained as part of a criminal investigation, and it is not clear here what does/doesn’t apply in different circumstances.

There are clearly some procedures that don’t apply for non-suspect detention e.g. interviews, VIPER, fingerprints. However, there are some that do (or may do), such as the explanation of rights and entitlements and some strip searches. And if “sections 8 and 9 must be considered as the minimum standards of treatment” even where the rest of the Code explicitly doesn’t apply, then both sections make reference to appropriate adults (see 8D and 9.3A).

² Zander, M. (2023) Zander on PACE: The Police and Criminal Evidence Act 1984 9th ed. pp 186-187