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Investigation

Investigative interviewing

Investigation is a core duty of policing. Interviewing victims, witnesses and suspects is central to the success of an investigation and the highest standards need to be upheld.

Forces need to develop and maintain the valuable resource of a skilled interviewer. Interviews that are conducted professionally and quality assured realise several benefits. In particular, they can:

- direct an investigation and gather material, which in turn can lead to a prosecution or early release of an innocent person
- support the prosecution case, thereby saving time, money and resources
- increase public confidence in the police service, particularly with witnesses and victims of crimes who come into direct contact with the police.

Without the accounts of those who played a central role in the crime, or those who have witnessed an important aspect of the commission of a crime, other sources of material such as CCTV images, fingerprints and forensic material, although extremely important, may have little value.

Conducting investigative interviews is, therefore, a crucial element of the process of investigation.

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Professionalism and integrity

Interviewing is complex. It requires learning and practice to ensure that high standards are achieved and maintained.

An interview may not be used solely for obtaining information about an investigation. It may also be used to provide witnesses and victims with important information, for example, about court proceedings, protection of identity, special measures, disclosure, intermediaries and witness protection.

In any interview it is essential that the investigator acts with professionalism and integrity. The following will support this.

Establishing a professional relationship

People are more likely to give accurate information if they trust the professionalism of the interviewer. The interviewee should be treated fairly and in accordance with legislative guidelines. Interviewers must not allow their personal opinions or beliefs to affect the way in which they deal with witnesses, victims or suspects.

The importance of being methodical

Being methodical helps both the interviewer and interviewee. Planning, preparation and ensuring that the interview plan is followed, and that answers are linked are all part of being methodical. The PEACE interview model also helps.

Personal style

Style matters because it affects the motivation of the interviewee to be accurate and relevant in their replies. Establishing a rapport means being genuinely open, interested and approachable, as well as being interested in the interviewee's feelings or welfare.

Interview location

The physical setting can have an effect on the establishment of the relationship between those involved. The interviewer should consider the impact the location can have on themselves and the interviewee, in particular the affect the formality of designated interview rooms can have on some witnesses and victims.

Dealing with suggestibility

This is when an interviewee is influenced by what they believe the interviewer wants or expects them to say. People vary in the degree to which they are suggestible. Vulnerable people, people with learning difficulties and children, eg, may be more suggestible and require special protection.

Principles and ethics

The national strategic steering group on investigative interviewing and the professionalising investigation programme support a quality approach to interviewing suspects, victims and witnesses. This, in turn, generates a number of benefits.

The aim of all professional interviewers is to obtain a full and accurate account. To do this they must ask the right questions.

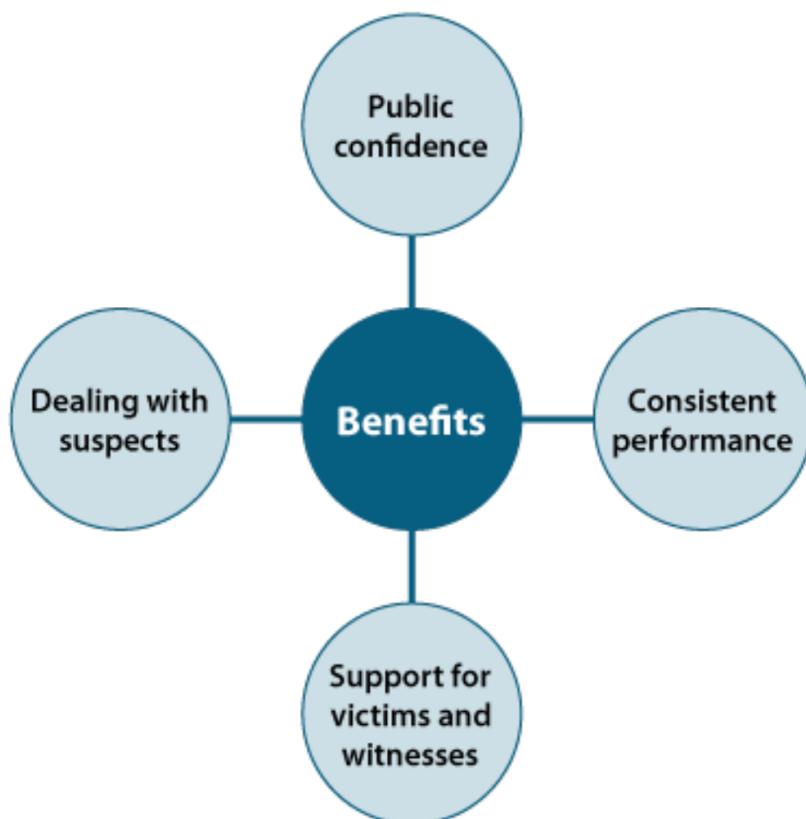
The chances of obtaining a high-quality account are increased by the application of good investigative interviewing techniques, underpinned by seven key principles.

These are designed to guide investigators on how to use the PEACE framework for investigative interviewing, for interviewing in operational situations.

They also help the investigator to comply with the legal issues, and when working with legal advisers.

Benefits

The following benefits have been defined by the professional structure for investigative interviewing:



Public confidence – Professional interviews will provide high-quality material that enables the guilty to be brought to justice and the innocent to be exonerated. This increases public confidence in the police service, particularly with victims and witnesses of crime.

Consistent performance – Criminal investigation largely takes place away from the police station. Interviews with victims and witnesses are conducted at scenes of crime, at witnesses' homes, at their place of work, in cars and in the street. The techniques of investigative interviewing will help investigators to achieve results in even the most unpromising circumstances.

Support for victims and witnesses – Victims and witnesses may be upset, scared, embarrassed or suspicious. Good investigative interview techniques will help to calm or reassure them so that they can provide an accurate account.

Dealing with suspects – Interviews generally take place in a police station, but can be elsewhere, eg, a prison. Do not assume that all suspects are going to lie, say nothing or provide a self-serving version of events. Some may, but where suspects do admit guilt this will be due, in part, to the strength of material gathered during the investigation.

Principle 1

The aim of investigative interviewing is to obtain accurate and reliable accounts from victims, witnesses or suspects about matters under police investigation.

To be accurate, information should be as complete as possible without any omissions or distortion.

To be reliable, the information must have been given truthfully and be able to withstand further scrutiny, eg, in court.

Accurate and reliable accounts ensure that the investigation can be taken further by opening up other lines of enquiry and acting as a basis for questioning others.

Principle 2

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](#).

Acting fairly means that the investigator must not approach any interview with prejudice. The interviewer should be prepared to believe the account that they are being given, but use common sense and judgement rather than personal beliefs to assess the accuracy of what is being said.

People with clear or perceived vulnerabilities should be treated with particular care, and extra safeguards should be put in place.

Principle 3

Investigative interviewing should be approached with an investigative mindset.

Accounts obtained from the person who is being interviewed should always be tested against what the interviewer already knows or what can be reasonably established.

The main purpose of obtaining information in an interview is to further the enquiry by establishing facts. This point highlights the importance of effective planning in line with the whole investigation.

Interviewers should think about what they want to achieve by interviewing the victim, witness or suspect, and set objectives which will help to corroborate or disprove information already known.

Investigators should try to fill the gaps in the investigation by testing and corroborating the information by other means where possible.

Principle 4

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.

Conducting an investigative interview is not the same as proving an argument in court. This means that interviewers are not bound by the same rules of evidence that lawyers must abide by.

Although the interviewer may ask a wide range of questions, the interviewing style must not be unfair or oppressive. The interviewer should act in accordance with the [Police and Criminal Evidence Act 1984 \(PACE\)](#) and the PACE codes of practice. See [principle 2](#) for further information regarding equality and human rights considerations.

In [R v Fulling, \[1987\] 2 ALLER 65](#), Lord Chief Justice Taylor stated that oppression is defined as:

the exercise of authority or power in a burdensome, harsh, or wrongful manner, or unjust or cruel treatment of subjects or inferiors, or the imposition of unreasonable or unjust burdens in circumstances which would almost always entail some impropriety on the part of the [interviewer].

Principle 5

Investigators should recognise the positive impact of an early admission in the context of the criminal justice system.

Benefits of an early admission relate to the following areas:

Further information

[Working with victims and witnesses](#)

[MOJ \(2011\) Achieving Best Evidence: Guidance on Interviewing Victims and Witnesses, and Guidance on Using Special Measures](#)

Further information

[Investigative and Evidential Evaluation](#)



Victim – has an opportunity to claim compensation in respect of an offence that has been admitted by the defendant, detected, and acknowledged by the criminal justice system.

Court – has a fuller and more accurate picture of the offending and is able to sentence more appropriately. There is the potential for savings too as offences can be dealt with promptly without additional court hearings.

Defendant – may receive credit for early admission of guilt. They may be eligible for a lesser sentence – possibly allowing for tailored sentencing and access to rehabilitative programmes, and being able to ‘clear the slate’ to avoid the risk of subsequent prosecution for other offences. See CPS guidance and Sentencing Council Guidelines (2007) Reduction in Sentence for a Guilty Plea.

Police – gain valuable intelligence, increase detected offences rates, record a fuller picture of offending for possible use in future cases or to support applications for anti-social behaviour orders, or other restrictive orders.

Prosecution – has a fuller and more accurate picture of, for example, the offender’s criminal history when considering the public interest test, bail decisions, bad character, level of danger, and what information to give the court.

Resources – are used efficiently, and the public’s confidence in the criminal justice system is improved.

Principle 6

Investigators are not bound to accept the first answer given. Questioning is not unfair merely because it is persistent.

An investigating officer has the duty to obtain accurate and reliable information. A complete and reliable account from witnesses, victims and suspects may not always be easy to obtain.

There may be different reasons why an investigator needs to be persistent:

- they may have reasonable belief that the interviewee is not telling the truth
- they may believe further information could be provided.

It is acceptable for interviewers to be persistent as long as they are also careful and consistent but not unfair or oppressive. See PACE Code C paragraph 10.9 and paragraph 11.5 for clarification.

Principle 7

Even when a suspect exercises the right to silence, investigators have a responsibility to put questions to them.

This principle extends the right of an investigator to put questions to those they believe can help them to establish the truth of a matter under investigation.

Suspects have the right to remain silent, but they are warned during the police caution or during special cautions of possible adverse inferences being drawn should they choose to exercise that right. These may be in terms of failure or refusal to account for objects, substances or marks (Criminal Justice and Public Order Act 1994 (CJPOA) section 36) or failure or refusal to account for presence at a particular place (CJPOA section 37).

Further information

[PACE Code C paragraph 10.10](#) and [paragraph 10.11](#)

National strategic steering group

The national strategic steering group on investigative interviewing (NSSGII) oversees the development and delivery of the most effective interview strategy. Its role is to ensure that the police service adopts a consistent and professional approach, which is able to withstand judicial and academic scrutiny and instil public confidence.

The overall aim of the NSSGII is to provide direction on the development of policy, practices and procedures to ensure that the interviewing of victims, witnesses and suspects supports professional investigation.

The NSSGII has clearly defined terms of reference.

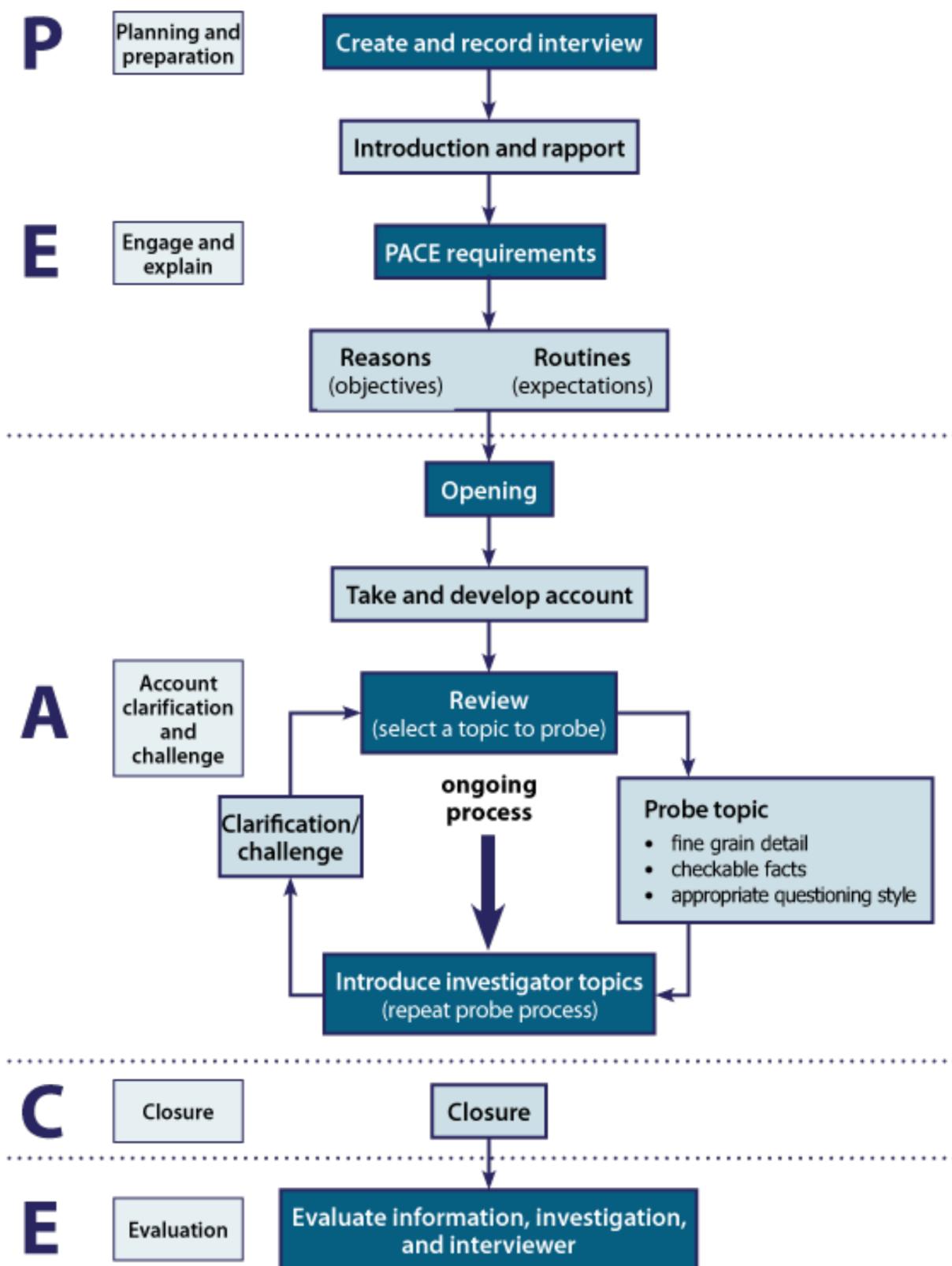
The following advice can be accessed through the NSSGII support network:

- National interview coordinator – who is able to provide a wide range of advice in relation to operational, training and policy issues.
- ACPO approved interview advisers – who provide assistance to the national interview coordinator.
- Force interviewing champion – each force should have nominated a champion for investigative interviewing who promotes interviewing as a core police service competency. The interviewing champion is responsible for overseeing the ongoing implementation and maintenance of the national investigative interviewing strategy in their force, which involves identifying innovations, supporting best practice and disseminating information.
- Regional coordinator – each region has appointed a coordinator for investigative interviewing. The regional coordinator for investigative interviewing supports the force interviewing champions within their region by promoting the national investigative interviewing strategy and disseminating good practice.

PEACE framework

PEACE model

There are five phases to the PEACE framework.



Planning and preparation

This is one of the most important phases in effective interviewing. The success of the interview and, consequently, the investigation could depend on it.

A planning session that takes account of all the available information and identifies the key issues and objectives is required, even where it is essential that an early interview takes place.

Interviewers should consider the following:

- create and record the interview plan
- characteristics of the interviewee
- practical arrangements
- making a written interview plan.

Interview plan

Planning and preparation gives the interviewer the opportunity to:

- review the investigation
- establish what material is already available
- decide on what the aims and objectives of the interview are.

Every interview must be prepared with the needs of the investigation in mind. How the material is obtained during interview helps to establish the accuracy of the matter under investigation and should be considered carefully.

The following questions may be helpful at this stage:

- who needs to be interviewed and in what order?
- why is a particular interviewee's viewpoint so important?
- what information should now be obtained?
- should the interviewee be interviewed immediately or would it be more useful to wait until more information has been obtained about the circumstances of the offence from other sources?

Interviewee

Individual characteristics should be taken into account when planning and preparing for an interview. Although not an exhaustive list, these may include:

- age – knowing the interviewee's age helps to determine the best time to undertake the interview and whether an appropriate adult/interview supporter is required
- cultural background – this can affect the way a person prefers to be addressed, and may also indicate the need for an interpreter
- religion or belief – eg, interviewers may need to take prayer requirements into account
- domestic circumstances – this can help to identify other people who may be useful to the investigation, eg, family, associates or neighbours
- physical and mental health – knowledge of an existing medical condition and ensuring that appropriate facilities are used
- disability
- previous contact with the police – this helps to determine factors such as the interviewee's reaction, and the interviewer's safety
- gender – in certain types of crime, eg, sexual offences or domestic violence, it is important to consider the gender of the interviewee. Potentially sensitive issues such as an interviewee's sexual orientation or gender assignment should be approached tactfully, if these matters become relevant to the interview.

Practical arrangements

The interviewer may need to consider a number of activities and practical considerations which may help them to understand the circumstances of the offence, and to achieve the best interview from the interviewee.

These include:

- visiting the scene
- searching relevant premises
- location of the interview
- role of interviewers
- timings
- equipment
- exhibits and property
- knowledge of the offence.

Written interview plan

The interview plan summarises the aim(s) of an interview and provides framework for questioning. It can increase the confidence of the interviewer and provide the flexibility to conduct a professional and effective interview. A written interview plan should be used for key witnesses, as well as suspects. It should include:

- the time a suspect has been in custody (investigators should be aware of the detention clock and its impact on the interview)
- the range of topics to be covered around identified time parameters (this may vary depending on whether it is a witness or suspect interview)
- the points necessary to prove the potential offence(s) under investigation
- any points which may be a defence for committing the offence(s) under investigation
- introduction of exhibits
- material which suggests the suspect may have committed the offence
- identified information which may assist the investigation
- any other relevant points, eg, actus reus (guilty act), mens rea (guilty mind), intention, no valid defence
- planning for a prepared statement, special warnings, adverse inference, significant comments or silences.

Multiple interviewers

The plan should record who will be the lead interviewer, and who is responsible for note-taking. It is important that interviewers understand their respective roles and maintain the role agreed. Two interviewers asking multiple questions in an unstructured manner is unlikely to achieve the interview's objective.

Engage and explain

The first step to encouraging conversation is to engage the interviewee. This is not always easy, especially if the person is previously unknown to the police.

Active listening assists the interviewer to establish and maintain a rapport. This then enables them to:

- identify topics during the interview and, therefore, manage the conversation
- communicate interest to the interviewee in their account
- identify important evidential information.

Factors such as the interviewee's background and personal characteristics should be taken into account.

Beginning the interview

This is important and should be considered in the planning stage. The reason for the interview should also be clearly explained, eg, the interviewer may say:

- 'You are here because you have been arrested for (offence)' or
- 'You are here because you witnessed (offence/incident).'

The interviewer should then check the interviewee has understood the explanation.

Objectives of the interview

Before starting an interview, the objectives of the interview should be explained to the interviewee, and they should be provided with an outline or route map of it.

For example, interviewers may say:

- 'During this interview I will talk to you about (list objectives).'

Then go on to explain:

- 'I will also ask you about anything else which may become relevant during the interview in order to properly establish the facts and issues.'

Routines and expectations

It is good practice to explain to the interviewee that if they nod or shake their head the interviewer will state that they have done so. It should also be explained that notes will be taken during the interview.

It may be useful to inform the interviewee that although the police wish to establish certain facts and issues, it is the interviewee's opportunity to explain their involvement or non-involvement in the incident under investigation.

Investigators should encourage the interviewee to voice anything which they feel is relevant, explaining that there is no time limit for the interview and that as much detail as possible is required, encouraging the interviewee to voice anything which they feel is relevant.

The interviewee should be reassured that they will not be interrupted. It may be appropriate to ask the interviewee to consider fully any question they are being asked before they answer.

Account, clarification, challenge

Obtaining an account consists of both initiating and supporting. In volume and priority crime investigations the most common way of initiating an account is simply to use an open-ended prompt, such as, 'tell me what happened'.

Support an account with active listening

This includes:

Further information

[Obtaining the suspect's account](#)

- non-verbal behaviour such as adopting an appropriate posture and orientation towards the interviewee
- allowing the interviewee to pause so that they can search their memory, without interrupting
- encouraging the interviewee to continue reporting their account until it is complete by using simple utterances such as 'mm mm' and prompts, eg, 'What happened next?' or questions that reflect what the interviewee has said, such as, 'He hit you?'

Clarify and expand the interviewee's account by:

- breaking the account down into manageable topics
- systematically probing those topics by means of open-ended and specific-closed questions until as full a picture as possible of the interviewee's account has been obtained
- examining any information, identified during the planning phase, that has not already been covered.

Questions

These should be as short and simple as possible. They should not contain jargon or other language which the interviewee may not understand.

Some types of questions are useful, helping the interviewer to extract information from the interviewee, eg, open-ended. Others are not and may actually confuse the interviewee or prevent them from giving a full and accurate account, eg, multiple questions.

Five key question types

- open-ended
- specific-closed
- forced-choice
- multiple
- leading.

Open-ended

For example, 'Tell me', 'Describe', 'Explain'.

- are useful at the beginning of an interview as they allow for a full, unrestricted account
- produce answers which are less likely to have been influenced by the interviewer.

The interviewer should avoid interrupting the interviewee when asking open questions.

Specific-closed

For example, 'Who did that?' 'What did he say?' 'Where does he live?' 'When did this happen?' This type of question:

- gives the interviewer with more control
- can be used to elicit information that an interviewee has not yet provided in response to open-ended questions
- may be used to clarify and extend an account that has been elicited through open-ended questions, cover information important to the investigation that an interviewee has not already been mentioned, or to challenge
- may have the potential disadvantage of restricting an interviewee's account.

Forced-choice

For example, 'Was the car an estate or a saloon?' In this situation:

- interviewees might guess the answer by selecting one of the options given
- interviewees might simply say 'yes' in response to the question, leaving the interviewer to guess which part of the question the response applies to, or needing to ask a follow-up question to clarify it
- the choice of answer given to the interviewee might not contain the correct information, eg, 'was it dark blue or light blue', when it could have been medium blue.

Multiple

For example, 'Where did he come from, what did he look like and where did he go to?' These questions may also refer to multiple concepts, eg, 'What did they look like' and confusion might arise as a result of the:

- interviewee not knowing which part of the question to answer
- the interviewer not knowing which part of the question the answer refers to.

Leading

For example, 'You saw the gun, didn't you?' implies the answer or assumes facts that are likely to be disputed. They can also:

- be used to introduce information not already mentioned, eg, 'What did **he** look like?'
- have an adverse influence on interviewee's response
- distort the interviewee's memory

The information obtained as a result of leading questions may be less credible and in extreme cases could be ruled inadmissible. They should, therefore, be used only as a last resort.

Closure

This should be planned and structured so that the interview does not end abruptly.

Where there are two interviewers, the lead interviewer should check that the second interviewer has no further questions before closing the interview.

The interviewer should accurately summarise what the interviewee has said, taking account of any clarification that the interviewee wishes to make.

Any questions the interviewee asks should be dealt with.

The interviewer should then bring the interview to a conclusion by preparing a witness statement if appropriate or, where the interviewee is a suspect, by announcing the date and time before turning the recording equipment off.

They should then explain to the interviewee what will happen next.

Evaluation

Following an interview, the interviewer needs to evaluate what has been said with a view to:

- determining whether any further action is necessary
- determining how the interviewee's account fits in with the rest of the investigation
- reflecting on the interviewer's performance.

Witness considerations

Victims are also witnesses. The skills needed to interview witnesses are just as important as those needed to deal appropriately with suspects. It is important that as much information as possible is gathered from the witness and recorded in witness statements. Completing a crime report is an opportunity to record information about the crime, including accurate and reliable information obtained from witnesses.

Interviewers must treat all witnesses with sensitivity, impartiality and respect for their culture and rights, while maintaining an investigative approach.

The interviewee may be suffering from shock or trauma as a result of the incident and be in need of support. The police can help by making appropriate referrals to other agencies and by supplying contact information. Any referrals should be made with the consent of the witness. See [working with victims and witnesses](#).

It is important to consider how a witness interview may be structured to obtain the best possible information.

Interviews should be conducted as soon as possible after the incident, in a quiet place, with minimum distraction and maximum privacy (eg, a car or quiet room). If this is not possible, investigators should consider arranging to conduct the interview later or elsewhere. A brief account of the main details should be obtained. This should be recorded and signed by the witness, in a pocket notebook if an alternative is not available. See also [witness interviews](#).

Witness statements

Police officers are required to produce a statement from an interview conducted with a witness. Statements may be taken at the scene immediately following an incident or at a later time or place, eg, at a police station, the witness's home or another location.

Investigators must be properly prepared. Any notes that are made must be retained, as the prosecution may need to disclose any unused material.

The interviewer should ensure that the witness statement accurately reflects what the witness has said.

The interviewer must also consider the relevant points to prove for the offence in question.

Where the witness is considered to be a significant witness, see [video of witness interview](#).

Crime report

The interviewer should complete a crime report following the victim interview, in accordance with local force policy. The crime report is an important document and forms the basis of any further investigation.

If required, the crime report may be disclosed in evidence to defence lawyers, who will scrutinise it to ensure that it is accurate and consistent with other evidence.

Crime reports must contain as much information as possible, to provide sufficient detail to assist any officer who undertakes further investigation of the offence.

Structuring a witness interview

A witness interview should be structured using the [PEACE framework](#).

It is possible to compare the PEACE model of interviewing with the Framework of Investigative Interviewing as set out in [MOJ \(2011\) Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses](#), and using [Special Measures](#). Most phases are compatible.

Achieving best evidence	PEACE
Planning and preparation	Planning and preparation
Establishing rapport	Engage and explain
Initiating and supporting a free narrative account questioning	Account, clarify and challenge
Closing the interview	Closure
Evaluation	Evaluation

Various question types may be used, but in witness interviews it is considered good practice to use free recall to encourage the individual to give an account of the situation.

Free recall

This is a system which can be used in interviews to encourage interviewees to put themselves back into the situation they were in when they witnessed the incident.

A free recall interview includes:

- asking the witness to provide an account of the relevant event(s) in their own words (eg, 'Earlier today you told me that you saw something last week, please tell me about that in your own words')
- adopting a posture of active listening, allowing the witness to pause, and using minimal prompts that do not go beyond the witness's account
- reflecting back what the witness has said, as appropriate
- avoiding interrupting
- identifying manageable topics or episodes in the witness's account to be expanded on and clarified
- systematically probing each topic or episode, beginning with open questions using words such as tell me, explain, describe, before moving on to closed-specific questions (eg, what, where, when, how and why)
- avoiding topic-hopping (rapidly moving from one topic to another and back again)
- avoiding multiple questions
- using forced-choice and leading questions only if it is essential to do so
- systematically probing any information important to the investigation that the witness has not adequately covered.

For example, where an incident took place while the witness was travelling to work, the investigator may ask them to remember how they felt when they got into their vehicle that morning, what they saw as they left the house, what the weather was like, and the traffic.

Helping the witness to recall details such as these will enable them to recall more accurately the conditions that existed at the time of the incident.

The interviewer must undertake a number of tasks simultaneously when conducting free recall interviews. A structure should, therefore, be in place for effective note-taking.

Note-taking

A structured process for note-taking enables the interviewer to process and respond to the quantity and quality of information received in the interview.

This provides a firm basis for the questions that need to be asked to clarify or challenge the interviewee's account. A tape recording is made, in accordance with [PACE](#), when interviewing suspects. However, the interviewer still needs to make notes and use them to clarify the suspect's account. For further information see [note-taking systems](#).

Suspect considerations

Working with legal advisers

Investigators have a duty to maximise the amount of material available to the courts. Legal advisers will try to obtain as much information as possible from the investigator, custody staff and their client, while working within their legal framework. See [legal services commission](#) for further information. This helps them to prepare and plan a strategy for advising their client in the police station, particularly during an interview. Legal advisers act in the best interests of their clients. This can include:

- challenging the legal basis of police action
- advising their client not to assist the prosecution case
- rigorously exploring alternative outcomes to charging
- attempting to persuade investigators that their client is not responsible for the offence in question.

Although the priorities and viewpoints of the police and legal advisers may differ, there should be mutual respect for the professional role of each party.

Police officers involved in the arrest, investigation or detention of a suspect must also ensure that they plan and prepare for any interaction or interview with a [legal adviser](#), including the pre-interview briefing.

In addition to gathering information, the legal adviser may also make [representations](#).

Legal adviser role

A legal adviser is one of the following:

- a solicitor who holds a current practising certificate
- an accredited or probationary representative included on the register of representatives maintained by the [legal services commission, PACE Code C 6.12](#).

The Law Society indicates that the role of the legal adviser is to:

- investigate the police case, the prosecution evidence, the police investigation and all police contact with, and conduct towards, the client
- act in their client's best interest, providing best advice
- assess the extent of the client's vulnerability and ability to comprehend, cope and communicate to best effect in any police interview
- identify the safest responses by the client, eg, to remain silent, provide a written statement or to answer police questions
- influence the police to accept their client is not guilty
- influence the police not to charge their client
- influence the police to make the most favourable case disposal decision for their client, implementing the most constructive alternative to charging relative to the circumstances of the case and the client
- create the most favourable position for the client if they are charged.

Advising their client

The legal adviser cannot prevent the suspect from answering questions if they choose to do so, nor can they answer questions on behalf of the suspect. The suspect may choose not to answer questions, but provide a prepared statement at any time before charge.

The legal adviser monitors the interview process and may make representations relating to the:

- investigator's compliance with PACE
- investigator's compliance with the PEACE model of interviewing
- suspect's capability of coping physically and mentally with the interview.

Interventions

In addition, the legal adviser may intervene during interview to:

- provide legal advice to their client
- request clarity when the questions are unclear and ambiguous
- prevent oppressive threatening or insulting questioning
- prevent questioning based on supposition
- prevent questioning based on material which has not been disclosed or summarised
- object to questions which are not relevant to the offence under investigation
- object to questions which are not directed at discovering whether and by whom the offence in question was committed.

Meeting legal advisers

Investigators will work with legal advisers:

- during pre-interview briefings
- during suspect interviews
- during identification procedures
- when the suspect is charged or bailed or
- during the post-charge disclosure processes.

Careful consideration should be given to the following:

Resources – finding a suitable room which is free from interruptions to conduct any discussions

Time – making an appointment convenient to all parties and allowing sufficient time for discussion, consultation and negotiation prior to subsequent suspect interviews, including rest breaks

Strategy – pre-interview briefing strategy. How this will be conducted and recorded, eg, whether it will be partial or full disclosure depends on the individual circumstances.

Legal adviser information

The legal adviser requires the following information prior to the interview:

- the particulars of the suspect's arrest and detention, their treatment and observance of their rights
- what investigation has taken place or is being considered
- what procedures have taken place or are being considered, eg, fingerprinting, intimate and non-intimate samples.

In order to advise their client prior to a police interview or other procedure, a solicitor needs to obtain as much information as possible about the case. This information comes initially from three sources:

- custody officer or custody record
- investigator
- suspect.

Custody officer information

The custody officer may be required to provide the following information:

- confirmation of the suspect's identity
- the alleged offence
- whether the suspect is under arrest or is a volunteer (if a volunteer, there is no custody record unless taken into custody)
- the suspect's state of health, physical condition or disability
- the names of the arresting officers
- time of arrest
- time of arrival at the police station
- whether an interview has already taken place
- when legal advice was first requested
- any significant statements/silences made on arrest or at time of detention
- any admissions made by the suspect.

Removal of legal adviser

Removing a legal adviser from an interview is an extreme step. It should be taken only if the legal adviser's approach or conduct prevents, or unreasonably obstructs, questions being put to the suspect. It may also be necessary if the legal adviser prevents the suspect's response from being recorded by talking over them or constantly interrupting them. PACE Code C Note 6D provides for the following examples of misconduct by the legal adviser:

- answering questions on the client's behalf
- providing written replies for the client to quote.

Prior to removing a legal adviser, the investigator must seek authority from a superintendent or above, or, if one is not readily available, an inspector. The authorising officer should:

- witness the behaviour themselves (which may include listening to tapes)
- be prepared to justify their reasons to a court.

Pre-interview briefings

This is the meeting between the investigator and legal adviser prior to conducting the suspect interview. The purpose of it is to provide the legal adviser with relevant material to help them advise their client.

Pre-interview disclosure should not be confused with the duty to disclose material post-charge.

Unrepresented suspects should not be given a pre-interview briefing as they may not understand the evidential value of any material provided.

Further information

[Disclosure](#)

Preparation

During a pre-interview briefing, the investigator demonstrates knowledge of the relevant legislation and supporting case law in relation to the offence under investigation. This is the point at which the investigator outlines the offence for which the suspect has been arrested and the purpose of the subsequent interview.

Investigators can seek assistance from the following:

- supervisors and colleagues
- evidence review officers
- interview specialists and interview advisers.

It is essential to plan and prepare the pre-interview briefing. The investigator should prepare a structured pre-interview briefing, disclosure strategy and interview plan. The plan should encompass the aims and objectives of the interview and the points required to prove the relevant offence, together with the likely defences and issues that need to be covered.

Plan and prepare the pre-interview briefing

The investigator should consider a number of issues when planning and preparing for a pre-interview briefing. This should include any information that may be given to the legal adviser (see also [disclosure strategy](#)), eg:

- an outline of the offence for which the suspect has been arrested
- the circumstances in which the suspect was arrested (which does not compromise the interview plan)
- history and character of suspect
- any significant comments, silences or material recovered at the time of arrest
- the reasons why it is necessary to interview the suspect, covering, eg, innocent explanations, self-defence, alibis, mitigation
- details of the areas the investigator wishes to cover during an interview, including the suspect's movements, time parameters, knowledge of locations or the victim.

The investigator should also consider:

- where the briefing should be conducted, especially if this is the first time the investigator has met the legal adviser, for example, using an interview room or an appropriate office in the police station
- how the investigator will respond to requests for further information from the legal adviser
- whether there should be staged disclosure of the material recovered
- recording what material has been disclosed prior to the interview either by audio-recording or providing a handwritten or typed document
- how the submission of a prepared statement and/or no comment interview will be managed
- how admissions to the offence will be managed.

Disclosure strategy

Investigators are not legally obliged to disclose any material to the legal adviser prior to the suspect interview. However, to achieve the intended aims and objectives of the interview, appropriate pre-interview disclosure may be beneficial.

The legal adviser will try to obtain as much information as possible about the circumstances of the arrest and the material that the investigator possesses. They will want to assess the strength of the prosecution case, advise their client accordingly.

To encourage a positive working relationship, the interviewer may outline in advance the general questions that will be asked during the interview. The investigator may also wish to reassure the legal adviser that no other topics or questioning will be introduced other than those outlined, unless first mentioned by the suspect themselves.

In serious or complex investigations it may be necessary to conduct a number of interviews, involving a phased or staged approach to the pre-interview briefing and disclosure of material.

If a legal adviser approaches an investigator after their client has been charged, to request disclosure of additional material, the investigator should politely refer them to the crown prosecutor. Disclosure under the provisions of the Criminal Procedure and Investigations Act 1996 begins after a suspect has been charged.

Pre-interview briefing is voluntary, whereas the disclosure provisions post charge are mandatory.

Material and information

Investigators will be requested to provide a range of material and information, which may or may not have been collected at the time the pre-interview briefing takes place or when the suspect is initially interviewed.

The investigator is not legally required to provide the legal adviser with any material prior to the interview of a suspect. There is also no requirement to explain to the legal adviser the reason for withholding material from the pre-interview briefing, although officers may subsequently need to explain their reasons to the court.

If the case then proceeds to a prosecution, there is a requirement on the prosecution team to disclose all material that is likely to undermine the prosecution or assist the defence.

Representations

Representation is made when the legal adviser wishes to bring a critical matter to the attention of the custody officer, any officer or civilian employed or instructed by the police.

Law Society (2004) Police Station Skills for Legal Advisers

The purpose of a representation is to encourage an individual to think or act differently or to persuade others to do so, for example, change a decision or action.

Representations can be made in relation to:

- any risk or disadvantage to the defence of the suspect
- the suspect's legal position
- the suspect's psychological or physical wellbeing or integrity.

A representation can be based on a fact or law, putting forward the suspect's point of view. They can be made by the legal adviser, a third party acting on behalf of the suspect or by the suspect specifically in respect of detention reviews.

Knowledge required by the investigator

An in-depth knowledge of PACE and the current Codes of Practice assists officers to respond to representations made by, or on behalf of, a suspect.

Reasons for representations

These may include:

Further information

PACE Codes of Practice

Code C, Code D, Code E, Code F

- the strength of evidence against a suspect (Code C 11.6, 16.1, Notes 16A–D)
- the suspect’s welfare or fitness for interview (Code C 12.3)
- the need to question or continue to question a suspect (Code C 11.1–11.6)
- the continued detention of a suspect (Code C 15.1 15.16, Notes 15 A–G)
- the suitability of an ‘appropriate adult’ or interpreter (Code C 1.7, Notes 1A–H)
- the use of a particular identification procedure (Code D 1.1–1.7, Annex A–F)
- searches (Code C 4.1–4.5, 4A–4C)
- obtaining intimate or non-intimate samples from the suspect (Code D 6.1–6.12, Notes 6A–6F)
- disposal either by way of bail, charges or diversion (Code C 16.1), for further information see [justice outcomes](#)
- testing for Class A drugs (Code C 17.1–17.14, Notes 17A–G)
- downstream monitoring of interviews (Code E 4.8–4.9, Note 4F), for further information see Home Office Circular 50/1995 Remote Monitoring of Interviews with Suspects
- video-recording of interviews (Code F 3.1–3.6, Notes 3A–3 F).

Actions required

Representations can be made orally or in writing at any time while a suspect is in police detention or at charge.

Representations may be made to:

- custody officers
- investigators
- reviewing officers
- identification officers
- any police officer or member of police staff concerned with the investigation or detention of the suspect.

The police officer or member of police staff should accurately record the content and context of the representation in the custody or identification parade record, or in their pocket notebook.

The facts or arguments presented by the legal adviser may become a matter of issue in legal proceedings. Maintaining records of all representations and how they were resolved will assist in the event of any subsequent review.

Interview structure

In addition to the PEACE model, there are a number of other considerations that need to be taken into account when structuring an interview.

Downstream monitoring

Suspects and their legal representatives must be made fully aware if remote monitoring of the interview is to take place. The following minimum standards apply, in accordance with Home Office Circular 50/1995 Remote Monitoring of Interviews with Suspects (as agreed between [ACPO](#) and the Law Society):

- the remote monitoring system should only be able to be operational when the tape recorder has been turned on
- a light, which automatically illuminates upon activation of remote monitoring, should be visible to all in the interview room
- all interview rooms with remote monitoring equipment should prominently display a notice referring to the capacity for remote monitoring and to bring attention to the fact that the warning light will illuminate to signify that remote monitoring is taking place
- at the beginning of the interview, the contents of the notice must be explained to the suspect by the interviewing officer (the explanation itself should be recorded on the tape)
- the suspect’s custody record should include reference to the fact that an interview, or part of an interview, was remotely monitored. It should include the names of the officers monitoring the interview and the purpose of the monitoring, ie, for training or to assist with the investigation.

Structuring the suspect interview

The interview should be structured in five identifiable stages, using the PEACE framework for investigative interviewing. The emphasis is to check the accuracy of the account, identify potential lines of enquiry and then challenge an account if necessary. Each stage provides convenient points to break and also to reappraise the objectives.

Starting an interview

The interviewer should:

- say that the interview is being audibly recorded
- give their name and rank and that of any other interviewer present
- ask the suspect and any other party present, eg, a solicitor, to identify themselves
- state the date, time of commencement and place of the interview
- tell the suspect they will be given a notice about the copies of the recording (this does not apply to interviews using a secure digital network).

See [Code E to PACE 4.4–4.6](#).

The introduction is also likely to include the formal caution:

You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence.

The suspect should be reminded of their entitlement to free legal advice.

A taped interview memo card may be a useful aide-memoire.

Significant statements

A significant statement or silence which occurred in the presence and hearing of a police officer or other police staff before the start of the interview should be recorded.

PACE Code C paragraph 11.4 states that at the beginning of an interview any significant statement or silence which has not already been put to the suspect during a previous interview, should be put to them. This should be done after the caution, and the suspect asked to confirm or deny their earlier statement, and whether they want to add anything.

Interviewer's objectives

These should be identified during the planning and preparation stage. The interviewer should:

- introduce each objective separately
- allow the suspect time to answer (do not interrupt)
- fully probe each objective.

After probing, the lead interviewer should verbally summarise the information.

Suspect's account

Interviewers should consider the following approaches when obtaining an account:

- allow the suspect the opportunity to establish their position
- define time parameters if relevant
- the use of open questions, eg, 'Tell me about your movements from leaving home yesterday morning and returning home yesterday evening'
- if the suspect avoids the question or does not answer, persist with questions worded to give an extended response
- if the suspect replies with their own concerns initially, the investigator should briefly respond and have another open question ready
- if the suspect denies knowledge of the incident, the interviewer should ask about the suspect's movements at the relevant time
- avoid interrupting the suspect while they are giving their account (interruptions may cause repercussions later and could result in miscarriage of justice, they may also inhibit the flow of information)
- accurate note-taking to assist in summarising the suspect's account
- summarising
- identifying topics for probing and using appropriate questions to expand the account, eg, 'What time did you leave the house?', 'Tell me about your journey to the club'
- select objectives for further probing using what, why, where, when, who, how, tell, explain and describe
- after the interviewer has probed all of the objectives relating to the suspect's account, the lead interviewer should ask the second interviewer if there are any matters they wish to clarify.

Challenging accounts

When challenging false accounts or inconsistencies in a suspect's account, the interviewer should not use a raised voice or inflammatory language as this can lead to a breakdown in rapport.

Each false account should be treated as a separate objective. The interviewer should use questioning to probe and summarise.

Necessity to arrest

Two recent cases highlight the challenges raised regarding necessity to arrest. Both cases went to appeal, and in each case the claims were in relation to unlawful arrest. Richardson found in favour of the claimant, and Hayes found in favour of the defendant.

- Richardson v CC of West Mids [2011] EWHC 773 (QB)
- Hayes v CC of Merseyside Police [2011] EWCA Civ 911

Section 24 of PACE identifies two criteria that must be met:

- i. that the officer, on the information known at the time, actually believes that the arrest is necessary for an identified section 24 (5) reason and
- ii. the belief is objectively reasonable.

In Hayes v Chief Constable of Merseyside Police, the QC defending Hayes contested that this should be a three-point test, and to justify an arrest the arresting officer should pass through a three-stage thought process. This is the points above plus 'he must actively consider all possible courses of action alternative to arrest; he must have taken into account all relevant considerations and have excluded all irrelevant ones'.

It is this last point which is contentious and not found in the Act. The court consequently found in favour of the defendant.

These cases demonstrate that each one should be considered on its own merits.

Richardson v CC West Midlands Police

A teacher, who had been arrested and detained after voluntarily attending a police station following allegations that he had assaulted a pupil, was awarded damages for false imprisonment. His arrest was deemed to be unlawful because the arresting officer failed to show that she had reasonable grounds for believing that his arrest was necessary, as required by the Police and Criminal Evidence Act 1984 s 24(4).

For further information see [\[2011\] EWHC 773](#).

Hayes v CC Merseyside Police

In this case the court restated the correct test for exercising the statutory power of arrest.

The court held that it was common ground for the police to justify an arrest. Dismissing the appeal, the court held a constable had to show two things: first, under the Police and Criminal Evidence Act 1984 s 24(2), that he had reasonable grounds for suspecting that an offence had been committed and that H was guilty of it; and second, that he had reasonable grounds for believing that it was necessary to arrest H to allow the prompt and effective investigation of the offence, as per ss 24(4) and 24(5)(e).

The first of such conditions had been met. As to the second, it was not a requirement that a constable should have actively considered all possible courses of action alternative to arrest and taken into account all relevant considerations and excluded all irrelevant ones; all that had to be shown was that the constable believed that arrest was necessary, and for a subsection (5) reason, and that, objectively, that belief was reasonable.

For further information see [\[2011\] EWCA Civ 911](#).

Legal issues

A person is innocent until proved guilty. It is the duty of the prosecution to prove their case against a person suspected of committing an offence.

A suspect is under no obligation to provide material to an investigator or prosecutor which is likely to be self-incriminating or which will assist the prosecution case.

No comment interview

[Principle 7](#) states that even when a suspect exercises their right to silence, investigators have a responsibility to put questions to them.

This can be difficult for officers who are not experienced in investigative interviewing.

Preparation is key to dealing with these situations. The interviewer should try not to be swayed by the no comment response. The practical problem is not so much whether to continue questioning when no responses are being given, but how to do in an effective and acceptable way.

The suspect must be given an opportunity to respond to all the relevant questions and be given enough time to decide if they would like to respond.

A no comment interview can be off-putting for even the most experienced interviewer. The most important point to remember is that the suspect must be given the opportunity to respond to any relevant information, therefore, all planned questions must be asked.

The interviewer should ask all the relevant questions as if the interviewee was responding. It is important that no gaps are left for the defence to fill at court. Failure to ask all the relevant questions in the first place may preclude inferences being drawn in court.

Adverse inference

CJPOA [section 34\(1\)\(a\)](#) allows the courts, in particular circumstances, to draw an adverse inference or conclusion from a suspect's silence or failure to mention, when questioned under caution prior to charge, a fact which they later rely on in their defence. An inference can also be drawn when a defendant is silent on charge (s 34(1)(b)). For further information see [the right to silence and the ECHR](#).

A suspect's silence is not in itself sufficient to establish guilt. A prima facie case, 'sufficiently compelling to call for an answer', must be made if the court is to invoke an adverse inference from the exercise of silence.

Where a suspect maintains their right to silence or fails to mention a fact on which they later rely in their defence in court, a trial judge is entitled to draw the jury's attention to the suspect's silence and invite the jury to draw an adverse inference.

The jury can be invited to consider why an innocent party would refuse to answer reasonable questions and whether any defence offered was plausible.

Through case law, the courts have identified [six conditions](#) that must be satisfied prior to a court drawing an adverse inference under CJPOA [section 34](#).

The judge may also draw attention to an explanation offered, which after consideration of all the evidence, may be less convincing than an explanation, which was offered at the time the suspect was being interviewed under caution and could, therefore, be checked.

Section 36 and section 37 CJPOA

Section 36

This permits the court or jury to draw adverse inferences from a suspect's failure or refusal to account for objects, marks or substances in certain circumstances.

Section 37

This outlines the circumstances where a suspect is found and arrested by a constable at a place at or about the time the offence was alleged to have been committed, and who fails or refuses to account for their presence in that place at that particular time.

Further information

[PACE Code C](#)

The Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers

The court will not be able to draw an adverse inference unless the investigator has, prior to putting questions to the suspect, warned them that their failure or refusal to give an account may not allow the court or jury to draw a proper inference. This is known as a special warning.

In serious cases consideration should be given to the preparation of an adverse inference pack.

Six conditions

There are six conditions which must be met when showing adverse inference.

1. The alleged failure to mention a fact which they later rely on in their defence must occur when the suspect is being questioned under caution.
2. The failure to mention these facts must occur before or on being charged.
3. The questions which were not answered were posed in an attempt to discover whether or by whom the offence had been committed.
4. The suspect failed to mention a fact which was later relied on in their defence.
5. The suspect could, in the circumstances existing at the time, reasonably have been expected to mention the facts they relied on at trial.
6. The provision only applies to criminal proceedings.

R v Argent [1997] 2 Cr App R 27

To comply with these requirements, the investigator must ensure that the suspect is at an authorised place of detention and has been told that they have the right to consult a legal representative prior to being questioned, charged or informed that they may be prosecuted.

Refusal of legal representation

Although the suspect must be advised of their right to legal representation, they may decline to consult a legal representative or choose not to have them present during an interview. In these circumstances, the court will still be entitled to draw an adverse inference from the suspect's silence or failure to mention a fact which they later rely on in their defence.

Section 34

CJPOA s 34 permits a court or jury to draw an adverse inference where a suspect fails to mention any fact on which they later rely in their defence, this fact being one which they could reasonably have been expected to mention when being questioned under caution.

This section has generated considerable case law which refines the legislation and provides an interpretation for investigators (see six conditions).

Case law

Considerable case law has developed which refines the legislation and provides an interpretation for investigators, eg, six conditions.

Investigators should regularly review their legal knowledge to ensure they remain up to date. Failure to do this may lead to an investigator conducting an interview in a manner which does not allow a court the opportunity to draw a proper inference.

Legal knowledge can be updated by the regular review of databases such as:

- The Police National Legal Database
- Lawtel
- The Crown Prosecution Service (CPS) Legal Guidance.

Adverse inference package

An important part of the investigator's role is to be proactive in considering possible events at court. If a suspect has refused to answer questions, or has failed to mention a particular point while under caution, there is a possibility that during the court hearing the suspect may put forward previously unmentioned information as part of their defence.

The purpose of an adverse inference package is to highlight to the CPS the various points during the interview where the suspect was given the opportunity to mention something that they are relying on in their defence statement.

To do this it is useful to prepare a file demonstrating the suspect's initial response which can, on request, be handed to the court.

Preparing the file

This involves reviewing the defence statement, where provided, and cross-checking it with documents that form part of the case preparation, thereby highlighting any change to the suspect's account.

It is a matter for the jury to determine whether the suspect's failure to mention those facts was reasonable. If they conclude that the suspect was acting unreasonably, they can draw an adverse inference from the failure to mention those facts.

Defence statement

It is essential for the investigator to be aware of the content of pre-interview briefings with legal advisers, interview plans, custody detention times, and recordings of interview, particularly where the suspect has either remained silent or given no comment answers.

Only by having this information can the investigator be ready to submit a package to the court which, illustrates why the jury should draw an adverse inference. Although it is not strictly speaking the responsibility of the investigator to create such a package, doing so will contribute to a successful prosecution. It is, therefore, in the investigator's interest to assist through efficient planning and preparation.

Prepared statement

Suspects may use prepared statements to reduce the chance of an adverse inference being drawn. Prior to starting the interview, the interviewer may wish to ask the legal representative whether a prepared statement is likely to be produced.

If a pre-prepared statement is handed in, or read out by the suspect's legal representative at the beginning of an interview, the investigator is still entitled to question the suspect about either the contents of the prepared statement or other matters.

A prepared statement is compiled by the suspect's legal representative in consultation with the suspect, signed and dated by the suspect and submitted by the defence prior to or during a suspect interview. Where the investigator is aware that a statement has been prepared but is not submitted, the interview should be conducted as planned, based on the material available to the investigator at that time.

On receipt of a prepared statement, the investigator should consider suspending the interview to consider the contents of this document.

There may be occasions when the suspect prepares a signed and dated statement that is not submitted to the police until charge or, in some cases, until trial. This may be because the statement contains incriminating information or may otherwise assist the prosecution case.

Even if the suspect maintains their right to silence, the investigator should ensure that the questions posed give the suspect every opportunity to provide a full verbal account. The leading cases in relation to prepared statements are:

- [R v Knight \[2003\] EWCA Crim 1977](#)
- [R v Turner \(Dwayne\) \[2003\] EWCA Crim 3108](#).

Statement containing new material

The statement should be assessed in the light of what is already known about the offence. Investigators should reassess their interview plan as further questions may be amended or prepared as a result of having the new material. Where, following the submission of a prepared statement, a suspect remains silent and a fact not mentioned in the statement is later relied on in the defence, the court or jury is entitled to consider drawing the appropriate inferences. Where a prepared statement containing material that is new to the investigation is tendered at the point of charge, consideration may be given to interviewing the suspect about it if they are still in custody.

Suspect on bail

If the suspect is on bail, there is no power to detain them for the purpose of such questioning but they can be asked to remain voluntarily and be interviewed about the content.

Special warnings

PACE Code C requires the use of special warning in certain circumstances. This is an additional caution. Legislation does not provide a specific form of wording for a special warning, but for an inference to be drawn it must be given in language that the suspect is capable of understanding. [PACE Code C](#) 10.11 and Note 10D state that it should include the following:

- details of the offence
- specific facts which the suspect is being asked to account for
- why the investigator thinks these facts may link the suspect to the offence
- making the suspect aware that a court may draw an inference if the suspect fails to account for these facts
- stating that a record is being made of the interview and that it may be given in evidence if the suspect is brought to trial.

When to introduce a special warning

- at the end of a relevant topic, in the early stages of an interview
- in the latter stages of the interview, prior to the challenge phase.

Difference between caution and special warning

The caution must be given before any questions are put to a suspect. The special warning is required only when the investigator wants the suspect to account for objects, substances or marks found on or about the suspect at the time of their arrest, or the investigator wants the suspect to account for their presence in a place at the time an offence was committed.

Bad character evidence

Bad character is evidence of, or a disposition towards, misconduct on the part of the defendant, rather than evidence relating to the facts in issue.

The Criminal Justice Act 2003 ([CJA](#)) made fundamental changes to the admissibility of evidence relating to the defendant's character and that of victims or witnesses. Section 103 provides for the admissibility of previous convictions in support of the propensity to commit like offences and/or to be untruthful. Common law rules, in the main, are abolished.

Prior to the 2003 Act, an interviewer could refer to previous bad character. The interview was not restricted to issues of material and admissible evidence. Such references stood to be removed. There was a risk that subsequent admissions might be disallowed if they were seen to follow from oppressive questioning.

The present law, by making a propensity to be untruthful and/or a propensity to commit offences relevant as evidence, reduces this possibility. As a result, these issues should be addressed in interview.

Evidence of bad character is admissible only if the [appropriate conditions](#) apply.

The investigator should, therefore, identify those conditions in framing questions. If the issue is a propensity to similar offending, the similarities should be referred to.

Criminal Justice Act

The 2003 Act specifically requires that the bad character be of the same description (a statement of the offence in a charge would be in the same terms) or category (prescribed by the secretary of state) and requires the court to have regard to the length of time between previous offending and the current case.

This does not prevent the investigator from establishing other similarities. The following all assist in establishing due relevance:

- location (having previously offended thereabout)
- nature of victim (eg, preys on older victims)
- specifics of modus operandi (method of entry, goods stolen, eg, antiques)
- words or phrases used towards the victim
- patterns of offending.

The matter should not be raised where the link between the current charge and previous offending is not strong.

Propensity to commit

Proving a propensity to commit an offence can be difficult and has been raised during trials on a number of occasions, covering several aspects which could be used to show propensity. *R v Hanson* [2005] EWCA Crim 824 highlights that a propensity for untruthfulness is not intended to be the same as a propensity for dishonesty. The provision is directed towards assessing the probative value of any remarks made by the defendant at interview or in their defence.

R v Hanson [2005] EWCA Crim 824 tries to clarify the difference between untruthfulness and dishonesty by saying:

As to propensity to untruthfulness, this, as it seems to us, is not the same as propensity to dishonesty. It is to be assumed, bearing in mind the frequency with which the words honest and dishonest appear in the criminal law, that Parliament deliberately chose the word 'untruthful' to convey a different meaning, reflecting a defendant's account of his behaviour, or lies told when committing an offence.

Three questions help to determine which convictions should be considered:

1. Does the history of conviction(s) establish a propensity to commit offences of the kind charged?
2. Does that propensity make it more likely that the defendant committed the offence charged?
3. Is it unjust to rely on the conviction(s) of the same description or category and/or will the proceedings be unfair if they are admitted?

There is no minimum number of offences which will go to show propensity. When considering significant features, eg, aspects of the defendant's modus operandi, the courts are encouraged not to view evidence of propensity too widely or too narrowly.

Evidence put forward to show a propensity does not have to be evidence of previous convictions. [CJA s 103 \(2\)](#) states that the prosecution can show a propensity by 'any other way of doing so'. This may include, for example, behavioural traits.

Appropriate conditions

If untruthfulness is relevant, the defendant has to have made a denial which they or another party disputes. Previous examples of false denials can then be raised.

Although CJPOA s 34 states that an inference can be drawn from silences in certain circumstances, this alone would not justify raising previous untruthfulness.

Issues relating to correcting false impressions or attacking the character of prosecution witnesses are more likely to occur at trial and are matters for the prosecutor. During the proceedings, the prosecutor can substantiate issues raised at interview and has a further opportunity to plead inclusion of bad character evidence according to events unfolding in the trial.

These provisions can prevent the defendant advancing a plausible defence which, if their true character were known, would make their defence less likely. Investigators should research the defendant's bad character so that they can counter any claims.

The investigator has to choose the grounds and timing in cases where the provision is likely to apply, in order to remain within the spirit of the law and for the testimony to be admissible. A propensity to offend is relevant and progressively more relevant according to similarity and frequency of offending.

In the same way that prosecution witnesses can be challenged by bad character, eg, 'You have lied before, why should the jury believe you?', the defendant can now also be challenged. The wording of the challenge should be carefully considered. For further information see case law examples [R v Hanson and others](#) [2005] EWCA Crim 824, [R v Edwards](#) [2005] EWCA Crim 1813.

