



**ASSOCIATION OF
CHIEF POLICE OFFICERS**

ACPO Position Statement:

Necessity to Arrest

National Investigative Interviewing

Strategic Steering Group (NISSG)

November 2012

Introduction

The revised Police and Criminal Evidence Act 1984 (PACE), Code G (implementation date 12th November 2012) demands more detailed consideration by arresting officers of the necessity to arrest than has previously been the case. Increased emphasis is placed on the use of alternatives to arrest, such as the use of street bail and, specifically from an interview perspective, the use of voluntary interviews under caution.

This document is intended to provide practical guidance to officers considering the necessity to arrest criteria from an investigative interviewing perspective. The subject of voluntary interviews under caution is contained in a separate ACPO Investigative Interviewing Steering Group positional statement.

Background

The implications of arrest on an individual even if no prosecution follows can be significant, including loss of reputation and reduced employment opportunities as a result of the arrest record appearing on enhanced Criminal Records Bureau (CRB) checks. The revision of PACE Code G was driven by a desire to prevent the unnecessary arrest of persons such as householders and others who use reasonable force in self defence and concerns about the position of teachers/school staff facing allegations connected with their employment. Case law¹ has also evolved surrounding the necessity to arrest criteria which the revised Code G consolidates. Further drivers to increase the use of alternatives to arrest have come from within the UK police service itself. Austerity measures have led to forces reviewing policy and procedure seeking to identify efficiency savings, including reducing demand on custody centres.

While the impact of PACE Code G on the decision to arrest is significant, it is essential for effective investigation that, while complying with the legislative requirements, an unintended consequence of operational officers become fearful

¹ Wren v CC Northumbria (2009), Farrelly and others v CC PSNI (2009), Richardson v CC West Midlands (2011), O'Hara v CC RUC (1997), Rollins v CC West Midlands (2010), Shields v CC Merseyside (2010), Hayes v CC Merseyside (2010).

of exercising lawful powers is not established, with a resulting negative impact on investigative interviewing and investigation in general. Investigating officers must not see a decision not to arrest as the default position even when suspects voluntarily attend the police station and should judge each case on its own merits after carefully considering all of the information available.

The elements of a lawful arrest are that the arresting officer must have:

- (1) Reasonable grounds to *suspect* an offence has been committed and that the person has committed it; AND

- (2) Reasonable grounds to *believe* that arrest is necessary for one or more of the specified reasons to
 - a) Ascertain the persons name
 - b) Ascertain the persons address
 - c) Prevent physical harm to self or another or suffering physical injury
 - d) Prevent loss of or damage to property
 - e) Prevent an offence against public decency
 - f) Prevent an unlawful obstruction of the highway
 - g) Protect a child or vulnerable person
 - h) Prevent any prosecution being hindered by the disappearance of the person in question
 - i) Allow a prompt and effective investigation of the offence or of the conduct of the person in question.

Each case must be considered on its own merits balancing the necessity and proportionality of the individual's right to liberty with the situation of the victim, the circumstances of the suspect, the nature of the offence and the needs of the investigation.

Officers must consider facts and information which tend to indicate the person's innocence as well as their guilt. For an offence involving the use of force this should include the circumstances in which the law allows the use of reasonable force in defence of persons or property.

The ACPO NI IISG Position

An officer conducting an arrest is responsible for making and justifying the decision to exercise their powers, the case of *O'Hara v CC RUC (1997)* decided that where an arrest is made solely on the order of a senior officer, the arresting officer must form the required reasonable grounds in their own mind before making the arrest. This should not be interpreted as meaning officers cannot conduct arrests when instructed to do so, it merely reinforces the need for arresting officers to form their own judgement of necessity based on the information supplied to them when briefed and directed by others.

Code G requires officers to *consider* other practical alternatives to arrest such as use of street bail to compel the suspected person to attend a police station at a later time and date for interview or the use of voluntary attendance to conduct the interview. Specifically the Code states an officer who believes it is necessary to interview a person suspected of committing an offence must consider whether their arrest is necessary to carry out the interview.² The use of the word 'consider' is important and does not suggest that a decision not to arrest should automatically be taken.

Interviewing a suspect is a main line of enquiry and is rarely unnecessary in any investigation. Not only does an interview allow the gathering of material/evidence by questioning the suspect (including developing adverse inference from no comment responses and lies), it also allows the interviewee an opportunity to put forward any defence and offer an explanation including any admissions and mitigation.

Nothing in Code G reduces the significance of a suspect's interview as forming part of a prompt and effective investigation; the necessity to arrest to conduct the interview is a separate issue that could be influenced by a number of factors according to the circumstances of each individual case. Each case must be considered on the circumstances as they exist to the officer at the time and be decided on a case by case basis using professional judgement and discretion

² PACE, Code G Note for Guidance 2F.

concerning necessity and proportionality. The importance of documenting the decision making process for future scrutiny if necessary should not be underestimated.

On many occasions a voluntary interview or an alternative course of action to arrest will be the most appropriate course of action, particularly when dealing with minor offences where the actions of the suspect if at liberty cannot influence the outcome of other enquiries.

Officers considering the necessity to arrest to conduct a prompt and effective investigation from an interview perspective should consider the following which is not an exhaustive list:

- It is thought unlikely that the person would attend the police station voluntarily to be interviewed;
- It is necessary to interview the suspect about the outcome of other investigative action for which their arrest is necessary;
- Arrest would enable the anticipated delivery of special warnings which can only be given to persons under arrest and, therefore, cannot be used in a voluntary interview;
- The person has made false statements and/or presented false evidence;
- It is thought likely the person may steal or destroy evidence, collude or make contact with co-suspects or conspirators or may intimidate or threaten to make contact with witnesses;
- The complexity of the interview strategy, such as whether it involves only a single issue requiring interview (e.g. the lawful use of self defence), or whether other investigative activity which could be influenced by the suspect if not in custody is to be conducted, e.g. checking alibis, comparing accounts with other material, and gathering supporting evidence of the provable lie for future challenge;

- Whether it is necessary to detain the suspect at the police station to conduct other enquiries either during or following the interview, e.g. checking alibis, comparing accounts with other material, and gathering supporting evidence for further interview;
- The likely length of the detention period required to conduct such interviews and enquiries (including whether this is likely to be over 24 hours for indictable offences);
- Effective management of the interview process for multiple suspects without allowing them the opportunity to collude;
- The impact of the pre-interview disclosure briefing (PIB) to a legal representative and any tactics to be used such as phased or staged disclosure necessitating a series of interviews;
- Whether the suspect is already on bail for other offences which may trigger the necessity to arrest to prevent further offences or minimise the risk of harm to others;
- What considerations are required concerning disposal of the suspect e.g. necessity to remand in custody or impose bail conditions to prevent further offences, minimise the risk they present to others or secure their attendance at court;
- Whether any of the other grounds (a) to (h) above apply;
- Management of bail issues to ensure proper attendance by a suspect during an ongoing investigation;
- Where it is anticipated that bail is likely to be refused should the suspect be charged;

- The necessity to arrest should be kept under continuous review during the actual interview, as the conduct of the interviewee including their response to questioning could trigger any of the criteria and make arrest necessary, for example issuing threats or implicating other previously unknown suspects. This contingency needs consideration by supervisors deploying single interviewers or interview teams with non warranted powers.

For a constable to have reasonable grounds for believing arrest is necessary, they are not required to be satisfied there is no viable alternative. However in all cases the officer should consider that arrest is the practical, sensible and proportionate option in all the circumstances at the time the decision is made. This applies equally to a person in police detention after being arrested for an offence who is suspected of involvement in a further offence and the necessity to arrest them for that offence is being considered.³

Code G does not draw any distinction between dynamic decisions such as those made by incident response officers without the benefit of all available information and decisions on necessity to arrest based on the result of further investigation. The emphasis is on the circumstances existing at the time of the decision and the application of sensible and proportionate use of powers as judged on a case by case basis. In some situations officers considering arrest may not be involved in any later interview with the suspect and may lack expertise and knowledge of the detail and potential complexities of an interview strategy. For this reason it is difficult to provide definitive guidance for all circumstances other than the broad areas for consideration set out above which offer a wide variety of options.

An area concerning arrest which directly impacts on a subsequent interview under caution is the information supplied to the suspect at the time of arrest and afterwards when presented to the custody officer. Code G⁴ clarifies that an arrested person must be given sufficient information to enable them to

³ PACE, Code G, Note for Guidance 2C.

⁴ PACE, Code G, Note for Guidance 3.

understand they have been deprived of their liberty and the reason they have been arrested as soon as practicable after arrest, including being informed of the nature of the suspected offence and when and where it was committed.

The Code states suspects must also be informed of the reasons why arrest is considered necessary avoiding vague or technical language and helpfully includes *'When explaining why one or more of the arrest criteria apply, it is not necessary to disclose any specific details that might undermine or otherwise adversely affect any investigative processes. An example might be the conduct of a formal interview when prior disclosure of such details might give the suspect an opportunity to fabricate an innocent explanation or to otherwise conceal lies from the interviewer'*.

This revision clarifies the position of Custody Officers receiving briefings to consider authorising detention. Arresting officers should repeat the same information to the Custody Officer in the presence of the suspect that was provided to the suspect when they were arrested. The Custody Officers' role in authorising detention does not extend to investigating the rationale underpinning the reasons for which an arrest was considered necessary. Custody Officers will, however, need to be satisfied that ongoing detention should be authorised. Any further detail requested by Custody Officers concerning material in the case for the purposes of authorising detention should not be provided in the presence and hearing of the suspect because this might undermine the investigation.

In conclusion the impact of Code G does not reduce the significance of a suspect's interview in the investigation process; in fact it specifically recognises and includes reference to special warnings, information to be supplied to suspects prior to interview and other processes such as the management of multiple suspects. The emphasis is that necessity to arrest and the necessity to interview are entirely separate matters of professional judgement to be exercised on a case by case basis, if applied properly with defensible non-risk averse decision making the impact on the quality of the investigative interview should be minimal.

Acknowledgement

This position statement was prepared by DCI Steve Hibbitt, an ACPO Approved Interview Adviser from Humberside Police.

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