

# 1

## Advising clients, including vulnerable clients, about the procedure and processes at the police station

### ■ MAKE SURE YOU KNOW

This chapter will cover the principles relating to the procedure and processes at the police station. For the purposes of the SQE1, you are required to know:

- the rights of a suspect being detained by the police for questioning
- identification procedures
- advising a client, including vulnerable clients, whether to answer police questions
- procedure for interviewing a suspect under the Police and Criminal Evidence Act (PACE) 1984.

The SQE1 Assessment Specification has identified that candidates are required to recall/recite PACE 1984, Codes C and D.

### ■ SQE ASSESSMENT ADVICE

As you work through this chapter, remember to pay particular attention in your revision to:

- the time limits for detaining a suspect without charge, and the circumstances where those limits may be extended
- when an identification procedure must be carried out, the procedures to be followed when legal advice may be delayed, and the criteria for delaying said access.

### ■ WHAT DO YOU KNOW ALREADY?

Have a go at these questions before reading this chapter. If you find some difficult or cannot remember the answers, make a note to look more closely at that subtopic during your revision.

- 2 The procedure and processes at the police station
- 1) True or false? A suspect is always entitled to free, in-person legal advice at the police station irrespective of their income.  
**[Rights of a suspect being detained by the police for questioning, page 4]**
- 2) What is the name of the identification procedure where an eyewitness is shown images of a suspect and individuals who resemble the suspect?  
**[Identification procedures, page 12]**
- 3) True or false? If a suspect claims to have relied on legal advice to remain silent during a police interview, they will automatically be protected from having adverse inferences drawn from their silence.  
**[Advising a client, including vulnerable clients, whether to answer police questions, page 17]**
- 4) In the case of a juvenile, what is the hierarchical order that the police must follow when identifying an appropriate adult?  
**[Procedure for interviewing a suspect under PACE 1984, page 20]**

## INTRODUCTION TO CRIMINAL PROCEDURE

Where an individual is suspected of being involved in a criminal offence, they may be arrested and taken to an authorised place of detention (ie a police station). At this stage, the suspect has not been *accused* of committing or being involved in the commission of the offence. A suspect becomes an 'accused' when they are charged with an offence. In this guide, we refer to this individual, once charged, as the 'defendant'.

### Arrival at the police station

On arrival at the police station following arrest, a suspect will be 'booked' into custody (ie their details are recorded) by the **custody officer**. This must be done as soon as practicable.

#### Key term: custody officer

An officer, independent of the investigation, holding the rank of at least sergeant, who is responsible for the welfare of a suspect who is in police custody.

The custody officer is responsible for opening a **custody record** as soon as practicable for any arrested person brought to the police station, and informing the suspect of their rights whilst in police detention and for the authorisation of detention.

#### Key term: custody record

A document opened and kept by the custody officer which is used to record details of the suspect and their welfare whilst in police detention.

In particular, the custody record will include details as to the suspect's name, address etc, the offence which they have been arrested for, the time of arrest, arrival at the police station, time of interview, confirmation that the rights of the suspect (eg to legal advice) have been provided to them, any requests made by the suspect and compliance with PACE Codes.

Two key points to note about the custody record:

- a suspect's custody record can be inspected at the request of a suspect, their solicitor, or appropriate adult at any time whilst the suspect is in custody
- a copy of the custody record can be obtained when the suspect is released from custody, upon request.

### Decision to charge, release or detain

Following the booking in of the suspect, the custody officer must decide, based on the details provided by the investigating officer, whether there is sufficient evidence already to charge the suspect with an offence, or whether detention of the suspect is required. **Table 1.1** details these courses of action.

*Table 1.1: Sufficient evidence to charge*

Status of the evidence	Action to be taken by custody officer
Sufficient evidence to charge the suspect	Custody officer should charge the suspect and either release them on bail, to appear before the magistrates' court at a later date, or remand them into police custody
Insufficient evidence to charge the suspect	Custody officer should release the suspect on bail (with or without conditions), or unconditionally, unless detention can be justified

The custody officer may detain a suspect in police custody if they have reasonable grounds for believing that the suspect's detention without being charged is necessary: (a) to secure or preserve evidence relating to an offence for which the suspect is under arrest; or (b) to obtain such evidence by questioning the person.

Discussion of the detention of a suspect is available below: see **Reviews and detention time limits under PACE 1984, Code C**.

## RIGHTS OF A SUSPECT BEING DETAINED BY THE POLICE FOR QUESTIONING

Once a suspect's initial detention has been authorised, they will remain in police custody for questioning. The suspect has certain rights, primarily prescribed and preserved by Codes of Practice under PACE 1984, known as the **PACE Codes**.

### Key term: PACE Codes

Under PACE 1984, there are eight Codes of Conduct (Codes A–H) which regulate how the police or other investigative agencies (eg HM Revenue & Customs (HMRC)) should conduct themselves before and during criminal proceedings. You can access all Codes of Practice from the gov.uk website.

The treatment of suspects in police custody is governed primarily by **PACE 1984, Code C**.

### Key term: PACE 1984, Code C

Code C of PACE 1984 provides, amongst other things, how suspects should be treated in police custody, their rights and how interviews are to be conducted.

In this section, we shall focus our discussion on the right to legal advice; right to have someone informed of arrest; and reviews and detention time limits under PACE 1984, Code C.

### Right to legal advice

When a suspect is detained in custody, the suspect has the right to consult legal advice, privately, at any time. A suspect must be *informed* of the right to seek free independent legal advice:

- on arrival at a police station
- on arrest following voluntary attendance at the police station
- immediately before the commencement, or recommencement, of any interview.

All suspects are entitled to free, in-person advice, unless the punishment for the offence for which the suspect is being held in police custody is non-imprisonable. Once legal advice has been accepted or requested, subject to the power to delay (see below, **Delaying access to legal advice**), a suspect should be permitted to consult with a solicitor *as soon as practicable*. It is also key to note that a custody officer should act with no delay in ensuring a solicitor is contacted.

#### *Obtaining legal advice*

In most cases, the custody officer will contact the **Defence Solicitor Call Centre (DSCC)**.

**Key term: Defence Solicitor Call Centre**

The DSCC, once contacted, will determine whether telephone advice is sufficient, or whether a solicitor or police station representative should attend in person.

There are occasions when the suspect may wish to have a specific solicitor or firm contacted instead. In that situation, the suspect will be asked to identify the solicitor/firm. The suspect must be informed of the solicitor's arrival at the police station and must be asked whether they wish to speak with the solicitor. Both the solicitor's arrival and the decision of the suspect to see the solicitor must be noted in the custody record.

*Delaying access to legal advice*

In limited circumstances, an officer of the rank of superintendent may delay a suspect's access to consult with a solicitor. The officer may do so if the suspect has been arrested for an indictable offence (which includes indictable only and either way offences; see **Chapter 3**) and the officer has *reasonable grounds to believe* that exercising the right to legal advice will, for example:

- lead to interference with or harm to evidence connected with the offence, or interference or physical injury to other persons
- lead to alerting others suspected of having committed such an offence who have not yet been arrested for it.

If a suspect has been denied access to a particular solicitor, they must be permitted to choose another solicitor. In any event, the right to access legal advice may only be delayed for as long as the ground used to justify the delay in the first place continues to exist. A delay to access legal advice must not exceed 36 hours from the relevant time (see **Initial decision to detain**, below). When the right to consult a solicitor is delayed, the suspect must be informed of the reason for the delay, and the reason shall be noted in the custody record.

*Declining legal advice*

If a suspect declines to speak to a solicitor, they must be informed that the right to legal advice also includes the right to speak to a solicitor on the telephone. The suspect must be given this option. If they decline, the custody officer must ask why the suspect has declined and record any answer in the custody record. Even if a suspect declines legal advice initially, they may request to consult a solicitor at any time.

**Right to have someone informed of arrest**

Where a person has been arrested and is being held in custody at a police station/authorised place of detention, they have the right to have someone

## 6 The procedure and processes at the police station

informed of their arrest *as soon as practicable* following their arrest. The individuals who may be informed are any:

- relative
- friend
- other person known to them, or who is likely to take an interest in the suspect's welfare.

The custody officer must inform the suspect of this right, and ask the suspect if they wish to exercise it.

Should the request be made, the chosen person will be informed of the fact that the suspect has been arrested, and of their place of detention. If the suspect is subsequently moved to another authorised place of detention, the suspect can request to have the person chosen informed of their new whereabouts. If the person chosen cannot be contacted, the suspect can nominate a maximum of two alternatives. If they cannot be contacted, the custody officer may allow further attempts.

### *Delaying notification*

An officer of the rank of inspector or above may authorise a delay in exercising the right of a suspect to notify someone of their arrest for up to 36 hours. Such a delay may *only* occur if the suspect is detained for an indictable offence, and there are *reasonable grounds to believe* that notifying an individual will, for example:

- lead to interference with or harm to evidence connected with the offence, or interference or physical injury to other persons
- lead to alerting others suspected of having committed such an offence who have not yet been arrested for it.

### **Revision tip**

A full statement of law relating to the delay of legal advice and the right to have someone informed is available at Annex B to Code C.

See **Practice example 1.1** to apply your understanding of the right to have someone informed.

### **Practice example 1.1**

At the scene of the alleged offence, Mark is arrested on suspicion of burglary, contrary to s 9 Theft Act 1968. Mark was the only suspect present at the scene when the police arrived. The police spoke to residents who claim to be witnesses. The witnesses said that they think there was another person involved; they saw another male and offered his description to the police. The custody officer informs Mark of his right to have someone informed of his arrest. Mark requested James to be informed and when the custody officer asked Mark for a brief description

of James, the investigating officer matched this with the description provided by the eyewitnesses.

What actions may the custody officer take in relation to Mark exercising his right to have someone informed of his arrest?

**It is likely that the custody officer may seek to have this right delayed. The custody officer may now have reasonable grounds to believe that James is the other male identified by the witnesses – a potential suspect linked to this offence but who has not yet been arrested for it. Therefore, due to Mark’s request, it is possible that contacting James may alert him to the fact that the police are investigating the offence.**

In addition, a delay may also be authorised where the officer has reasonable grounds to believe that:

- the person detained has benefited from their criminal conduct
- the recovery of the value of the property constituting the benefit will be hindered by telling the named person of their arrest.

When the right to inform someone of a suspect’s arrest and detention is delayed, the suspect must be informed of the reason for the delay, and the reason shall be noted in the custody record.

## **Reviews and detention time limits under PACE 1984, Code C**

For the purposes of SQE1, you need to be familiar with two time periods:

- Period of detention: Often referred to as the ‘detention clock’, this prescribes how long a suspect may be kept in police custody.
- Period of reviews of detention: Often referred to as the ‘review clock’, this prescribes the time periods when the detention of a suspect must be reviewed.

We shall consider both detention and its review in this section.

### *Initial decision to detain*

Generally, a person suspected of committing an offence may only be held without charge for a maximum period of 24 hours from the **relevant time** (see **Practice example 1.2**).

#### **Key term: relevant time**

The relevant time is the time when the detention clock starts. Usually, the relevant time is the time when the arrested suspect arrives at the police station, or 24 hours after the arrest, whichever is earlier.

**Practice example 1.2**

Mark is arrested on suspicion of robbery, contrary to s 8 Theft Act 1968. Mark was arrested at 11.05pm and is transported to his local police station, arriving at 11.20pm. Mark’s detention is authorised by the custody officer at 11.30pm.

When will Mark’s detention clock begin to run?

**As Mark has been arrested away from the police station, the general rule is that the detention clock will begin at the time of arrival at the police station. As such, Mark may be detained in police custody for 24 hours, beginning at 11.20pm. Mark must therefore be released or charged before 11.20pm the next day, or his detention must be extended (see below: Expiry of the initial 24-hour period).**

*Expiry of the initial 24-hour period*

Once the initial period of detention is due to expire, the police ultimately have two options: (a) seek to extend the suspect’s detention; or (b) release the suspect.

**Revision tip**

It is relatively uncommon for the police to use the full 24-hour period. In most cases, the police will charge the suspect with the offence or release them under investigation (referred to as RUI). Only rarely will the police require an extension to the suspect’s detention.

**Table 1.2** demonstrates the process of extending the detention of the suspect.

*Table 1.2: Extending the suspect’s detention*

Type of extension and explanation
<p><b>Extension from 24 to 36 hours</b></p> <p>When the initial 24-hour period has expired, an officer of the rank of superintendent or above, who is responsible for the station at which the suspect is being held, may authorise a 12-hour extension to detain the suspect, taking them to a maximum of 36 hours in detention (ie 24 + 12 = 36 hours)</p> <p>This may only be done if the officer has reasonable grounds to believe that the:</p> <ul style="list-style-type: none"> <li>• detention of that person without charge is necessary to secure or preserve evidence relating to an offence for which they are under arrest or to obtain such evidence by questioning them</li> </ul>

Table 1.2: (continued)

Type of extension and explanation
<ul style="list-style-type: none"> <li>• offence for which the suspect has been arrested in connection with is an indictable offence, and</li> <li>• investigation is being conducted diligently and expeditiously</li> </ul>
<p><b>Extension for more than 36 hours: warrants from the magistrates' court</b></p> <p>If the police wish to extend the detention of a suspect <i>beyond</i> 36 hours from the relevant time, they <i>must</i> seek a warrant for further detention from the magistrates' court. The magistrates' court may authorise further detention for such period of time as the magistrates think fit, but up to a maximum of 36 hours' detention. The conditions for extending the suspect's detention are:</p> <ul style="list-style-type: none"> <li>• the court is made up of a minimum of two lay magistrates, or a district judge</li> <li>• the application is made on oath by a warranted constable, supported by written information</li> <li>• the suspect is present in court and being detained in connection with an indictable offence, and</li> <li>• the court is satisfied that there are reasonable grounds for believing that the further detention of the suspect is justified. Further detention is 'justified' if it is necessary to: <ul style="list-style-type: none"> <li>- secure or preserve evidence relating to the offence</li> <li>- obtain such evidence through questioning the suspect, and</li> <li>- the investigation is being conducted diligently and expeditiously</li> </ul> </li> </ul> <p>The magistrates' court may issue a warrant for further extensions, up to a maximum of 36 hours for each extension. However, the magistrates' court cannot extend detention beyond 96 hours in total. This means, for example, that if the magistrates extend detention by 36 hours on the first occasion, they would be restricted to an extension of 24 hours on the second detention (ie 24 + 12 + 36 + 24 = 96 hours)</p>

### Exam warning

Remember, if the police wish to have detention authorised beyond 36 hours, the magistrates' court must warrant the extension for further detention. It is imperative that the police have an application listed and heard *before* the 36-hour period is up. A magistrates' court cannot authorise a warrant for further detention if the 36-hour period has already expired.

Use **Table 1.3** to aid your revision on detention time limits.

Table 1.3: Detention time limits

Time limit	0–24 hours	24–36 hours	36–72 hours	72–96 hours	96 hours
<b>Authorisation</b>	Custody officer (subject to detention reviews)	Officer of the rank of superintendent or above (subject to satisfying the relevant criteria)	Magistrates' court (subject to satisfying the relevant criteria)	Magistrates' court (subject to satisfying the relevant criteria)	No further extensions permitted Suspect must be released or charged
<b>Offence</b>	Any	Indictable	Indictable	Indictable	

### *Procedure on expiry of detention*

If the limit on detention has been reached and an extension is neither authorised nor sought after, the police have three options:

- charge the suspect
- release the suspect on bail
- release the suspect.

**Table 1.4** details each of these options in turn.

Table 1.4: Options following expiration of detention

Option	Explanation
Charge the suspect	Depending on the nature of the offence, the police will usually need authorisation from the Crown Prosecution Service (CPS) to charge the suspect. If there is sufficient evidence, the suspect will be charged, and the case will progress to the next stage. If a suspect is charged, they may be granted police bail, or depending on the offence, the courts would need to determine the issue of bail
Release the suspect on bail	In some instances, the suspect will be released on police bail
Release the suspect	If the police do not have enough evidence to charge the suspect, and do not intend to prosecute, the suspect will be released without charge. The custody officer will provide a written notice of the police's intention not to prosecute the suspect relating to the offence concerned, unless new evidence arises which supports a prosecution

### *Detention reviews*

Irrespective of how long a suspect is detained for, custody officers are required to carry out **detention reviews**.

### Key term: detention reviews

A detention review is where an officer, of at least the rank of inspector (a 'review officer'), determines whether a suspect's continued detention is justified. The review clock begins when the custody officer has authorised the initial detention of the suspect.

The first detention review must be conducted no later than six hours after the custody officer first authorised the detention of the suspect. The second review, and any subsequent reviews, must be carried out no later than nine hours after the previous review. **Figure 1.1** illustrates what occurs during the first 24-hour period in police custody and what reviews must be undertaken whilst a suspect remains detained.

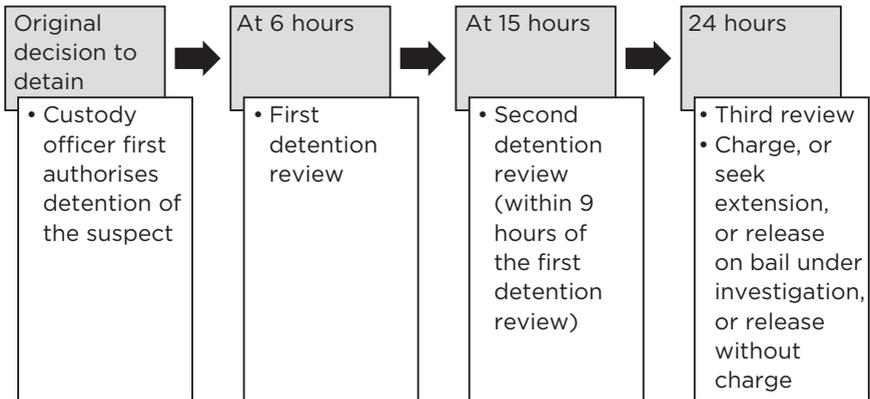


Figure 1.1: First 24 hours in police custody

### Exam warning

Be aware! The detention clock and review clock start at different times. Do not confuse them. The detention clock begins at the point of arrival at the police station. The review clock begins when the custody officer first authorises the detention of the suspect. An MCQ may attempt to confuse the two points at which the clocks begin to run.

If the suspect has not been charged, the officer carrying out the detention review must determine whether the police have sufficient evidence to charge the suspect. If there is not enough evidence to charge, the review officer must decide if detention is still necessary. When conducting a review, the officer will:

- consult with the investigating officer to determine what documents and materials are essential for challenging the lawfulness of the arrest and detention, and these must be made available to the detained suspect

- allow the suspect, their solicitor, and if applicable, their appropriate adult, to make oral or written representations (ie submissions) about the detention.

## IDENTIFICATION PROCEDURES

To assist the police in confirming that the suspect was involved in the alleged offence, or, in certain circumstances, potentially eliminating a suspect from an investigation, the police will usually carry out an **identification procedure**. For the purposes of SQE1, we shall only consider identification of a suspect by an eyewitness.

### Key term: identification procedure

Identification procedures are methods of attempting to have a suspect positively identified by a witness, or witnesses, to an alleged offence. They are designed to test the eyewitness' ability to identify the suspect as the person they saw on a previous occasion, and provide safeguards against mistaken identification.

Whenever the police carry out an identification procedure, they must comply with **PACE 1984, Code D**.

### Key term: PACE 1984, Code D

PACE 1984, Code D, is the relevant Code of Practice for, amongst other things, carrying out identity procedures at the police station. This is not the only aspect of police conduct that is governed by Code D, but it is a significant part.

## When an identification procedure must be held

There are some instances, prescribed in PACE 1984, Code D, where the police *must* carry out an identification procedure as soon as practicable. If *all* of the conditions in **Figure 1.2** are satisfied, an identification *must* take place.

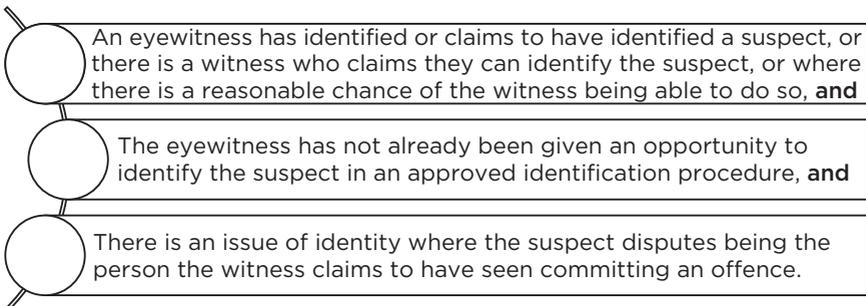


Figure 1.2: When an identification procedure must take place

There are exceptions to this general rule, however. An identification procedure need not be held if:

- it is not practicable to hold any such procedure, or
- any such procedure would serve no useful purpose in proving or disproving whether the suspect was involved in committing the offence.

Examples of where the procedure would serve no useful purpose are provided in Code D:

- where the suspect admits being at the scene of the crime and gives an account of what took place and the eyewitness did not see anything which contradicts that
- when it is not disputed that the suspect is already known to the eyewitness who claims to have recognised them when seeing them commit the crime.

An identification procedure may also be held if the officer in charge of the investigation, after consultation with the identification officer (see key term **identification officer**, below), considers it would be 'useful'.

Whether an identity procedure will be held depends on whether the suspect is **known and available**.

### **Key term: known and available**

A suspect is considered 'known' for these purposes where the police have sufficient information to justify a person's arrest due to their suspected involvement in committing an alleged offence. A suspect is 'available' if they are immediately, or within a reasonably short period of time, willing to take part in an identification procedure.

### *Suspect's identity is unknown*

In circumstances where the suspect's identity is unknown, the police may take the eyewitness to a particular area in an attempt to identify the alleged offender. The eyewitness may, complying with relevant guidelines, also be shown photographs of potential suspects.

### *Suspect's identity is known, and they are available*

The police will likely want to carry out an identification procedure when a suspect is known and available. See below: **Different types of identification procedure**.

### *Suspect's identity is known, but they are not available*

Where a suspect is known but is either not immediately available, or likely to be available in a reasonably short period of time, the identification officer may proceed to conduct covert identification procedures, or identification procedures without the suspect's consent (such as group identification

or confrontation). If a suspect refuses to participate in an identification procedure, they will be treated as 'known but not available'.

### *Consequences of refusing to participate*

If a suspect refuses to participate, their refusal may be adduced in evidence at any subsequent trial, and the police may conduct a covert procedure (ie carrying out an identification procedure without the suspect's consent or knowledge). See **Practice example 1.3** for application of this principle.

#### **Practice example 1.3**

With some incriminating evidence, James is arrested on suspicion of theft, contrary to s 1 Theft Act 1968. He is taken to a police station, interviewed and detained further after telling the police that he was nowhere near the scene of the alleged theft, disputing his involvement. An eyewitness told police at the scene that they observed the alleged offence and provided the police with a description of the alleged offender which somewhat matches James. The eyewitness, who has not carried out an identification procedure, says that they could identify the alleged offender if given the opportunity and lives ten minutes from the police station. James was asked to consent to his participation but refuses.

What are the potential consequences relating to James' refusal to consent to an identification procedure?

**Initially, James would have been considered as known and available: he would be 'known' due to the police having enough evidence to arrest him on suspicion of theft and detain him for questioning. As he was at the police station, he would have been considered 'available' for an identity procedure. As the eyewitness claims to be able to identify the suspect and has not previously been given an opportunity to do so at an identification procedure, and the issue of identity is disputed by James, an identification procedure must take place. However, as James has refused to consent to a procedure, he will now be considered as known but not available. The police may now carry out a covert identification procedure without James' consent, and James' refusal may be given in evidence at a subsequent trial.**

### **Different types of identification procedure**

The primary types of identification procedure where a suspect is known and available are as follows:

- video identification
- identification parade
- group identification
- confrontation.

Before we consider each in turn, it is important to appreciate the approach adopted by the police when dealing with the types of identification procedures. The choice can be summarised as follows:

- The suspect shall initially be invited to take part in a video identification.
- This is so unless:
  - a video identification is not practicable
  - an identification parade is both practicable and more suitable than a video identification, or
  - the officer in charge of the investigation considers group identification is more suitable than a video identification or an identification parade, and the identification officer considers it practicable to arrange.

The identification officer and the officer in charge of the investigation shall consult each other to determine which option is to be offered.

### *Video identification*

The police may conduct a video identification, ordinarily with the suspect's consent.

This is where an eyewitness is shown a selection of portrait images on a computer screen, including an image of the suspect. The individuals whose images make up the selection will visually resemble the suspect, and the witness indicates if and when they see the image of the person they believe they saw commit the offence.

A video identification procedure is usually carried out when the suspect is known and available, or known but not available but photographs have been previously obtained.

### *Identification parade*

When an identification parade takes place, the suspect is lined up with others who are visually similar to the suspect. The eyewitness will indicate which individual, if any, is the person they believe they have seen.

### *Group identification*

Similar to an identification parade but without the same control, group identification is when an eyewitness sees the suspect in an informal group of people. During the procedure, the identification officer must reasonably expect that over the period the witness observes the group, the witness will be able to see, from time to time, a number of others (in addition to the suspect) whose appearance is broadly similar.

### *Confrontation*

A measure of last resort, confrontation is when the suspect is directly confronted by the eyewitness. A confrontation does not require the suspect's

consent and is less controlled. This method may be adopted when the suspect refuses to consent to an identification procedure, and thus is considered known but not available.

### Revision tip

When revising the different types of identification procedures, think about the relative advantages and disadvantages of those procedures. That will help you to understand which procedures are likely to be offered to a suspect. For example, PACE 1984, Code D, provides that '[a]n identification parade may not be practicable because of factors relating to the witnesses, such as their number, state of health, availability and travelling requirements. A video identification would normally be more suitable if it could be arranged and completed sooner than an identification parade'.

## Procedure for carrying out an identification procedure under PACE 1984, Code D

All identification procedures must be presided over by an **identification officer**.

### Key term: identification officer

Independent from the main investigation, the identification officer oversees the identification procedure and ensures that PACE 1984, Code D, is complied with. The identification officer must be of the rank of at least inspector and any duties imposed must be performed as soon as practicable.

Regardless of the type of procedure carried out, all suspects who may be subject to an identification procedure will need to be provided with 'notice'. Prior to any identification procedure being undertaken, the identification officer must explain to the suspect (amongst other things):

- the purpose of the procedure
- the relevant process for the procedure, including the right to legal advice and to have a solicitor or friend present
- the right to refuse to participate
- the consequence of refusing to take part
- if appropriate, any special arrangements for juveniles or vulnerable persons
- the fact that their solicitor will be provided with the initial description of the suspect, as first given by eyewitnesses.

This information must then be recorded in a written notice and handed to the suspect.

The process to be followed for carrying out particular identification procedures, for example video identification, is detailed and complex. You are strongly advised to refer to PACE 1984, Code D, for a full breakdown

of the procedure to be adopted. **Table 1.5** details where you can find the relevant rules, and gives examples of the procedure to be adopted (though you should read the Annexes in full).

*Table 1.5: Specific procedure for carrying out an identification procedure*

Type of identification procedure	Location of rules of procedure	Examples of procedure from the Code
Video identification	PACE 1984, Code D, Annex A	The set of images must include the suspect and at least eight other people who, so far as possible, resemble the suspect in age, general appearance and position in life
Identification parade	PACE 1984, Code D, Annex B	May take place either in a normal room or one equipped with a screen permitting witnesses to see members of the identification parade without being seen
Group identification	PACE 1984, Code D, Annex C	The place where the group identification is held should be one where other people are either passing by or waiting around informally (eg people leaving an escalator)
Confrontation	PACE 1984, Code D, Annex D	Confrontation must take place in the presence of the suspect's solicitor, interpreter or friend unless this would cause unreasonable delay

## **ADVISING A CLIENT, INCLUDING VULNERABLE CLIENTS, WHETHER TO ANSWER POLICE QUESTIONS**

Before a suspect is interviewed, and if the suspect wishes to exercise their right to legal advice, it is likely that they will consult privately with a solicitor. At this stage, and following a conference with the suspect, the solicitor should review the custody record and speak with the custody officer, assess the evidence, take instructions, then advise the suspect primarily on whether they should answer police questions.

### **Factors relevant to assessing whether to answer police questions**

There are many advantages and disadvantages to answering police questions. For example, a client may benefit from answering police questions in that it will allow them to set the record straight and put their case forward clearly. On

the other hand, by answering police questions, a suspect may say something incriminating or undermine their own credibility.

For these reasons (amongst many others), a solicitor must weigh up a number of factors to determine whether it is appropriate for the client to answer police questions or whether they should remain silent. **Table 1.6** outlines some of these factors that may be relevant to a given case.

*Table 1.6: Determining whether to answer police questions*

Factor relevant to the solicitor's advice	Explanation
Case is weak and there is insufficient evidence to prove allegation	A 'no comment' interview may be appropriate here to avoid the risk of the client revealing any incriminating information, and will often involve the police choosing not to pursue the matter further (if their evidence is indeed weak)
Inadequate police disclosure to solicitor	A 'no comment' interview given may be appropriate given the fact that the solicitor has been unable to form a proper view of the strength of the police's case
Client will likely perform poorly in interview	For many reasons, a client may be deemed by their solicitor as likely to perform badly in interview. The client's age, lack of maturity or vulnerability may mean that answering police questions will be detrimental to them

In addition to the above factors, the solicitor must advise their client as to:

- the right to silence
- potential adverse inferences that may be drawn from silence.

## The right to silence

In criminal proceedings, it is for the prosecution to prove that someone is guilty of an offence, not for a defendant to prove their innocence. This provides an important starting point for the solicitor's advice, and the suspect must be informed of their **right to silence**.

### Key term: right to silence

The right to silence is a term which means that a suspect has the privilege against self-incrimination. In practice, this means that a suspect is not obliged to answer police questions.

In essence, a suspect does not need to say or prove anything which may assist the police. However, exercising the right to silence may have potential consequences (see **Adverse inferences**, below).

After consulting with a suspect, the solicitor may advise them to remain silent, answer questions, or make a **prepared statement**.

### **Key term: prepared statement**

The suspect may, on advice from their solicitor, decide to make a prepared statement and offer it to the police instead of directly answering questions at interview. This is particularly common where the solicitor is concerned that the client will perform poorly in interview or if the client is particularly vulnerable. A prepared statement may be sparse or detailed, and usually sets out the suspect's position. The police will still ask the suspect questions even if a prepared statement has been read out, but a suspect will tend not to answer those questions if a prepared statement has been used.

## **Adverse inferences**

We discuss the effect of adverse inferences in more detail in **Chapter 6**. However, it is important to understand the impact that legal advice may have. Simply put, a suspect may be liable to have inferences drawn from their silence at interview if they later rely on a fact in their defence at trial.

### *Legal advice to remain silent*

If a suspect remains silent on the advice of a solicitor, but later relies on a fact at trial which was not mentioned, but was reasonable to mention when questioned under **caution** before or on charge, the suspect is not necessarily immune from having adverse inferences drawn. If the suspect genuinely relied on the advice of a solicitor to remain silent but had a good defence, inferences may not be drawn. If, however, the arbiter of fact (eg the magistrates or jury) takes the view that the reliance on legal advice was not genuine, but merely used by the suspect as a screen to hide the fact that they have no defence, inferences may be drawn.

### **Key term: caution**

The police caution, contained in PACE 1984, Code C, must be administered on arrest and before every interview. The standard police caution is:

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.

Whilst minor deviation from the wording is permitted, the substance of the caution must be understood by the suspect.

### *Prepared statements and adverse inferences*

Similarly, where a suspect offers a prepared statement to the police, this will not negate the possibility for adverse inferences to be drawn. If a statement

has been prepared and used, and a constable has asked a question which the statement does not address, but the suspect later advances a fact at trial which they rely on, and which could have been given in response to that original question, inferences may still be drawn.

## PROCEDURE FOR INTERVIEWING A SUSPECT UNDER PACE 1984

The procedure for interrogating suspects is governed primarily by PACE 1984, Codes C and E. The police, or investigating authority, will initially **interview** a suspect to further their investigation.

### Key term: interview

In criminal proceedings, an interview is defined in Code C as the 'questioning' of a person regarding their involvement or suspected involvement in a criminal offence, which must be carried out under caution.

### Fitness to be interviewed

Before a suspect is interviewed, it is imperative that they are deemed fit for interview. A suspect is considered unfit to be interviewed if it appears that they are unable to:

- appreciate the significance of the questions which are put to them, or their answers to the questions, or
- understand what is happening due to the influence of drugs, alcohol, or any medical illness, ailment or condition.

Any concerns regarding a suspect's fitness to be interviewed should be noted in the custody record, and steps should be taken to ascertain a suspect's fitness for interview.

### *Where interviews may be conducted*

If a police officer arrests a person, the arrest should not be delayed in order to question the suspect beforehand. Following an arrest, therefore, the suspect will be interviewed, which *must* take place at a police station or authorised place of detention unless the delay in taking the suspect to a police station or an authorised place of detention would likely:

- lead to interference with or harm to evidence connected with an offence, or interference with or physical harm to other persons, or serious loss of, or damage to property
- lead to the alerting of other persons suspected of having committed an offence but not yet arrested for it, or
- hinder the recovery of property obtained in consequence of the commission of the offence.

**Exam warning**

If an interview takes place anywhere but a police station or authorised place of detention due to one of the factors mentioned, the interview *must* cease once the relevant risk has been averted or the necessary questions have been put forward to avert the risk. Look out for this in an MCQ.

*How interviews are to be conducted*

The conduct of an interview is dictated by PACE 1984, Code C, and can be summarised as follows:

- **Reminder of right to legal advice:** Immediately prior to the start of an interview, and unless it has been delayed for a valid reason, the suspect is to be reminded of the right to free legal advice and that the interview can be delayed for the suspect to obtain legal advice; any violation of a suspect's right to legal advice may lead to any evidence being excluded.
- **Commencement of interview and caution** (see key term **caution**, above): The interviewing officer will then begin the interview and will first caution the suspect.
- **Significant statement or silence:** Following the caution, the interviewing officer will put to the suspect any significant statement or silence (if applicable). The interviewing officer must ask the suspect whether they confirm or deny that earlier statement or silence and if they want to add anything.

**Key term: significant statement or silence**

In some instances, a significant statement is a statement which the suspect made in the presence and hearing of a police officer or other police staff, which has not been put in the course of a previous interview, that may be capable of being used in evidence and a possible admission of guilt. For example, a suspect may explain on arrest that they attacked the complainant but claim that they acted in self-defence. Equally, significant silence occurs when the suspect fails or refuses to answer a question or answer satisfactorily when under caution.

- **Nature of police questioning:** Whilst there is no particular guidance on how interviews are to be conducted, no officer must:
  - attempt to obtain answers through oppression (see **Chapter 6**)
  - indicate what action the police will take in the event of a suspect refusing to answer a question or make a prepared statement, unless the suspect directly asks such a question.
- **Breaks from interview:** It is important to note that those in police custody should have eight hours' undisturbed rest between interviews. Breaks from interviewing should be made at recognised meal times or at other times that take account of when the suspect last had a meal. Short refreshment breaks must be provided at approximately two-hour intervals.
- **Cessation of interviews:** Generally, interviews should cease to continue when the officer responsible for conducting the investigation is satisfied

that all of the questions which are deemed relevant to obtaining accurate and reliable information about the offence have been put to the suspect. This should be approached in conjunction with the other evidence available, and with consideration of whether there is sufficient evidence to provide a realistic prospect of conviction.

**The role and appropriate conduct by a defence legal representative/solicitor including representation of a vulnerable client**

The conduct of a solicitor during an interview is an important consideration. The solicitor primarily has an ethical duty to represent the best interests of their client. In doing so, they can, for example:

- request that the police disclose evidence mentioned in interview
- challenge an improper question, or the manner in which the question is put
- advise their client not to answer a question.

*Role of the solicitor*

When a suspect is to be interviewed, the solicitor has a number of key roles to undertake. These roles are presented in **Table 1.7** with some examples of their application.

*Table 1.7: Role of a solicitor at interview*

<p><b>Prepare the client for interview</b></p> <p>The solicitor should explain (inter alia):</p> <ul style="list-style-type: none"> <li>• How the interview will be conducted (eg the use of audible recordings and the general structure)</li> <li>• The seating arrangements (ie that the solicitor will sit beside the client at a table, whilst the interviewing officer will sit facing the client and solicitor)</li> <li>• That the interview can be stopped (by the client or solicitor) if further legal advice is required</li> <li>• That the solicitor will intervene where necessary to protect the client’s interests</li> <li>• That the police will often use tactics to get the client to talk and, as a result, that they should remain calm</li> <li>• That if the client has chosen to remain silent, they should use the phrase ‘no comment’ in response to police questions</li> </ul>
<p><b>Take an active role in the interview</b></p> <p>A solicitor should not be passive in an interview. PACE 1984, Code C, provides that the solicitor may intervene in order to seek clarification, challenge an improper question to their client or the manner in which it is put, advise their client not to reply to particular questions or if they wish to give their client further legal advice. The solicitor should make an opening statement at the start of every interview explaining their role and involvement in the interview</p>

### *Conduct of the solicitor*

It is important to remember, however, that a solicitor must not conduct themselves in an interview in a way which prevents the proper putting of questions to a suspect, for example:

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

If an officer of the rank of superintendent or above takes the view that a solicitor is misconducting themselves, they may require the solicitor to leave the interview, on the grounds that they are impeding the interview being carried out. The suspect, in this situation, must be provided with the opportunity to consult another solicitor before the interview continues.

### **The role of an appropriate adult and who can be an appropriate adult**

It is not uncommon for a solicitor to represent a **juvenile** or **vulnerable person**. These individuals will present additional challenges to the solicitor's role and it is important to appreciate how the conduct of a police interview will vary according to the client's circumstances.

#### **Key term: juvenile**

A juvenile is anyone who is under the age of 18. In addition, in the absence of any clear evidence of a suspect's actual age, if they appear to be under the age of 18, they shall be treated as a juvenile.

#### **Key term: vulnerable person**

An individual is treated as being vulnerable if because of a mental health condition or disorder:

- they may have difficulty understanding or communicating effectively about the full implications for them of any procedures and processes
- they do not appear to understand the significance of what they are told, of questions they are asked or of their replies
- they appear to be particularly prone to becoming confused and unclear about their position, providing unreliable, misleading or incriminating information without knowing or wishing to do so, accepting or acting on suggestions from others without consciously knowing, or wishing to do so, or readily agreeing to suggestions or proposals without any protest or question.

A juvenile or vulnerable person must not be interviewed regarding their involvement or suspected involvement in a criminal offence or offences, or asked to provide or sign a written statement under caution or record of interview, in the absence of an **appropriate adult**.

**Key term: appropriate adult**

An appropriate adult is an individual who generally must be present to safeguard the rights, welfare and entitlement of juveniles or vulnerable persons.

*Who can be an appropriate adult?*

**Table 1.8** sets out who could, or could not, be considered an appropriate adult. As will be evident from **Table 1.8**, the law prescribes a hierarchical order that the police should follow when identifying the appropriate adult (see **Practice example 1.4**).

*Table 1.8: Appropriate adults*

Who can be an appropriate adult	Who cannot be an appropriate adult
<p><b>For juveniles</b></p> <p>(a) Parents or guardians (or representatives from the local authority if the juvenile is in local authority care)</p> <p>(b) If not (a), then, a social worker from the local authority</p> <p>(c) If not (a) or (b), then, some other responsible adult aged 18 or over who is not connected to the police (eg a grandparent)</p> <p><b>For vulnerable persons</b></p> <p>(a) A relative, guardian or other person responsible for their care or custody</p> <p>(b) If not (a), then, someone experienced in dealing with vulnerable persons but who is not connected to the police (eg employed by the police)</p> <p>(c) If not (a) or (b), then, some other responsible adult aged 18 or over</p>	<p><b>Anyone who</b></p> <ul style="list-style-type: none"> <li>• Is suspected of being involved in the suspected offence</li> <li>• Is a victim or a witness in the alleged offence</li> <li>• Is involved in the investigation (eg a police officer/police employee)</li> <li>• Has received admissions from the suspect before acting as an appropriate adult (this also applies to social workers and members of the Youth Offending Team)</li> <li>• Is a solicitor representing the juvenile/vulnerable person</li> <li>• Is an estranged parent (if the juvenile/vulnerable person does not wish them to attend)</li> </ul>

**Practice example 1.4**

James, a 16-year-old, is arrested on suspicion of assaulting his uncle, occasioning actual bodily harm, contrary to s 47 Offences Against the Person Act 1861. James' mother and aunt witnessed the alleged assault. James is taken to the police station. On arrival, the custody officer informed James of his rights, and asked for his age. James, being

stubborn, refused to answer. As he appeared to be under the age of 18, the custody officer started to make arrangements for an appropriate adult to attend the police station. James is estranged from his father and informs the custody officer that he does not want him contacted. The solicitor, who also happens to be a close family friend of James, is on her way.

What action should the custody officer take in selecting an appropriate adult?

**It is likely that the custody officer will initially ask James if there is anyone who could act as an appropriate adult. James' mother cannot be an appropriate adult as she witnessed the alleged assault, and for the same reason, nor can James' aunt. As James is estranged from his father, and James has made an express request not to contact him, the custody officer must not call James' father. Whilst James' solicitor is a family friend, she cannot act as an appropriate adult because she is acting as James' solicitor. As the uncle is the complainant, he cannot be an appropriate adult. If James does not provide the police with the contact details of anyone who could be an appropriate adult, it is likely that a social worker from the local authority would be contacted.**

### *Role of the appropriate adult*

PACE 1984, Code C, provides that an appropriate adult is generally expected, amongst other things, to:

- support, advise and assist the juvenile or vulnerable person in accordance with a PACE Code when they are required to provide information or participate in a procedure
- observe whether the police are acting properly and fairly, and to inform an officer of the rank of inspector or above if they consider that they are not
- assist detainees to communicate with the police while respecting their right not to say anything unless they want to
- help them to understand their rights and ensure that those rights are protected and respected.

## ■ KEY POINT CHECKLIST

This chapter has covered the following key knowledge points. You can use these to structure your revision, ensuring you recall the key details for each point, as covered in this chapter.

- Suspects under investigation reserve the right to have someone informed of their arrest, and the right to legal advice. These rights can only be delayed, not extinguished.
- The police have limited powers in authorising further detention. Once the police have exhausted their powers, any further extensions may only be authorised by the magistrates' court by means of a warrant.

- Identification procedures must only be carried out when the relevant criteria are satisfied. In any other case, a procedure may be carried out if the police deem it necessary.
- A client must appreciate the relative strengths and weaknesses of answering police questions and the consequences if they exercise their right to remain silent.
- An appropriate adult must be present when the police detain a juvenile or vulnerable person.
- Interviews should cease when all questions deemed necessary for obtaining relevant and accurate information have been put to the suspect, not necessarily answered.

## ■ KEY TERMS AND CONCEPTS

- custody officer (**page 2**)
- custody record (**page 2**)
- PACE Codes (**page 4**)
- PACE 1984, Code C (**page 4**)
- Defence Solicitor Call Centre (**page 5**)
- relevant time (**page 7**)
- detention reviews (**page 11**)
- identification procedure (**page 12**)
- PACE 1984, Code D (**page 12**)
- known and available (**page 13**)
- identification officer (**page 16**)
- right to silence (**page 18**)
- prepared statement (**page 19**)
- caution (**page 19**)
- interview (**page 20**)
- significant statement or silence (**page 21**)
- juvenile (**page 23**)
- vulnerable person (**page 23**)
- appropriate adult (**page 24**)

## ■ SQE1-STYLE QUESTIONS

### QUESTION 1

A girl, aged 16, is arrested on suspicion of theft, contrary to s 1 Theft Act 1968, and is taken to a police station. On arrival, the custody officer books her in and opens a custody record. The custody officer asks the girl how old she is and who she lives with and informs her of her rights. The girl tells the custody officer that the only family she is aware of is her father, who she has not seen for five years, and that she is in the care of the local authority. The

girl expressly informs the custody officer that she does not want her father involved. The girl asks to consult with a solicitor and insists that she wants to be interviewed immediately because she wants to go home.

**Which of the following best describes the actions the custody officer should take?**

- A. The custody officer may arrange for an appropriate adult to attend the police station before interviewing the girl. As the girl has identified that she is in local authority care, her social worker or a representative of the local authority must be contacted. The girl must not be interviewed until the appropriate adult arrives and she has consulted with her solicitor.
- B. The custody officer must arrange for an appropriate adult to attend the police station before interviewing the girl. As the girl has identified her father, he must act as the appropriate adult and attend the police station. The girl must not be interviewed until her father arrives and she has consulted with her solicitor.
- C. The custody officer must arrange for an appropriate adult to attend the police station before interviewing the girl. As the girl has identified that she is in local authority care, her social worker or a representative of the local authority must be contacted. The girl must not be interviewed until the appropriate adult arrives and she has consulted with her solicitor.
- D. The custody officer must arrange for an appropriate adult to attend the police station before interviewing the girl. The solicitor is able to act as an appropriate adult, and when the solicitor attends the police station, the girl must be able to consult with them in private.
- E. The custody officer may arrange for an appropriate adult to attend the police station before interviewing the girl. As the girl has identified that she is in local authority care, her social worker or a representative of the local authority must be contacted. The girl may be interviewed before her solicitor and appropriate adult arrives if an officer of the rank of inspector or above is satisfied that the relevant conditions are met.

## **QUESTION 2**

A woman is arrested on suspicion of common assault and is taken to an authorised place of detention. The woman did not say a great deal to the arresting officer but indicates that she may have acted in self-defence. At the scene, a witness claims to have seen the alleged assault, and even though they were standing at a distance, would recognise the suspect given the opportunity; a statement has been given to this effect. The woman, who is yet to be interviewed, is consulting with her solicitor, and the police are considering the appropriate course of action regarding an identification procedure.

**Which of the following best describes the actions the police should take regarding carrying out an identification procedure?**

- A. The police must carry out an identification procedure, as a witness claims that they can identify the suspect who allegedly committed the assault and has not yet been given the opportunity to do so, and the identity of the suspect may be disputed.
- B. The police may carry out an identification procedure but should wait until they have interviewed the woman. Whilst there is a witness who claims that they can identify the suspect who allegedly committed the assault and has not yet been given the opportunity to do so, the issue of identity may not be in dispute.
- C. The police must carry out an identification procedure but must wait until they have interviewed the woman. Whilst there is a witness who claims that they can identify the suspect who allegedly committed the assault and has not yet been given the opportunity to do so, the issue of identity may not be in dispute.
- D. The police must not carry out an identification procedure before the suspect is interviewed. There is a witness who claims that they can identify the suspect who allegedly committed the assault and has not yet been given the opportunity to do so, and as there is the potential for identity to be disputed, a procedure must be carried out.
- E. The police may not carry out an identification procedure after the woman has been interviewed. As the witness has already provided a statement to the police purporting to recognise the woman, this is sufficient identification evidence and it is likely that the identification officer would conclude that it is unnecessary for a procedure to go ahead.

**QUESTION 3**

A woman is arrested on suspicion of murder. On arrival at the police station, the woman had her detention authorised by the custody officer. The woman confirmed that she wanted to speak to a solicitor, and the police waited until the solicitor arrived. The woman was very nervous and had never been in trouble with the police before. The solicitor spoke to the woman in private and requested disclosure of the evidence which the police had obtained. Before interview, the solicitor advised the woman to remain silent, which she did after trusting the solicitor. The woman is later charged and pleads not guilty. The woman gives evidence at trial and puts forward evidence not previously relied upon in response to police questioning. The woman is now concerned about the impact of any adverse inferences.

**Which of the following best describes the position regarding whether adverse inferences will be drawn from the woman's silence during police questioning?**

- A. As the woman relied on the advice of the solicitor to remain silent, adverse inferences must not be drawn. There is no need to show that reliance on the advice was genuine, as remaining silent on legal advice is a permitted exception.
- B. As the woman relied on the advice of the solicitor to remain silent, adverse inferences may not be drawn. If the jury are satisfied that reliance on the solicitor's advice was genuine, inferences may not be drawn.
- C. As the woman remained silent at interview before charge, but put forward a positive defence at trial, inferences must be drawn irrespective of reliance on legal advice.
- D. As the woman relied on the advice of the solicitor to remain silent, adverse inferences may not be drawn. If the trial judge is satisfied that the reliance on the solicitor's advice was genuine, inferences may not be drawn.
- E. As the woman remained silent at interview before charge, but put forward a positive defence at trial, inferences must not be drawn irrespective of reliance on legal advice.

#### **QUESTION 4**

A man is arrested on suspicion of assault occasioning actual bodily harm, contrary to s 47 Offences Against the Person Act 1861. On arrest, the man was cautioned, and understood the caution. The man was interviewed, and then released on bail, still subject to investigation. The police obtained evidence from an eyewitness who claims that they could recognise the person who they believe committed the offence and gave a description which was similar to the man's appearance. The police asked whether the man would consent to an identification procedure. The man, who protests his innocence and denies any involvement, lives 20 minutes away from the police station and says that he will get to the police station as soon as he can.

**Which of the following best describes the man's status for an identification procedure?**

- A. The man would be considered as known and unavailable, as whilst he is known to the police, he is not immediately available to participate in the identification procedure.
- B. The man would be considered as known but unavailable, as whilst he is known to the police, he is not available within a reasonably short time to participate in the identification procedure.
- C. The man would be considered as not known and available, as whilst he is reasonably available within a short period of time, he has not been positively identified by name. Therefore, his identity is not known to the police.

30 The procedure and processes at the police station

- D. The man would be considered as known and available, as he is known to the police, willing to participate in the identification procedure and will be accessible within a reasonably short time.
- E. The man would be considered as known and available, but as the eyewitness has given a detailed description of the alleged offender to the police, there is no requirement to carry out an identification procedure.

## QUESTION 5

A man is arrested at his home on suspicion of burglary, contrary to s 9 Theft Act 1968. The man is taken to an authorised place of detention and is booked into custody at 19:00 (7 pm). The man requested legal advice and consulted a solicitor before being interviewed. At the 24-hour period, an extension of 12 hours was granted for further detention. There are six hours left until the man will need to be charged or released, but the officers in the case are pursuing a new line of enquiry and seek to detain the man further.

**Which of the following best describes the most appropriate course of action to detain the man further?**

- A. Authorisation for further detention can only be given by the magistrates' court, either with a single district judge or two lay magistrates, who may grant the police's request. The police will need to ensure that the application is listed and granted before the current 36-hour period expires.
- B. Authorisation for further detention can only be given by an officer of the rank of superintendent or above, who is responsible for the station where the man is being held. The police will need to ensure that the extension is granted before the current 36-hour period expires.
- C. Authorisation for further detention can only be given by the magistrates' court, either with a single district judge or two lay magistrates, who must grant the police's request. The police will need to ensure that the application is listed and granted before the current 36-hour period expires.
- D. Authorisation for further detention can only be given by an officer of the rank of superintendent or above, who is responsible for the station where the man is being held. The police will need to ensure that the extension is granted after the current 36-hour period expires.
- E. Authorisation for further detention can only be given by the magistrates' court, either with a single district judge or two lay magistrates, who may grant the police's request. The police will need to ensure that the application is listed before the expiry of the 36-hour period, but the magistrates' court may grant the extension after the expiry of the 36-hour period.

## ■ ANSWERS TO QUESTIONS

### Answers to 'What do you know already?' questions at the start of the chapter

- 1) False. All suspects are entitled to free legal advice, but the advice is not always in-person; suspects who are detained on suspicion of committing an offence which is not punishable by imprisonment may receive free telephone advice.
- 2) Video identification procedure. This is where eyewitnesses are shown various images, including one of the suspect.
- 3) False. Suspects, who later become defendants, are not *automatically* immune from having adverse inferences drawn by simply claiming that they relied on legal advice to remain silent. If the arbiter of fact is satisfied that reliance on the advice was genuine, then inferences may not be drawn.
- 4) The police should first attempt to make contact with the parents or guardians of the juvenile (or representatives from the local authority if the juvenile is in local authority care). Failing that, the police should identify a social worker from the local authority to act as the appropriate adult. Failing that, the police should identify some other responsible adult aged 18 or over who is not connected to the police.

### Answers to end-of-chapter SQE1-style questions

#### Question 1

The correct answer was C. This is because the police must contact an appropriate adult for the girl, and, as she has identified that she is in local authority care, the most appropriate individual would be a local authority representative. Options A and E are wrong because this is an instance where the police *must* obtain an appropriate adult; it is not optional. Option B is wrong because an estranged parent is not necessarily considered an appropriate adult. Option D is also wrong because solicitors are prohibited from acting as an appropriate adult when they are representing the juvenile or vulnerable person in their professional capacity.

#### Question 2

The correct answer was B. This is because at present, the issue of identity may not be in dispute (as the woman appears to be claiming self-defence). Before this is confirmed in interview, there is nothing compelling the police at this stage to carry out an identity procedure; therefore, option A is wrong. Option C is wrong because reliance on legal advice may prevent inferences being drawn where a fact was not mentioned before or on charge but was at trial. Option D is also wrong because whilst it would be practical to wait until the interview has concluded, there is nothing compelling the police to carry out a

## 32 The procedure and processes at the police station

procedure after an interview. Option E is wrong because whilst the police retain the right not to hold an identity procedure if there is little purpose, that is not the case here, and the conditions *requiring* the police to carry out a procedure are satisfied.

### Question 3

The correct answer was B. This is because if the woman's reliance on the advice was genuine, then inferences may not be drawn. However, there is nothing which says that inferences *must* not be drawn (therefore option C is wrong); it is for the arbiter of fact (in this case, the jury) to decide if the reliance was genuine. Option A is wrong because the woman will need to demonstrate that her reliance was genuine. Option D is wrong because the issue of reliance is for the jury, not the judge. Option E is wrong as it completely misrepresents the law relating to adverse inferences.

### Question 4

The correct answer was D. This is because the correct term for a suspect who is known to the police and is willing and able to take part in an identity procedure is 'known and available'. Options A and B are wrong because a suspect is considered 'available' if they are immediately available or will be within a reasonably short time. Option C is wrong because the man is considered 'known' for these purposes. Option E is also wrong because there is a requirement to carry out an identity procedure in these circumstances.

### Question 5

The correct answer was A. This is because the police have exhausted their powers of granting an extension to the period of detention, and the magistrates' court are the only body able to grant a further extension. The application must be listed and heard before the 36 hours expire; therefore, option E is wrong. The magistrates' court cannot extend custody time limits after the period expires. As previously mentioned, the police have exhausted their extension powers; therefore, options B and D are wrong. Option C is also wrong because the courts are not compelled to grant an extension; they *may* grant an extension if they consider the relevant criteria are satisfied.

## ■ KEY CASES, RULES, STATUTES AND INSTRUMENTS

The SQE1 Assessment Specification has identified that candidates are required to recall/recite:

- PACE 1984, Code C
- PACE 1984, Code D

The SQE1 Assessment Specification does not require you to know any case names, or statutory materials, for the topic of advising clients, including vulnerable clients, about the procedure and processes at the police station.