



Fitness to be interviewed by the police



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Outline

Context

Understand the guidance on fitness to be interviewed in code C of the police and criminal evidence act 1984 (PACE)

Outlines the criminal justice process leading to police interviews

How to conduct this assessment

Highlights practical issues to consider when assessing fitness to be interviewed in this context.

The dramatis personae: Suspect, detainee, accused, defendant or offender?

Different terms are used at different stages to refer to persons involved in criminal proceedings.

A person who is suspected of committing a crime is a suspect.

If the police consider that there is sufficient evidence, the suspect is arrested and becomes a detainee or detained person (sometimes abbreviated to DP in the custody record).

Following interview, a detainee may be charged with an offence or released without charge.

A person released without charge may remain a suspect and may therefore be released on bail in order that the police can interview them again.

Terminology

If the person is charged with an offence they become an accused person.

An accused may be remanded into police custody and remain a detainee and then appear before a court to be released on bail or remanded into prison custody.

An accused person who attends court to plead guilty and await sentence or to plead not guilty and stand trial is also known as a defendant.

Once convicted, upon a plea of guilty or a finding of guilt by a court, the person can be described as an offender.

In this presentation, we are concerned mainly with persons arrested and detained in police custody for interview and we mainly use the term detainee.

Where we refer to case law relating to trials and appeals, we use the term defendant, as the context is the trial process, or the term appellant.

Defining fitness to be interviewed

Code C of the Codes of Practice of the **Police and Criminal Evidence Act 1984** (PACE) codifies good practice in relation to the detention, treatment and questioning of persons by police officers (Home Office 2019).

It defines fitness as being 'at risk' in an interview

Risk in this context appears to be related to vulnerability

Definition of fitness to be interviewed

Fitness to be interviewed is a two-part assessment.

The first part relates to whether harm is likely to be caused to the individual and the second part relates to the individual's reliability.

A detainee may be at risk in an interview if it is considered that:

- (a) conducting the interview could significantly harm the detainee's physical or mental state;
- (b) anything the detainee says in the interview about their involvement or suspected involvement in the offence about which they are being interviewed might be considered unreliable in subsequent court proceedings because of their physical or mental state.'

(Police and Criminal Evidence Act 1984 (PACE), Code C, Annex G, para. 2: Home Office 2019)

Fitness to be interviewed and capacity

- Fitness to be interviewed, like, for example, fitness to plead and stand trial, is a capacity issue.
- The Mental Capacity Act 2005 has given a statutory basis to capacity being approached in terms of function rather than status or outcome.
- The functional approach is already adopted by the Codes. Annex G of Code C, states that:
 - 'It is essential health care professionals who are consulted consider the functional ability of the detainee rather than simply relying on a medical diagnosis, e.g. it is possible for a person with severe mental illness to be fit for interview'
 - It is a functional test. It is not the case that anyone who has a psychiatric disorder, or a history of psychiatric disorder, will be unfit to be interviewed.

Definition of 'vulnerable'

"Vulnerable" applies to any person who, because of a mental health condition or mental disorder

- (i) may have difficulty understanding or communicating effectively about the full implications for them of any procedures and processes connected with:
 - a) their arrest and detention; or
 - b) their voluntary attendance at a police station or their presence elsewhere for the purpose of a voluntary interview; and
 - c) the exercise of their rights and entitlements

“vulnerable”

(ii) does not appear to understand the significance of what they are told, of questions they are asked or of their replies;

(iii) appears to be particularly prone to:

contd..

- a) becoming confused and unclear about their position;
- b) providing unreliable, misleading or incriminating information without knowing or wishing to do so;
- c) accepting or acting on suggestions from others without consciously knowing or wishing to do so; or
- d) readily agreeing to suggestions or proposals without any protest or question.'

(Police and Criminal Evidence Act 1984 (PACE), Code C, para. 1.13(d): Home Office 2019)

Assessing fitness to be interviewed



At the start of the assessment, the clinician should obtain the interviewee's consent and reassess them for this purpose, even if the individual is already known to them.



The interviewee should then be assessed against the criteria having regard to both 'harm' and 'reliability'.



If the interviewee is not able to give consent and does not have capacity to make this decision, then they should be managed in their best interest (Department for Constitutional Affairs 2007)

Harm

The interview process can include particularly probing questions and the way this might affect an interviewee needs to be considered (PACE Code C, annex G, para. 3(c)).

Any police interview is likely to cause some degree of stress or anxiety and it is up to the person assessing fitness for interview to decide where 'normal' anxiety and stress becomes psychological harm.

Code C provides guidelines for the police to help reduce the risk of harm.

Reducing “harm”

- These include ensuring that regular breaks are offered while a suspect is being questioned (Code C, para. 12.8)
- Ensuring that oppressive techniques are not being used (Code C, para. 11.5).
- Such measures can also help reduce unreliability.
- Physical health conditions such as those causing significant pain, or those requiring emergency treatment, also need to be considered, especially if police interview would interrupt their management.

Reliability

Reliability can be more complex to establish and requires consideration of the individual's abilities in multiple areas .

These abilities are relevant to understanding the police caution; if the caution cannot be understood, even when simplified, then it is likely that the individual will be unfit to be interviewed.

Factors to consider when assessing reliability

Does the suspect's physical or mental state affect their ability to:

- understand the nature and purpose of the interview
- comprehend what is being asked
- appreciate the significance of any answers given
- make rational decisions about whether they want to say anything

(Police and Criminal Evidence Act 1984 (PACE), Code C, Annex G, 3(a): Home Office 2019)

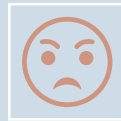
Quantifying the risk of unreliability



1 Definite risk: The detainee is unlikely to be fit for interview at any stage.



2 Major risk: Detainee is unfit for interview at the time of the assessment but a further evaluation is required at a later time.



3 Some risk: Precautions are advised, which may include recommendation of an appropriate adult or referral to a medical or psychiatric service.



4 No discernible risk: Interview can proceed without the presence of an appropriate adult or further medical or psychiatric intervention.

Other factors

- It requires a careful assessment of the individual's mental state, in addition to considering factors such as **suggestibility**, **compliance** and **acquiescence**, which can contribute to false confessions

(Gudjonsson, Hayes and Rowlands2000).

Suggestibility

Suggestibility in this context is the extent to which the person accepts and acts on plausible suggestions or messages from others during formal interview in a closed social interaction (Gudjonsson2003).

This can be hard to detect without formal psychological testing.

Compliance

With regard to compliance, a patient may comply and give false information owing to, for example, fear or the desire to remove themselves from a situation that they are unable to tolerate (Rix1997).

This could occur in individuals who are highly anxious (Rowlands2000).

Personality traits, especially those of a dependent nature, may lead individuals to be more submissive, agree to a confession made to protect another person (Ventress, Rix and Kent2008) or give unreliable information'.

Acquiescence

Acquiescence is the tendency of the individual to 'answer questions affirmatively regardless of the content'

This tends more commonly to occur in those of 'low intelligence' (Gudjonsson 1990).

Other individuals may have traits to suggest that they are likely to exaggerate events without understanding the full implications of their disclosure (Ventress, Rix and Kent 2008).



Mental disorders

- Specific mental disorders carry a higher risk of leading to unreliable interview evidence (Ventress, Rix and Kent2008).

Context:

*Interviews
and the
criminal
justice
process*

When the police interview someone suspected of committing a criminal offence, it is important that the interview evidence is reliable, to help prevent a miscarriage of justice (Green, Shenoy and Kent2012).

The police may request an assessment of the suspect's fitness to be interviewed if there are concerns that they are vulnerable because of a mental health condition or mental disorder that may impair the reliability of their evidence or may cause them to come to harm through the interview process.

Interviews and the criminal justice process

Mental health in-patient settings, the safety of patients, their visitors and staff is paramount.



Consequently, any assaults or other alleged crimes are encouraged to be reported internally within the NHS trust and, where appropriate, to the police.



Reporting to police

- When a crime is reported to the police, they will attend to gather complainant and witness statements, collect hard evidence, such as anything used as a weapon, and collect supplementary evidence, such as CCTV recordings.
- Complainant and witness interviews are usually completed first, as they are often required to substantiate a crime.

The police caution

- The suspect must be given clear advice about the caution and about what it means in terms of how the answers may be used in evidence.

The 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 that you do say may be given in evidence.'

(Police and Criminal Evidence Act 1984 (PACE), Code C, para. 10.5: Home Office 2019)

The assessor and the location of the assessment

Forensic physicians (previously called forensic medical examiners), who are registered medical practitioners with additional training in this field (Crouch Reference Crouch2005).

In recent years, this function has largely shifted to other healthcare professionals, primarily custody nurses. As these assessments occur in police custody, the police custody officer remains responsible for the welfare of the suspect

On a psychiatric in-patient ward, it would be the treating team who assess fitness to be interviewed and they would maintain responsibility for the interviewee's well-being along with the clinician in charge of the individual's care.

The custody officer

The custody officer is a police officer, in the rank of at least sergeant, who is responsible for the welfare of suspects detained at a police station and has a pivotal role in ensuring compliance with all of the provisions of the Codes.

This is a welfare role that is separate from the investigative role.

The custody officer decides if and when the investigating officers can have access to the detainees in his or her care and with what precautions or safeguards, such as the assistance of the appropriate adult.

The assessment of fitness

- The assessment of fitness to be interviewed is based on the standard psychiatric history, mental state and appropriate physical examination.
- Enquiry should be made as to any history of mental illness, including admissions to hospital, treatment, adherence and typical symptoms.
- A history of dependence on, or recent use of, drugs and alcohol, including any current or anticipated withdrawal symptoms, should be sought.
- Pointers as to the presence of personality disorder may be apparent from the history and examination, and should be pursued accordingly.
- Examination of the mental state is essential. Testing of cognitive function, including the Mini-Mental State Examination (Folstein and McHughFolstein et al, 1975) may be necessary.
- Understanding of the police caution should be assessed. This can be explained in simple terms if necessary. The person should then be asked to explain the caution in their own words.

? *Intellectual ability*

- The intellectual ability of the detainee is assessed on the basis of the history and the practical, conceptual and social skills as part of adaptive functioning.
- Functional ability as indicated by the developmental, educational and social aspects of the history and the person's performance and understanding in ordinary conversation.
- The psychiatrist should not hesitate to recommend formal IQ testing even though this may not take place for weeks or months.



Key elements of a police detainee's capacity assessment

- Does the person understand why they are at a police station?
- Does the person know that they are to be interviewed?
- Does the person understand the purpose of the interview, i.e. that they are suspected of committing a crime?
- Does the person understand the police caution after it has been explained to them carefully?
- Can the person understand what is being asked?
- Does the person appreciate the significance of any answers they give? In some cases, detainees may admit to anything in order to fulfil their immediate needs, e.g. the ending of the interview.
- Is the person capable of deciding whether or not to answer a particular question?

(Adapted from Kent & Gunasekaran, 2010)

After the assessment

At the end of the assessment the doctor should record the main findings in the custody record, including an opinion on fitness to be interviewed, along with any recommendations.

These might include the provision of an appropriate adult, the use of simple language in interview, checking that the suspect understands the questions put to them, shorter interview sessions and longer breaks.

An opinion should be given as to the likely duration or permanence of a detainee being unfit for interview and an appropriate time for re-examination should be suggested.

The doctor should also state whether any medical or psychiatric treatment is needed, how soon it might be effective and whether further assessment of fitness to be interviewed by another specialist, for example, a consultant in the psychiatry of intellectual disability or a psychologist is indicated.

The police interview

If the suspect is not deemed fit for interview, then the police are likely to follow the team's assessment and not complete the interview at this time.

If the patient is deemed fit, the interview can potentially be completed on the ward. There are several advantages to this, including both logistical and safety benefits. .

After the interview

If the interview goes ahead, then once it is completed, standard charging procedures would apply and the police would seek advice from the Crown Prosecution Service (CPS) as to whether the

two-stage test was fulfilled:

whether there is enough evidence to secure a conviction and

whether it would be in the public interest to prosecute

(Crown Prosecution Service 2017).

After the interview

The CPS will then give guidance on what offence, if any, the suspect should be charged with (Crown Prosecution Service 2017).

Alternatively, out-of-court disposals such as, but not limited to, fines or cautions, are also available.

These depend on the severity of the offence and the wishes of the victim.

If the threshold to charge is met, then the case will probably be tried and the interview may be used in evidence.

After the interview

If the patient is not deemed fit to be interviewed, they can still be charged without interview if the two-stage test is satisfied (evidentiary threshold and public interest).

The patient can be arrested at any point during this process if their risk is deemed to be too high to be managed safely within their current ward setting or due to the severity of the alleged offence.

This whole process can take several months to complete (Ministry of Justice 2019) and thus a patient will often be discharged from the ward before their court date.

Safeguards

In completing a fitness to be interviewed assessment, it is important to make appropriate recommendations.

These can range from advice on how to interact with an individual to formal safeguards.

Examples include advising the use of simple language with an individual with an intellectual disability or informing the police of an individual's specific delusional beliefs that could affect their interview.

The appropriate adult

The use of an 'appropriate adult' is a specific safeguard.

Their role and the requirement for their deployment is set out in Code C, Annex E

- To advise the person being interviewed
-
- To observe whether the interview is being conducted properly and fairly
-
- To facilitate communication with the person being interviewed
-

(Police and Criminal Evidence Act 1984 (PACE): Code C: para. 11.17(b))

Definition appropriate adult

- A relative, guardian or other person responsible for (the detainee's) care or custody
- Someone who has experience of dealing with mentally disordered or mentally handicapped people but is not a police officer or employed by the police (such as an approved social worker as defined by the Mental Health Act 1983) or a specialist social worker; or
- Failing either above, some other responsible adult aged 18 or over who is not a police officer or employed by the police

(Police and Criminal Evidence Act 1984 (PACE): Code C, para. 1.7(b))

Good practice!

- Given that many of the patients on an in-patient mental health ward are likely to be considered vulnerable, it is recommended that all patients having formal interviews are seen with an appropriate adult.
- If there are concerns during the interview process, then the appropriate adult should raise them.
- In police custody this is raised to an officer of the rank of inspector or above, as specified in Code C.

The solicitor

- All suspects undergoing formal police interview should be offered a solicitor to represent them and provide legal advice.
- Police stations have a duty solicitor 24 h a day who would be able to attend if the interviewee had not appointed their own.
- The police have a duty to inform the suspect of this right and an appropriate adult can further help in ensuring that the interviewee understands the benefit of a solicitor.
- Good practice is that all patients are interviewed with a solicitor.



Ethical issues

- Psychiatrists/mental health professionals to ensure that their relevant skills are kept up to date and that they keep up to date with the statutory and case law that affects their opinions in this area.
- The psychiatrist must avoid crossing over from their area of expertise into the unfamiliar territory of the legal representative or advocate.



To conclude

- Thorough assessment of a detainee's fitness to be interviewed is essential and proper safeguards are to be maintained, so as to prevent unreliable evidence being admitted in court with the real dangers of miscarriages of justice.
- With attention to case law, which is constantly exploring and refining all aspects of detainees' rights, and the PACE Codes of Practice, which are periodically updated, the psychiatrist can make a real contribution to fairness in the administration of justice.

reference

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*Thank you for your
valuable time!*

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