**CHAPTER 6**

EXERCISE 1

ANSWERS TO THE QUESTIONS TESTING YOUR KNOWLEDGE OF CODE C SAFEGUARDS

**Question 1**

In accordance with Code C 10.1 a caution must be given to any suspect who the police wish to question in circumstances where there are grounds to suspect that person of involvement in an offence and whose silence or answers to any questions may be given in evidence against him. An individual must also be cautioned on arrest and on being charged (C 10.5) or informed that they might be prosecuted. A caution must also be given at the commencement of each interview (Code C 10.1), and where there is a break in an interview the suspect should be reminded that they are under caution (C 10.8). It is the duty of the interviewing officer to ensure that the suspect understands the caution (Code C 10D). Where access to a solicitor has been delayed in accordance with s. 58(8) PACE/Code C 6.6, s. 58 Youth Justice and Criminal Evidence Act 1999 prohibits a court from drawing an adverse inference from silence. In these circumstances the police are obliged to caution the suspect in the following terms: ‘You do not have to say anything, but anything you do say may be given in evidence against you.’

The caution reminds the suspect that he has the right not to incriminate himself. Incriminating admissions obtained in circumstances where a caution has not been properly administered are vulnerable to challenge under s. 76(2)(b) and s. 78 PACE. In R v Armas-Rodriguez [2005] EWCA Crim 1981, while acknowledging that a failure to caution a suspect at the commencement of an interview constituted a ‘significant and substantial’ breach of Code C, on the facts in this particular case, it had not been unfair (in accordance with s. 78 PACE) to admit the interview. In particular, the Court of Appeal observed that the police had cautioned D on arrest; there had been no bad faith on the part of the interviewing officer; the defendant had been represented by a solicitor throughout; the interview had been tape-recorded and the questions put fairly. Furthermore, the defendant had been interviewed a second time under caution and had given a substantially similar account.

**Question 2**

Upon arrival at the police station and in accordance with Code C 3.1, the custody officer should explain to the suspect that he has the following rights which may be exercised at any stage:

(i) the right to have someone informed of his arrest;

(ii) the right to consult in private with a solicitor, such advice being free (save in isolated categories) and independent;

(iii) the right to consult the Codes of Practice.

Furthermore, under Code C 3.5, the custody officer is required to ask the suspect on his arrival at the police station whether he:

• wants legal advice;

• wants to inform someone of his arrest;

• might be in need of medical treatment;

• requires the presence of an appropriate adult; or

• requires an interpreter.

**Question 3**

A number of individuals might be considered vulnerable. Under Code C 3.6–3.10 the custody officer must undertake a risk assessment of all detainees. Detainees who would clearly require assistance include those with learning difficulties or communication difficulties, those requiring an interpreter, those on medication, juveniles, the mentally disordered or mentally vulnerable. Note the definition of a vulnerable suspect in the 2019 version of Code C, at para. 1.13(d) and 1G-1GC. Such individuals will require the services of an appropriate adult (C 3.15). C 1.7 identifies who can act the appropriate adult and 1.7A explains their role.

**Questions 4 and 5**

Some especially important safeguards are contained in para. 6 of Code C. Code C 6.4 states that no police officer should, at any time, do or say anything with the intention of dissuading a detainee from obtaining legal advice. If the detainee refuses legal advice Code C 6.5 requires the custody officer to explain that he may seek advice over the telephone and if the detainee continues to decline the services of a lawyer, the custody sergeant should ask the detainee why and record the reasons. The effect of these paragraphs is to encourage the police to be proactive in securing suspects access to legal advice.

Access to legal advice may be delayed but only in the circumstances set out in Code C 6.6. If C 6.6 does not apply a detainee wanting legal advice may not be interviewed or continue to be interviewed until they have received legal advice.

The decision to delay access to a solicitor is a serious matter and will require justification by the police. A confession obtained in violation of s. 58 PACE is particularly vulnerable to challenge under both s. 76 and/or s. 78 PACE.

A suspect should be reminded at the start or re-commencement of any interview that the suspect is entitled to free legal advice and that the interview can be delayed for that purpose.

**Question 6**

Custody time limits are set out in s. 42 PACE. The maximum period of detention for any individual arrested but not charged in connection with an indictable offence is 36 hours. This period can be extended up to 96 hours on the authority of a magistrates’ court for an indictable offence. The detention of any individual must be always justified under s. 37(2) PACE. The custody officer must be satisfied that detention is necessary to secure or preserve evidence relating to an offence for which the person is under arrest or to obtain such evidence by questioning. If the detention grounds are not made out, the detainee must be released immediately either with or without bail (s. 34 PACE): note the pre-charge bail time limits. Where there is sufficient evidence to charge an individual, s. 37(1) PACE provides the individual must be charged and either released on bail or remanded into police cells pending an appearance before magistrates within 24 hours. Detention is subject to regular reviews, initially at six hours and thereafter at nine-hourly intervals (s. 40 PACE).

**Question 7**

The basic human rights to which a suspect is entitled are set out in Code C paras. 8 and 9. They include the right to an adequately heated, cleaned and ventilated cell. Access to toilet facilities must be provided. If a detainee’s clothing needs to be removed, he should be supplied with adequate replacement clothing. The detainee should be provided with two light meals and one main meal in any 24-hour period. Drinks should be provided at mealtimes and upon reasonable request. The above safeguards underline the importance of the custody record in evidential terms. It should be a complete record of the detainee’s time in detention and it should record any complaints made by the detainee (C 9.2).

In accordance with Code C 12.2, in any period of 24 hours, a suspect is entitled to a continuous period of eight hours’ rest, normally at night, and under C 12.8, a suspect is entitled to breaks from interviewing at recognised mealtimes. Interviews should break for refreshments at two-hour intervals.

**Question 8**

An interview, according to Code C para. 11.1A, is the questioning of a person regarding their involvement or suspected involvement in a criminal offence which, under Code C para. 10, must be carried out under caution. Such an interview must be carried out at a police station unless the extremely strict conditions in Code C para. 11.1 are made out.

**Question 9**

Paragraph 9.5 of Code C is important. If a detainee appears to be suffering from physical illness, or is injured, or appears to be suffering from a mental disorder, or appears to need clinical attention, the custody officer must make sure the detainee receives appropriate attention as soon as reasonably practicable. Paragraph 9.13 provides that where a health-care professional is called to examine or treat the offender, the custody officer shall ask for their opinion about any risks or problems the police need to consider when making decisions about the detainee about when to carry out an interview and the need for specific safeguards. Note 9C offers the following guidance:

‘A detainee who appears drunk or behaves abnormally may be suffering from illness, the effect of drugs or may have sustained injury, particularly a head injury which is not apparent. A detainee needing or dependent on certain drugs, including alcohol, may experience harmful effects within a short time of being deprived of their supply. In these circumstances, when there is any doubt, police should always act urgently to call an appropriate health care professional.’

Code C 12.3 is all-important. Before any detainee is interviewed the custody officer shall assess whether the detainee is fit to be interviewed. In appropriate cases, the custody officer will take this decision in conjunction with a health-care professional.

An omission on the part of the police to spot and deal with a particular vulnerability renders any resulting confession vulnerable to challenge under ss. 76 and 78 PACE.

**Question 10**

Code C para. 11.5 provides an important safeguard in relation to confession evidence by prohibiting officers from offering inducements to the suspect. It provides that no officer interviewer shall indicate, except to answer a direct question, what action the police may take if the suspect adopts a particular course of action. If the suspect asks a direct question, the interviewer may inform the suspect of what action the police propose to take, provided the action is itself proper and warranted.

The safeguards associated with the conduct of interviews of mentally vulnerable individuals are covered by Code C 11.15. Note 11C is worth considering:

*‘Although juveniles or people who are mentally vulnerable are often capable of providing reliable evidence, they may, without knowing or wishing to do so, be particularly prone in certain circumstances to provide information that may be unreliable, misleading or self-incriminating. Special care should always be taken when questioning such a person, and the appropriate adult should be involved if there is any doubt about a person’s age, mental state or capacity. Because of the risk of unreliable evidence it is important to obtain corroboration of any facts admitted wherever possible.’*

Aside from the numerous safeguards already identified, juveniles and the mentally ill and mentally vulnerable are entitled to have an appropriate adult present during an interview (Code C 11.5).

EXERCISE 2: ANALYSIS OF LENNY WISE’S CONFESSION

The admissibility of Lenny’s confession should be challenged under s. 76(2)(b) PACE (unreliability) and s. 78 PACE (unfairness).

The admissibility of Lenny’s confession would be determined at a pre-trial hearing. A voir dire would need to be conducted, at which the judge would hear evidence as to how Lenny’s confession was obtained. The prosecution would have the burden of proof under s. 76(2)(b). The prosecution would need to call the custody officers who supervised Lenny’s detention, as well as the interviewing officers. In this instance, the prosecution would also need to call Dr Ghulam, who examined Lenny while he was in detention. The custody record would be an important piece of evidence at this hearing.

Given Lenny’s recent psychiatric history, the defence might explore the possibility of obtaining a psychiatric report to shed light on Lenny’s state of mind during his detention and in interview.

The burden of proof under s. 76(2)(b) rests on the prosecution. The prosecution would point to the fact that Lenny was offered a solicitor but declined. Furthermore, attempts were made to contact Lenny’s sister. Lenny was fed and refreshed. He was given rest and his detention was properly reviewed. When the officer in charge was made aware of Lenny’s mental state, he was allowed to see a doctor, who subsequently administered Lenny’s medication and pronounced him fit to be interviewed. On the face of it, the prosecution would have to concede there had been a breach of the requirement to ensure access to an appropriate adult, under Code C para. 3.15, having been made aware of Lenny’s mental condition. However, they can still contend that the breach did not result in an unreliable confession, nor is it one that would be unfair to admit. It is not Lenny’s first experience of custody and he may be taken to know the procedures.

The defence would make much of the fact that Lenny was unrepresented at the police station and did not have the services of an appropriate adult. On oath, you would need to ask the custody officer who opened the custody record if he undertook a risk assessment of Lenny Wise in accordance with the requirement under Code C paras. 3.6–3.10 and if he did, why Lenny’s vulnerability was not spotted immediately. It may be that Lenny lied to the officer and simply did not make the officer aware of his particular needs. When searched, Lenny was not found to be in possession of his medication.

The defence would want to explore whether the police fully complied with s. 58 PACE. Code C para. 6.5 requires the police to be proactive in ensuring access to a solicitor. The absence of a solicitor is made worse by the fact that Lenny was not provided with the services of an appropriate adult. Having made the police aware of his mental condition, and having been examined by a police doctor, it must be put to the custody officer that there was a blatant breach of Code C 3.15. A suitable appropriate adult in this case would have been Lenny’s sister. The police only tried her number once while Lenny was in custody. Furthermore, the defence would be able to point to a breach of Code C 11.15 which stipulates that a vulnerable suspect should not be interviewed in the absence of an appropriate adult for the reasons highlighted in Note 11C.

The defence would need to explore Lenny’s behaviour while in custody. Did no one pick up on the fact that Lenny did not sleep and had little to eat? Such behaviour is indicative of someone with depression. In addition, it should be put to the officers that Lenny made it clear he wanted a cigarette and that it was suggested to him that if he co-operated, his release from custody would have been speeded up. Reliance might be placed by the defence on the case of R v Aspinall [1999] Crim LR 741. The facts are not dissimilar.

The defence can easily establish a link in terms of cause and effect. Had a solicitor been present, the outcome for Lenny would have been different. Given Lenny’s mental state and the fact that he was desirous of escaping the confines of his custody, coupled with the very serious omission to ensure access to an appropriate adult, further compounded by the lack of legal advice, Lenny’s confession is both unreliable and unfair to admit. If the confession were to be excluded, a principal component of the prosecution’s case would be lost.

You can chart the progress of Lenny’s case through our case study, the complete version of which is provided on the Online Resource Centre.

EXERCISE 3

This scenario raises the issue of unlawfully obtained evidence. The illegality relates to the manner in which Ranjit was stopped and searched under s. 1 PACE (see Chapter 3). The search may be illegal for several reasons:

• Was the decision to stop and search Ranjit based on reasonable suspicion as required by Code A (paras. 2.2–2.11)? This seems doubtful.

• Did the officers provide Ranjit with the required information before commencing the search as required by Code A para. 3.8?

• Was the way the search was conducted (removal of outer clothing, socks and shoes in public) lawful, having regard to Code A para. 3.5?

As a result of the actions of the police, a quantity of cocaine is found. If the search was unlawful, can the evidence obtained as a consequence be excluded under s. 78 PACE? Certainly the defence advocate should consider such an application. Given the restrictive interpretation of s. 78, however, it is highly questionable whether the evidence would be excluded since it is relevant and reliable.

Ranjit may have a defence to the allegation that he assaulted a police officer in the execution of his duty if it can be established that the officer was not in fact acting in the execution of his duty at the time he initially approached Ranjit and grabbed him by the shoulder. Additionally, Ranjit may state that he acted in self-defence.