

**Extracts from the Codes of practice – Code C
Detention, treatment and questioning of
persons by police officers (amended from 1st
February 2008)**

6B A detainee who asks for legal advice should be given an opportunity to consult a specific solicitor or another solicitor from that solicitor's firm or the duty solicitor. If advice is not available by these means, or they do not want to consult the duty solicitor, the detainee should be given an opportunity to choose a solicitor from a list of those willing to provide legal advice. If this solicitor is unavailable, they may choose up to two alternatives. If these attempts are unsuccessful, the custody officer has discretion to allow further attempts until a solicitor has been contacted and agrees to provide legal advice. Apart from carrying out these duties, an officer must not advise the suspect about any particular firm of solicitors.

See Notes for Guidance 6B1 and 6B2 below.

6B1 With effect from 1 February 2008, Note for Guidance 6B above will cease to apply in the following forces areas:

Greater Manchester Police

West Midlands Police

West Yorkshire Police

and the following provisions will apply to those force areas: a detainee who asks for legal advice to be paid for by himself should be given an opportunity to consult a specific solicitor or another solicitor from that solicitor's firm. If this solicitor is unavailable by these means, they may choose up to two alternatives. If these attempts are unsuccessful, the custody officer has discretion to allow further attempts until a solicitor has been contacted and agrees to provide legal advice. Otherwise, publicly funded legal advice shall in the first instance be accessed by telephoning a call centre authorised by the Legal Services Commission (LSC) to deal with calls from the police station. The Defence Solicitor Call Centre will determine whether legal advice should be limited to telephone advice or whether a solicitor should attend. Legal advice will be

by telephone if a detainee is:

- detained for a non-imprisonable offence,
 - arrested on a bench warrant for failing to appear and being held for production before the court (except where the solicitor has clear documentary evidence available that would result in the client being released from custody),
 - arrested on suspicion of driving with excess alcohol (failure to provide a specimen, driving whilst unfit/drunk in charge of a motor vehicle),
- or

- detained in relation to breach of police or court bail conditions. An attendance by a solicitor for an offence suitable for telephone advice will depend on whether limited exceptions apply, such as:
 - whether the police are going to carry out an interview or an identification parade,
 - whether the detainee is eligible for assistance from an appropriate adult,
 - whether the detainee is unable to communicate over the telephone,
 - whether the detainee alleges serious maltreatment by the police.

Apart from carrying out these duties, an officer must not advise the suspect about any particular firm of solicitors.

See Note for Guidance 6B2 below.

6B2 With effect from 21 April 2008, the contents of Notes for Guidance 6B and 6B1 above will be superseded by this paragraph in all police forces areas in England and Wales by the following. A detainee who asks for legal advice to be paid for by himself should be given an opportunity to consult a specific solicitor or another solicitor from that solicitor's firm. If this solicitor is unavailable by these means, they may choose up to two alternatives. If these attempts are unsuccessful, the custody officer has discretion to allow further attempts until a solicitor has been contacted and agrees to provide legal advice. Otherwise, publicly funded legal advice shall in the first instance be accessed by telephoning a call centre authorised by the Legal Services Commission (LSC) to deal with calls from the police station. The Defence Solicitor Call centre will determine whether legal advice should be limited to telephone advice or whether a solicitor should attend. Legal advice will be by telephone if a detainee is:

- detained for a non-imprisonable offence,
- arrested on a bench warrant for failing to appear and being held for production before the court (except where the solicitor has clear documentary evidence available that would result in the client being released from custody),
- arrested on suspicion of driving with excess alcohol (failure to provide a specimen, driving whilst unfit/drunk in charge of a motor vehicle), or
- detained in relation to breach of police or court bail conditions.

An attendance by a solicitor for an offence suitable for telephone advice will depend on whether limited exceptions apply, such as:

- whether the police are going to carry out an interview or an identification parade,

- whether the detainee is eligible for assistance from an appropriate adult,
- whether the detainee is unable to communicate over the telephone,
- whether the detainee alleges serious maltreatment by the police.

Apart from carrying out these duties, an officer must not advise the suspect about any particular firm of solicitors.

6C Not Used

6D A detainee has a right to free legal advice and to be represented by a solicitor. Legal advice by telephone may be provided in respect of those offences listed in Note for Guidance 6B1 and 6B2 above. The Defence Solicitor Call Centre will determine whether attendance is required by a solicitor. The solicitor's only role in the police station is to protect and advance the legal rights of their client. On occasions this may require the solicitor to give advice which has the effect of the client avoiding giving evidence which strengthens a prosecution case. 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. Paragraph 6.9 only applies if the solicitor's approach or conduct prevents or unreasonably obstructs proper questions being put to the suspect or the suspect's response being recorded. Examples of unacceptable conduct include answering questions on a suspect's behalf or providing written replies for the suspect to quote.

6E An officer who takes the decision to exclude a solicitor must be in a position to satisfy the court the decision was properly made. In order to do this they may need to witness what is happening.

6F If an officer of at least inspector rank considers a particular solicitor or firm of solicitors is persistently sending probationary representatives who are unsuited to provide legal advice, they should inform an officer of at least superintendent rank, who may wish to take the matter up with the Law Society.

6G Subject to the constraints of Annex B, a solicitor may advise more than one client in an investigation if they wish. Any question of a conflict of interest is for the solicitor under their professional code of conduct. If, however, waiting for a solicitor to give advice to one client may lead to unreasonable delay to the interview with another, the provisions of paragraph 6.6(b) may apply.

6H In addition to a poster in English, a poster or posters containing translations into Welsh, the main minority ethnic languages and the principal European languages should be displayed wherever they are likely to be helpful and it is practicable to do so

6I Paragraph 6.6(d) requires the authorisation of an officer of inspector rank or above to the continuation of an interview when a detainee who wanted legal advice changes their mind. It is permissible for such authorisation to be given over the telephone, if the authorising officer is able to satisfy themselves about the reason for the detainee's change of mind and is satisfied it is proper to continue the interview in those circumstances.

6J Whenever a detainee exercises their right to legal advice by consulting or communicating with a solicitor, they must be allowed to do so in private. This right to consult or communicate in private is fundamental. If the requirement for privacy is compromised because what is said or written by the detainee or solicitor for the purpose of giving and receiving legal advice is overheard, listened to, or read by others without the informed consent of the detainee, the right will effectively have been denied. When a detainee chooses to speak to a solicitor on the telephone, they should be allowed to do so in private unless this is impractical because of the design and layout of the custody area or the location of telephones. However, the normal expectation should be that facilities will be available, unless they are being used, at all police stations to enable detainees to speak in private to a solicitor either face to face or over the telephone.

6K A detainee is not obliged to give reasons for declining legal advice and should not be pressed to do so.