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RESEARCH FINDINGS No. 62

SUSPECTS IN POLICE CUSTODY AND THE REVISED PACE CODES OF PRACTICE

Tom Bucke and David Brown

The Police and Criminal Evidence Act 1984 (PACE) requires the issuing of five Codes of Practice which outline police powers and explain how they should be exercised. Revisions to the Codes of Practice were introduced in April 1995 partly to reflect new provisions in the Criminal Justice and Public Order Act on right of silence and bail. The findings reported here examine the impact of the revisions, and other related changes, on suspects in police custody.

KEY POINTS

- Attempts to improve the quality of legal advice given at police stations and related changes in the Codes of Practice have led to a decline in the use of unqualified 'legal representatives'. A corresponding rise occurred in the number of solicitors giving advice and the introduction of 'accredited representatives'.
- There was a significant reduction in the use of the right of silence in police interviews. This reduction applied to both the number of suspects giving complete 'no comment' interviews and those who refused to answer questions on a selective basis.
- 'Special warnings' were given to 7% of suspects when they failed to answer questions about certain incriminating circumstances, such as their presence at the scene of a crime.
- Non-intimate samples were taken for forensic analysis in 7% of cases, mainly for offences involving violence against the person, sexual offences or burglary. Intimate samples were taken in less than 1% of cases, usually in serious offences such as murder, rape and robbery.
- The new police power to attach conditions to bail had limited impact on the proportion of suspects detained after charge. Instead, conditions were mainly placed on those suspects who would in the past have been bailed unconditionally.

BACKGROUND

Suspects' rights and police powers in relation to criminal investigations are regulated by the Police and Criminal Evidence Act 1984 (PACE). The Act and the accompanying Codes of Practice set out police powers and procedures in the investigation of crime up to the point of charge. Revisions to the Codes of Practice were introduced in April 1995 to take account of the Criminal Justice and Public Order Act (CJPOA) 1994, the recommendations of the Royal Commission on Criminal Justice (RCCJ) and other related developments. The impact of these and other changes were examined in a research project involving:

- observation in police station custody areas
- a survey of investigating officers
- analysis of custody records.

Table 1
Suspects' use of the right of silence by study

Study	Refused all questions	Refused some questions	Answered all questions
Phillips and Brown	10%	13%	77%
Current study	6%	10%	84%

LEGAL ADVICE

Suspects in police custody have a right to free legal advice (received by 34%). Of those receiving advice, 60% consulted their own legal adviser and 40% consulted a duty solicitor. The RCCJ criticised the standard of legal advice given to suspects, particularly the use of unqualified solicitors known as 'legal representatives'. Following this, the Law Society introduced a scheme which 'accredited' representatives who passed a series of tests. They are then given similar rights of access to suspects as qualified solicitors.

At police stations, consultations were with:

- accredited representatives (10%)
- solicitors (84%)
- unaccredited representatives (6%).

Comparisons can be made with a similar study (Phillips and Brown, forthcoming) conducted before the reforms. Their study estimated that before the accreditation scheme, legal representatives gave advice in about a quarter of cases. These figures suggest a decline in the use of such representatives against a rise in solicitors attending police stations and the introduction of accredited representatives. This tendency was even more marked when a suspect's own legal adviser was requested. Such shifts are of significance since changes concerning the right of silence mean that suspects interviewed by the police may increasingly feel the need for expert advice.

THE RIGHT OF SILENCE

After a long and heated debate the right of silence was revised by the CJPOA. Courts are now allowed to draw such inferences as 'appear proper' from a person's use of the right of silence during police interviews. Inferences can be drawn when:

- a defendant uses a defence in court which they failed to mention earlier when questioned or charged by the police
- a defendant aged 14 years or over refuses to give evidence at trial
- a suspect, once given a special warning, fails to account for certain evidence.

Suspects' current use of the right of silence during police questioning was compared with findings from Phillips and Brown's study. Table 1 gives figures from each study and indicates a reduction in suspects refusing all questions from officers, and those selectively answering questions. There has been a corresponding rise in suspects answering all questions. This reduction in the use of the right of silence occurred across all police stations included in these two studies.

Reductions in the use of silence were found to be greatest among suspects receiving legal advice. This may be a result of legal advisers warning their clients about the consequences of remaining silent under the new provisions. However, these changes do not mean that suspects were more likely to confess. There was relatively little change in the proportion of suspects making confessions before and after the reforms (Phillips and Brown: 55%; current research: 58%).

Special warnings can be given when suspects refuse to account for incriminating objects, marks or substances (s36 special warning), or for their presence at a particular place (s37 special warning). Such warnings were given to 39% of suspects exercising silence (7% of all suspects interviewed). Table 2 shows that, having been given a special warning, a majority of suspects either refused to provide an account or gave one which was considered unsatisfactory by officers. Only in a relatively small proportion of cases did a special warning result in a satisfactory account being given.

Suspects' failure to provide an account in response to 'special warnings' may have significance for the

Table 2
Results of s36 and s37 special warnings

	No account given	Unsatisfactory account given	Satisfactory account given
Accounting for marks, objects, substances (s36 special warning)	70%	11%	19%
Accounting for presence at scene (s37 special warning)	77%	10%	13%

later prosecution of the case since inferences may be drawn by the court.

NON-INTIMATE AND INTIMATE SAMPLES

Non-intimate and intimate samples are taken from suspects for forensic analysis, including DNA profiling. The CJPOA greatly expanded the opportunities for taking both non-intimate and intimate samples. The main reason for this development is to build-up a DNA database.

Non-intimate samples

Non-intimate samples can be taken without a suspect's consent, if authorised by a superintendent to ascertain involvement in an offence, or if the suspect has been charged with a recordable offence. They are defined by the Codes of Practice to include:

- hair (other than pubic hair)
- samples taken from a nail or from under a nail
- swabs from any part of the body including the mouth (but no other body orifice)
- saliva
- footprints or similar impressions of a body (except from the hand).

Non-intimate samples were taken from 7% of suspects. They were arrested for a wide range of offences, including theft, criminal damage, drugs and public disorder. Figure 1 shows that samples were most likely to be taken for sexual offences, violence, burglary and robbery. This concentration of sampling would suggest that police forces are following advice from the Home Office and Association of Chief Police Officers to focus on offences against the person, sexual offences and burglaries. The sampling in respect of other offences may be due to officers taking specimens from those suspected of crimes in the designated categories, even if they had been arrested for another type of offence.

Figure 1 Non-intimate samples taken within each offence group

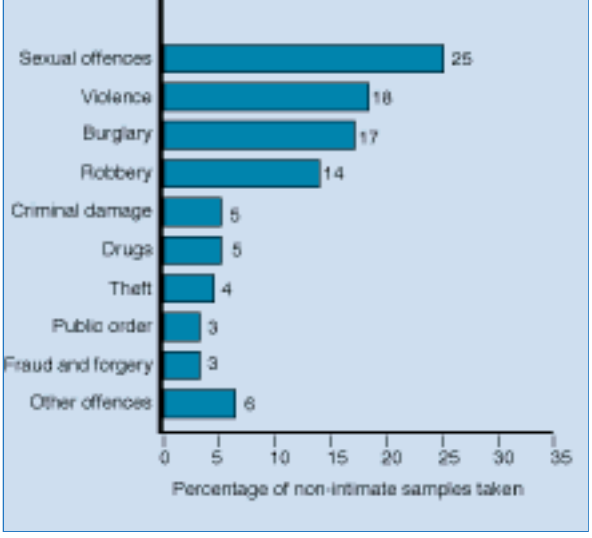
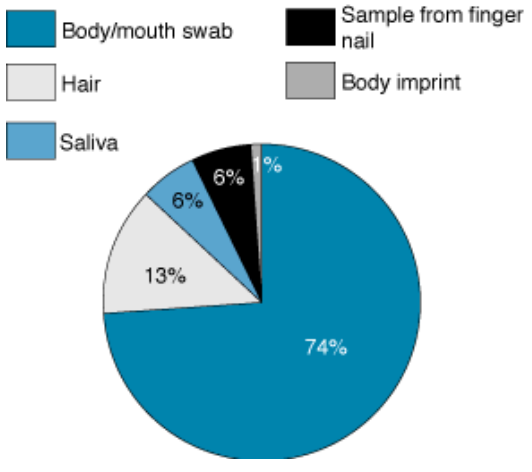


Figure 2 Type of non-intimate sample taken



Just over half of suspects gave their consent to a non-intimate sample. Figure 2 shows what kind of sample was taken, with mouth swabs being far the most common. This was because only two mouth swabs are required for a non-intimate sample, compared to ten separate hairs. Custody officers therefore viewed mouth swabs as an easier and less painful way of sampling, despite hair, when plucked by the root, being better for DNA analysis. The majority of non-intimate samples (82%) were taken to provide a record after the suspect had been charged. These samples are used to build up the national DNA database but are destroyed if the person is not convicted. A much smaller proportion of samples (18%) were taken in order to ascertain a suspect's involvement in an offence.

Intimate samples

The Codes of Practice definition includes:

- dental impressions
- samples of blood, semen or other tissue fluid
- urine
- pubic hair
- swabs taken from a person's body orifice other than the mouth.

These were taken rarely – well under 1% of all suspects provided such samples. They were taken in cases involving serious crimes against the person such as murder, rape and robbery. Blood was the sample taken in the vast majority of cases.

BAIL WITH CONDITIONS

In the past, custody officers unwilling to grant bail to someone charged with an offence would detain that person in custody and then bring them before court where bail might be granted, often with conditions attached. In an attempt to save court time and cut down on overnight remand prisoners, the CJPOA gave the police the power to place conditions on bail.

Of those charged in the study, the outcome was:

- bailed with conditions (17%)
- bailed unconditionally (63%)
- detained for court (20%).

Bail with conditions was most likely to be granted in cases involving violence against the person and sexual offences such as threats/conspiracy to murder, grievous bodily harm, actual bodily harm, common assault and indecent assault. It was least likely to be used in drug and motoring cases. Multiple reasons could be given for attaching conditions to bail. The most common reasons were that custody officers believed the suspect might:

- offend again (67%)
- interfere with justice by contacting witnesses or the victim (54%)
- fail to appear at court at the end of the bail period (13%).

The conditions attached to bail varied according to the type of offence. The most common conditions were to:

- not contact named individuals (e.g. victims, witnesses)
- keep away from named places (e.g. local town centre, a victim's address).

Conditions used less often included:

- keeping a curfew between specific hours
- reporting to the local police station
- residing at a specific address.

However, the use of bail with conditions does not appear to have reduced the proportion of suspects detained after charge substantially. In the current study, 20% of those charged were detained while in Phillips and Brown's study prior to the new legislation the figure was 22%. Instead of being used for people who would have been detained in the past, bail with conditions appears to be applied to those who before the new powers would have been charged and unconditionally released. Police officers appear cautious about taking on the extra responsibility of granting bail where there is a possibility of breach or reoffending, and in such cases the responsibility for bail is deferred to magistrates the next day.

METHODOLOGICAL NOTE

Observation was conducted in the custody areas of 13 police stations with observers present every day between the hours of 0900 and midnight for a period of three weeks. A total of 3,950 detainees passed through police custody during the observation period. A self-completion questionnaire was also given to the police officer responsible for each case in the observation sample, and 12,500 custody records were analysed from 25 police stations (500 custody records at each station). The fieldwork period ran from the middle of August 1995 until the end of February 1996.

REFERENCES

PHILLIPS, C. and BROWN, D., with the assistance of Goodrich, P. and James, Z. (forthcoming). *Entry into the Criminal Justice System: a survey of police arrests and their outcomes*. Home Office Research and Statistics Directorate Report. London: Home Office.

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For a more detailed report on the above findings and other related areas see *In police custody: police powers and suspects' rights under the revised PACE codes of practice* by Tom Bucke and David Brown, Home Office Research Study No. 174. London: Home Office. Available from Information and Publications Group (address below).

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