

## **PACE 1984 - Code C 10 Caution & Special Warnings**

### **When a caution must be given**

10.1 A person whom there are grounds to suspect of an offence, see Note 10A, must be cautioned before any questions about an offence, or further questions if the answers provide the grounds for suspicion, are put to them if either the suspect's answers or silence, (i.e. failure or refusal to answer or answer satisfactorily) may be given in evidence to a court in a prosecution. A person need not be cautioned if questions are for other necessary purposes, e.g.:

- (a) solely to establish their identity or ownership of any vehicle;
- (b) to obtain information in accordance with any relevant statutory requirement, see paragraph 10.9;
- (c) in furtherance of the proper and effective conduct of a search, e.g. to determine the need to search in the exercise of powers of stop and search or to seek co-operation while carrying out a search; or
- (d) to seek verification of a written record as in paragraph 11.13.
- (e) Not used.

10.2 Whenever a person not under arrest is initially cautioned, or reminded they are under caution, that person must at the same time be told they are not under arrest and informed of the provisions of paragraph 3.21 which explain how they may obtain legal advice according to whether they are at a police station or elsewhere. See Note 10C.

10.3 A person who is arrested, or further arrested, must be informed at the time if practicable or, if not, as soon as it becomes practicable thereafter, that they are under arrest and of the grounds and reasons for their arrest, see paragraph 3.4, Note 10B and Code G, paragraphs 2.2 and 4.3.

10.4 As required by Code G, section 3, a person who is arrested, or further arrested, must also be cautioned unless:

- (a) it is impracticable to do so by reason of their condition or behaviour at the time;
- (b) they have already been cautioned immediately prior to arrest as in paragraph 10.1.

**Terms of the cautions**

10.5 The caution which must be given on:

(a) arrest; or

(b) all other occasions before a person is charged or informed they may be prosecuted; see section 16, should, unless the restriction on drawing adverse inferences from silence applies, see Annex C, be in the following terms:

*“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.”*

See Note 10G

10.6 Annex C, paragraph 2 sets out the alternative terms of the caution to be used when the restriction on drawing adverse inferences from silence applies.

10.7 Minor deviations from the words of any caution given in accordance with this Code do not constitute a breach of this Code, provided the sense of the relevant caution is preserved. See Note 10D.

10.8 After any break in questioning under caution, the person being questioned must be made aware they remain under caution. If there is any doubt the relevant caution should be given again in full when the interview resumes. See Note 10E.

10.9 When, despite being cautioned, a person fails to co-operate or to answer particular questions which may affect their immediate treatment, the person should be informed of any relevant consequences and that those consequences are not affected by the caution. Examples are when a person's refusal to provide:

(c) their name and address when charged may make them liable to detention; particulars and information in accordance with a statutory requirement, e.g. under the Road Traffic Act 1988, may amount to an offence or may make the person liable to a further arrest.

**Special warnings under the Criminal Justice and Public Order Act 1994, sections 36 and 37**

10.10 When a suspect interviewed at a police station or authorised place of detention after arrest fails or refuses to answer certain questions, or to answer satisfactorily, after due warning, see Note 10F, a court or jury may draw such inferences as appear proper under the Criminal Justice and Public Order Act 1994, sections 36 and 37. Such inferences may only be drawn when:

(a) the restriction on drawing adverse inferences from silence, see Annex C, does not apply; and

(b) the suspect is arrested by a constable and fails or refuses to account for any objects, marks or substances, or marks on such objects found:

- on their person;
- in or on their clothing or footwear;
- otherwise in their possession; or
- in the place they were arrested;

(c) the arrested suspect was found by a constable at a place at or about the time the offence for which that officer has arrested them is alleged to have been committed, and the suspect fails or refuses to account for their presence there.

When the restriction on drawing adverse inferences from silence applies, the suspect may still be asked to account for any of the matters in (b) or (c) but the special warning described in paragraph 10.11 will not apply and must not be given.

10.11 For an inference to be drawn when a suspect fails or refuses to answer a question about one of these matters or to answer it satisfactorily, the suspect must first be told in ordinary language:

- what offence is being investigated;
- what fact they are being asked to account for;
- this fact may be due to them taking part in the commission of the offence;
- a court may draw a proper inference if they fail or refuse to account for this fact; and
- a record is being made of the interview and it may be given in evidence if they are brought to trial.

(d) Juveniles and persons who are mentally disordered or otherwise mentally vulnerable

10.11A The information required in paragraph 10.11 must not be given to a suspect who is a juvenile or who is mentally disordered or otherwise mentally vulnerable unless the appropriate adult is present.

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10.12 If a juvenile or a person who is mentally disordered or otherwise mentally vulnerable is cautioned in the absence of the appropriate adult, the caution must be repeated in the adult's presence.

10.12A Paragraph 1.5A extends the requirements in paragraphs 10.11A and 10.12 to 17-year-old detainees.

(e) Documentation

10.13 A record shall be made when a caution is given under this section, either in the interviewer's pocket book or in the interview record.

### **Notes for Guidance**

10A There must be some reasonable, objective grounds for the suspicion, based on known facts or information which are relevant to the likelihood the offence has been committed and the person to be questioned committed it.

10B An arrested person must be given sufficient information to enable them to understand that they have been deprived of their liberty and the reason they have been arrested, e.g. when a person is arrested on suspicion of committing an offence they must be informed of the suspected offence's nature, when and where it was committed. The suspect must also be informed of the reason or reasons why the arrest is considered necessary. Vague or technical language should be avoided.

10C The restriction on drawing inferences from silence, see Annex C, paragraph 1, does not apply to a person who has not been detained and who therefore cannot be prevented from seeking legal advice if they want, see paragraph 3.21.

10D If it appears a person does not understand the caution, the person giving it should explain it in their own words.

10E It may be necessary to show to the court that nothing occurred during an interview break or between interviews which influenced the suspect's recorded evidence. After a break in an interview or at the beginning of a subsequent interview, the interviewing officer should summarise the reason for the break and confirm this with the suspect.

10F The Criminal Justice and Public Order Act 1994, sections 36 and 37 apply only to suspects who have been arrested by a constable or an officer of Revenue and Customs and are given the relevant warning by the police or Revenue and Customs officer who made the arrest or who is investigating the offence. They do not apply to any interviews with suspects who have not been arrested.

10G Nothing in this Code requires a caution to be given or repeated when informing a person not under arrest they may be prosecuted for an offence. However, a court will not be able to draw any inferences under the Criminal Justice and Public Order Act 1994, section 34, if the person was not cautioned.