



Peter Adamson
SCOTSS Chairman
Trading Standards Manager
Moray Council
PO Box 6760
Elgin

Telephone: 07595873122
E-Mail: chairman@scotss.org

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Karen Aitken
Senior Procurator Fiscal Depute
Policy and Engagement
Crown Office

karen.aitken@copfs.gsi.gov.uk

Dear Karen

**Criminal Procedure (Scotland) Act 2016
Codes of Practice on the Questioning and Recording of Questioning... etc.**

The Society of Chief Officers of Trading Standards in Scotland is the professional body representing the lead officers for trading standards services in Scottish local authorities, and I welcome the opportunity to respond to your consultation on the above codes of practice.

In general terms the codes are useful and should help officers understand the requirements and issues flowing from the Criminal Justice (Scotland) Act 2016 and the questioning and recording of questioning of suspected persons.

We have read through the two codes of practice and have a few points to make on the "Questioning" Code, some of which are really queries. I hope this is helpful and that the issues identified are clear, however please let me know if you would like to discuss any of the points made.

1. In the Code, paragraphs 1.13 - 1.17 make it clear that the intention is that the code will apply, where appropriate, to Specialist Reporting Agencies (SRAs), indeed there is reference to SRAs at paragraph 1.8 however I wondered if reference to its applicability should not have been included earlier in the text. Perhaps it could be referred to in paragraph 1.2 where there is discussion of the 'Public Sector Duty' under the Equality Act 2010?
2. Paragraph 1.5 states that a copy of the Code must be available online and at all premises where a suspect may be interviewed. Therefore, is there an expectation that enforcement officers will carry a copy of the code when

operating in the field, so that "street" interviews can take place or is the more literal interpretation of "at all premises" mean that that would not be required?

3. There is a similar issue in paragraph 1.8 where the code states "the interview should take place at another suitable location where the suspect's rights can be protected" the question being does this preclude an officer conducting an interview either in the interviewee's premises or in the street?
4. Throughout the Code there are a number of references to police constable ranks, where special authorisation is required. Paragraph 1.15 and 1.17 highlight the need for SRAs to have equivalent ranks and for certain matters, that the person be unconnected with the investigation. We fully understand the need to separate the review or decision making from the investigation, however this may cause some issues in some local authorities and will certainly require every authority to "appoint" people at the appropriate level to give consent to certain matters. An example of the need for the equivalent officer is given in paragraph 2.8 (constable of at least the rank of inspector) where s/he must consider whether or not a suspect should be interviewed without a solicitor being present.
5. The foot note (29) for 4.1 refers to Chapter X which I believe should be Chapter 3.
6. Chapter 4 relates to vulnerable suspects, the purpose being to ensure that interviewers and questioning takes account of that condition. One of those protections is to provide an 'Appropriate Adult' to assist in communication although they may not advise the suspect on how or whether to answer questions, as these are the functions of a solicitor. Given the Appropriate Adult is provided to assist with communication I wondered about the provision at paragraph 4.18 which states that the Appropriate Adult should not be present during a private consultation between the vulnerable suspect and their solicitor? I would have thought that depending on the circumstances it may be helpful for the Appropriate Adult to be present.
7. In paragraphs 4.19 and 4.22 reference is made to the Appropriate Adult giving a statement which will be forwarded to the Procurator Fiscal however no detail is given about what that statement should cover.
8. The provision of interpreters is covered by Chapter 5 and in paragraph 5.12 it states that the interpreter should not be an employee of the police or the investigating SRA. My question therefore is whether we look upon the SRA as the local authority or as the enforcement section. In practical terms some of our members have authorised the use of interpreters on a number of occasions and sourced these through their own councils' interpreting service, however they are not connected with them and they are outside the control of the trading standard service. In the future however, depending on the interpretation, services may have to employ an interpreter who was not part of the council.

9. The interview and caution are covered in Chapter 6. In particular, paragraph 6.19 (referring back to 6.18) which states that "after each sentence in the caution, the suspect should be asked "Do you understand?" Is the Code suggesting that we really ask the suspect "Do you understand?" 5 times?
10. In paragraph 6.23, in the penultimate sentence, the final clause, I believe, is missing a word; the interview may take place (in) their cell.
11. Chapter 7 covers interview records and will cause a significant change for some SRAs in that at footnote 34 (relating to paragraph 7.11) it states; "However, SRAs need only audio record the relevant interviews, unless they have access to the necessary equipment to make audio-visual recording." And at paragraph 7.14 it is made clear that interviews in relation to offences which are likely to be prosecuted on indictment should be audio or audio-visually recorded. The exception to that (7.16) again is an illustration of point made earlier about "equivalent ranks". The need to record interviews may have cost implications for authorities particularly when read in conjunction with the subsequent paragraphs in Chapter 7.
12. Appendix A outlines the processes for contacting a solicitor and particularly the Solicitor Contact Line operated by the Scottish Legal Aid Board. However, the Code does not actually provide the contact number which I think would be helpful particularly for SRAs who may be less familiar with making arrangements for a solicitor.

I hope this is helpful, and if you wish to discuss further in relation to these or any other matters, please do not hesitate to contact me. Please feel free to publish our response if appropriate.

Yours faithfully

Peter Adamson
Chairman SCOTSS

The Society of Chief Officers of Trading Standards in Scotland (SCOTSS), is a Scottish Charitable Incorporated Organisation (SC047951). Our members are professional trading standards managers representing every Scottish local authority trading standards service.