

# Police Station and the Crown Court Webinar

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# Presenters

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Former Solicitor, former Higher Courts Advocate.

This contents of this lecture are based on my own experience of attending the police station, and being briefed in trials where inferences are often drawn.

Having spent 20 years at the “Coal Face”, I know only too well, the difficulties which solicitors and police station representatives face.

# Agenda

- Welcome and Introduction
- This lecture is intended to be a brief walk through the difficulties that can be caused when the client has been advised at the Police Station. It is not intended to be a criticism of those who undertake what is probably the most important part of representing the client when they are at the most vulnerable. Having been a Solicitor, and a H.C.A for many years, and having represented those at the Police Station, I know too well, how difficult it can be.
- The Purpose of this lecture is to try to avoid pitfalls when a case is to be tried, both in the Magistrates Court, and the Crown Court, and hopefully it will assist in case management going forward.
- This is not intended to be a lecture on Peer Review, or Legal Aid Authority Contracts, Lexcel or Specialist Quality Mark.

As I stated at the outset, the most important part of beginning to defend a client at his or her trial, begins its life at the Police Station, and it is here where important decisions have to be made by those who represent the vulnerable, as to how to deal with the interview.

It is not unusual for interviews to take place overnight, when often the defendant is tired, perhaps withdrawing from drugs or alcohol, and the client is either disorientated or anxious to leave the police station.

In cases such as these, a copy of the custody record is vital, and it should be made available to the trial advocate, this may be the starting point to avoid inferences which the Court may be asked to draw when the defendant does not come up to proof.

We know that the client is entitled, under the Police and Criminal Evidence Act, to 8 hours rest, preferably overnight. When someone has just been woken up for an interview, this should be noted, and it would be preferable to have a brief statement from the Police Station attendee as to the demeanour of the client, any objections made to the custody sergeant, and a copy of those objections on the custody record, or followed up by an e mail.

Why is this important?

Often, an interview is the one and only opportunity that a client has to get his or her version of events on record, one chance to get it right. Any variations given in evidence will be highlighted both by the Prosecutor, and often the Judge or Magistrates.

A weapon in the armoury of the trial advocate is a copy of the custody record, and e mails which can be put to the Officer in the Case, or as agreed facts. Points can be raised in closing speeches, can be dealt with by amended directions in the Judges "Route to Verdict, and should be.

The same principle applies to a "No Comment" interview. Time and again, the Prosecutor will ask, "Why didn't you say this in your interview"

The standard reply, "On legal advice", or more recently in a case in which I was defending, "My Solicitor told me that this was an explanation case".

We all know, far too well, there are many reasons for a no comment interview, and guilt is not the sole reason. However, at trial, the inference that the Jury is asked to draw is always adverse. It is important to deflect this assertion at trial. "I was tired, I was withdrawing, the disclosure given was an ambush, I was not well. Anything that can be used to deflect an adverse inference is helpful.

My own personal preference is a pre-prepared statement, brief but setting out the defence, eg, "I was in the area, I was not involved in this offence, I did not assault anybody at all, I have nothing more to add, and so will not answer any further questions, as is my right"

## Disclosure at the Police Station

When disclosure is given at the police station, it is helpful for the trial advocate to have a copy.

Disclosure is often inadequate, and sadly, often misleading. The interviewing officer, or the Officer in Charge of the case often offer gems in cross examination. Again, a recent case, my client was arrested for a slave trafficking offence, and using “red deisal”! His interview was solely based on a tenancy taken out in a false name. It was therefore not surprising to discover that he was confused in interview, and his confusion spilled over at trial.

There are points to be made, submissions to help if this information is provided

There are cases where the client, during cross-examination will say, “I said no comment because my solicitor told me to”. Privilege can be waived, and the advising Solicitor can be cross examined in Court. A brief note, or a copy of the advice given at the police station is priceless. It enables robust advice to be given without the situation backfiring on those who provide advice at the police station

Bad Character is a trap awaiting those who advise at police stations. Character and credibility can be lost in seconds.

“I was going to meet my dealer”

He/She is a liar I would never do a thing to hurt my kids

There are many comments which are unhelpful, and it is my preference to use a pro forma warning the client of the trap which he or she can fall into. It is my preference to have the client go through the pro forma, and sign a copy. This is an insurance policy for the future. However agitated a client is, at the police station, in your office, or in Court, they have been warned about their behaviour. You can do no more.

Pre Charge Protocol and engagement is already here.

As of the 21<sup>st</sup> December 2021, there should be engagement by solicitors, and this engagement begins at the police station. If you do not engage, and the police fail to investigate, this will inevitably fall at the door of the Solicitor.

If your client has been arrested on suspicion of rape, and either upon advice, or by choice, he gives a no comment interview, you will still be expected to engage with the protocol

This lecture was intended to highlight issues which trial advocates often face, it is not intended as a criticism, but to highlight the importance of police station representation and where small adjustments can make all the difference.

So what should you do?

You should draft requirements in a written form, after receiving instructions. If there is cctv which will assist your client, cell site evidence, messages on your clients, or the alleged aggrieveds mobile phone, facebook, Instagram, you must state what is required.

If the police then fail to investigate, you have an endorsement which should be read out at the conclusion of the interview, a copy should be handed to the interviewing officer, and an e mail follow up where possible. If there is a failure to investigate, that falls on the police. If there is a failure to communicate, that falls on the Solicitor

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