

RESEARCH FINDINGS No. 49

PACE TEN YEARS ON: A REVIEW OF RESEARCH

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This review examines the considerable body of research now available on the operation of the Police and Criminal Evidence Act 1984 (PACE). It was originally undertaken to assist the Royal Commission on Criminal Justice with its assessment of pre-trial procedures. Subsequently, the review was updated to take account of a range of more recent research, including studies undertaken for the Royal Commission itself.

KEY POINTS

- ▶ The powers to stop and search pedestrians or vehicles and to enter and search premises are widely used. The main difficulties have concerned the definition of reasonable suspicion for use of these powers and the status of searches with consent.
- ▶ Custody officers usually ensure that suspects are aware of their basic rights and receive medical treatment when needed, but rarely make detailed enquiries into the grounds for detention.
- ▶ PACE has led to at least a doubling in demand for legal advice among suspects. However, the quality of service provided by advisers is patchy.
- ▶ Unacceptable tactics to secure confessions have declined and suspects are safeguarded by the tape-recording of police station interviews.
- ▶ Up to 60% of suspects provide confessions; however, over 20% refuse to answer some or all police questions.
- ▶ The 'appropriate adult' provisions provide an important safeguard for vulnerable groups, but have raised concerns about the competence of those performing this role and the difficulties of identifying those at risk.
- ▶ Changes to the police complaints system have raised public awareness of the independent element in the procedure, while the introduction of police community consultative groups has provided the public with an increasing say about policing in their local areas.

BACKGROUND TO THE REVIEW

The Royal Commission on Criminal Procedure, reporting in 1981, recommended systematic reform of the criminal investigative process. It stressed the importance of striking a satisfactory balance between the powers and duties of the police on the one hand and the rights and duties of suspects on the other.

The law should also meet basic criteria of fairness, openness and workability. PACE was the direct result of the Royal Commission's report and laid down a statutory framework for the criminal investigation process.

In 1991, following a number of well-publicised miscarriages of justice, the criminal process once again came under scrutiny from the Royal Commission on Criminal Justice (RCCJ). The RCCJ's remit included aspects of the working of PACE, covering as it did the conduct and supervision of police investigations, the right of silence and access by those accused to legal advice. Since the introduction of PACE, there have been various studies which cast some light on these and other aspects of the Act. The Home Office's Research and Planning Unit (as it then was) was asked to carry out a review of relevant

research in order to help the RCCJ take stock of PACE. On completion this was made available to the Commission. At the same time, the RCCJ funded research of its own in areas where there were gaps in knowledge. This is available in published form as a series of research studies. However, it was felt that it would be useful to include this material in the Home Office review, which was therefore updated after the RCCJ had reported, to take account of their studies, as well as various more recently completed studies not sponsored by them. The main points of the review are summarised here.

STOP AND SEARCH

PACE introduced a general power to stop and search persons or vehicles for stolen or prohibited articles. Among the safeguards for the suspect were: the criterion of reasonable suspicion; recording requirements; and the obligation to inform those stopped of the reasons for police action. Code of Practice A (one of five issued in conjunction with the Act) laid down detailed guidance on the exercise of these powers.

Findings

Research and statistical data show that the stop and search powers have been used increasingly since their introduction, although level of use varies widely between police forces, with the Metropolitan Police being the most extensive user. Looking at the 'success' of searches in terms of the proportion producing arrests, effectiveness has gradually declined: currently, one in eight results in arrest. Around two-thirds of those arrested are eventually charged or cautioned.

The research calls in question whether the police always carry out stops based on reasonable suspicion, but notes that providing a satisfactory working definition of reasonable suspicion itself creates difficulties. While many searches are carried out with consent, it is doubtful whether this is often fully informed. In some areas, Afro-Caribbeans are more likely to be stopped than white people or Asians, although studies have not found clear-cut and consistent evidence of discrimination. Some of the discrepancy is accounted for by differences in the age and class structure of the black and white populations. Afro-Caribbeans are more likely to be subject to repeated stops than white people.

ENTRY, SEARCH AND SEIZURE

PACE put on a statutory basis and supplemented police powers to enter and search premises and to seize evidence. Safeguards relate to the level of suspicion required, the need for a senior officer's authorisation, record-keeping and the provision of reasons. Guidance on the operation of these powers is contained in PACE Code of Practice B.

Findings

Research shows that the new entry, search and seizure powers are being frequently used, while searches on a magistrate's warrant have declined. As with stop and

search, it is doubtful whether the standard of reasonable suspicion is always reached. Also, it is not always clear whether a search is being carried out with the suspect's consent or under the statutory powers. About half of searches under the new powers lead to the seizure of property (usually stolen goods). About half of those whose premises are searched are happy with the conduct of the search. Main complaints are that officers do not identify themselves or specify the power they are exercising.

The police have new powers of access to personal information relating to a serious offence, which is innocently held in confidence by a third party. They have found these powers valuable and applications to the courts for their exercise are usually soundly prepared. However, compliance with production orders can present problems where there is a large volume of data or where data are stored on computer.

ARREST AND DETENTION

PACE rationalises arrest powers and again lays down the standard of reasonable suspicion. In the case of less serious offences, arrests may only be made where service of a summons is impracticable. Detention of suspects in police custody is only permissible where necessary to secure or preserve evidence or obtain evidence by questioning. Custody officers, who are independent from the investigation, decide on the necessity for detention and look after the suspect's welfare. There is an upper limit of 24 hours on detention without charge, other than in a limited group of 'serious arrestable offences'. The need for detention to continue is reviewed by officers of inspector rank at specified intervals. Code of Practice C governs the operation of the detention provisions (and those on the treatment and questioning of suspects).

Findings

There are grounds for believing that the level of pre-arrest evidence has improved. Arrest rather than summons continues to be the preferred means of dealing with suspects. Custody officers show considerable independence in the way they carry out their job although practical constraints limit their examination of the evidence against the suspect when considering whether to authorise detention. They often call in the police surgeon where they have any concern about the suspect's well-being. The time suspects spend in police custody has reduced in serious cases, without apparently generating major difficulties for investigating officers. In less serious cases, suspects are spending longer in custody, due to waits for solicitors and appropriate adults.

LEGAL ADVICE AND OUTSIDE CONTACT

PACE provides suspects with a statutory right to legal advice and to have someone informed of their detention. If legal advice is requested, the suspect may not be interviewed until it has been received. Advice is free and, if the suspect does not have a solicitor, one will be provided under a new duty solicitor scheme.

Findings

Almost all suspects are told about these rights by custody officers – although this is not always done clearly – and are given written information. Consequently, most suspects are aware of their basic rights although there is some confusion about the detail. One-fifth of suspects ask to have someone informed of their arrest.

The proportion of suspects requesting legal advice has continued to rise since PACE was introduced and currently is around 38%. Increasing awareness both of the right to advice and that advice is free explains some of the increase. However, demand varies considerably between stations and the way in which the right is conveyed by custody officers may account for some of this fluctuation. Of those who request advice, around 80% receive it; the remainder of requests are cancelled or not taken forward for various reasons. Hardly any requests are formally delayed.

Doubts have been raised about the quality of advice given by legal advisers. For example:

- in around a third of legal advice cases, advice is given by telephone only
- much advice is given by solicitors' representatives rather than qualified solicitors
- pre-interview consultations with clients and with officers are usually brief, and
- during interviews advisers seldom intervene, even where questioning is oppressive.

INTERVIEWS AND THE RIGHT OF SILENCE

PACE requires accurate records to be made of police interviews with suspects. When the Act was first introduced this was to be achieved through the taking of contemporaneous notes but provision was made for the later introduction of tape-recording. This is now universally in place. Interviews other than at the police station can be conducted only in very limited circumstances. PACE made no alteration to the suspect's right of silence (although the Criminal Justice and Public Order Act 1994, the effect of which is not reflected in this review, now allows inferences to be drawn from silence in certain circumstances). The wording and timing of the caution are specified in Code of Practice C.

Findings

PACE has led to a reduction in the frequency of interviews and use of unacceptable interview tactics. However, the confession rate has changed little, remaining at around 60%. Some forms of questioning raise concerns about the potential for false confessions and identifying those most prone to make such confessions continues to be problematic. Little supervision or monitoring of interviews occurs, despite the ready availability to supervisors of interview tapes, and cultural barriers have largely been blamed for this. Some unregulated interviewing continues to occur outside the interview room, either on the way to the station or in

police cells. Audio-taping has reduced disputes in court about what was said in interviews, as well as stimulating the flow of questioning. However, summaries of interviews, which are used by the Crown Prosecution Service to prepare and conduct the prosecution, have often been found to be of poor quality. Using civilian summarisers has proved to be a way of resolving this problem.

Over 20% of suspects refuse to answer some or all questions during interviews, although the figure is higher for serious offences and among those with previous convictions. Legally advised suspects are far more likely to remain silent, although only a minority do so as a direct result of that advice.

SUSPECTS AT RISK

Special provisions apply to those at risk, chiefly juveniles and the mentally disordered or mentally handicapped. The main safeguard is that the custody officer must secure the attendance of an 'appropriate adult' and the suspect must not be interviewed without them present.

Findings

One-fifth of suspects are juveniles. Parents usually act as appropriate adults, but social workers attend in around one-third of cases. Doubts have been cast on the effectiveness of both groups. Both parents and social workers may know little about police procedures, while parents are often distraught at their child's arrest. Neither play a significant part in police interviews. Juveniles are less likely than adults to be given full information about their rights and are less likely to seek legal advice. They are more likely than adults to provide confessions.

Those treated as mentally disordered or mentally handicapped comprise only around two per cent of detainees, but studies estimate that far more should probably be treated as at risk. Around a third have not been arrested for an offence but brought to the police station as a place of safety. Custody officers tend often to follow the police surgeon's advice in deciding whether to call an 'appropriate adult', who will usually be a mental health or social work professional. The adult's task presents various difficulties, including the confusion that may arise between their role under PACE and that of making an assessment under the Mental Health Act. There is a particular risk of interviews with mentally handicapped suspects producing unreliable evidence and the passivity of 'appropriate adults' during interviews suggests that they do not provide an adequate safeguard against this danger.

SUPERVISION AND ACCOUNTABILITY

Various PACE provisions (e.g. the requirement to keep a custody record of the suspect's detention) enhance the reviewability of police actions and certain key powers (such as delaying access to legal advice) are only exercisable on a senior officer's authority.

Findings

The research evidence suggests that general investigative work remains relatively unscrutinised by supervisors and that existing supervision is at a low level in the police hierarchy. This contrasts with the situation in special squads and major enquiries, where supervision is more structured and proactive.

In terms of external accountability, PACE made important changes to the police complaints system. An independent body, the Police Complaints Authority (PCA) now supervises the investigation of serious allegations, and a new procedure for informally resolving complaints operates. Research during the PCA's early years suggested that the way in which members supervised investigations ranged from passive to directive. They were less likely to supervise investigation of assault allegations as typically they are hard to substantiate. Supervision increased the chances that action would be taken against the accused officer.

Among complainants generally, over two-thirds were dissatisfied with the outcome of their complaints, usually due to the lack of an apology or an explanation. Those whose complaints were informally resolved were happiest, although they were critical about not meeting the officers subject to complaint. Complainants in supervised cases were generally dissatisfied with the outcome, although they were satisfied that their allegations had been taken seriously and that feedback had been good. A third of complainants reported some dissuasion by the police from registering a complaint, while a majority reported persuasion to withdraw after complaints had been registered.

The PCA appears to have made a considerable impact on the consciousness of the general public, although levels of awareness and confidence are lower among ethnic minorities.

PACE provides for arrangements to be made to obtain the views of the community about policing and consultation arrangements now exist in most parts of the country. However, there have been problems in ensuring adequate representation of all sections of communities, particularly the young and members of ethnic minorities. Some consultative groups are considerably more active than others and have been successful in involving local people. But others are dominated by police authorities or

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For a more detailed report, including a list of the literature summarised here, see *PACE ten years on: a review of the research* by David Brown, Home Office Study No. 155. London: Home Office. Available from the Information and Publications Group (address below).



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other influential groups, who tend to pursue their own agenda. In addition, the effectiveness of the consultation machinery is hindered by lack of formal authority, absence of key information, ignorance of policing issues and a pro-police stance.

CONCLUSIONS

PACE has introduced greater fairness into pre-charge procedures, in that suspects are more aware of their rights and given the chance to exercise them, although there remain areas in which improvements are required. There are also benefits for the police in terms of clearer and more certain powers, primarily in relation to detention at the police station. However, this is not always so in relation to powers outside the station, particularly stop, search and entry powers. The extent to which the exercise of these powers can be reviewed after the event is limited where officers act with the apparent consent of the suspect. Reviewability is also constrained by dependence on official records which may be incomplete, unreliable or unverifiable. At the station, suspects may still be disadvantaged by the failure to clarify what interview tactics are permissible.

The impact of the PACE and Code of Practice provisions on police behaviour appears to have been stronger inside the police station than outside. The reason is probably that the legislation takes insufficient account of the strong informal working rules which determine how the police behave on the street. The conclusion to be drawn is that new legal rules can alter existing working practices provided that they are :

- clear
- accompanied by adequate training
- backed up by effective sanctions and supervision, and
- that the public are aware both of their rights and of police powers.

Overall, PACE has not produced a system that is in balance, in the sense that police powers and safeguards for the suspect are well matched in key areas. Thus, in relation to stop and search and entry and search powers suspects may be at a relative disadvantage. In contrast, at the police station they may be benefiting considerably from the availability of legal advice and use of the right of silence. However, this balance may be shifting, particularly with the recent changes in the law on inferences from silence.