

The Role of the Custody Officer

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1.1 Introduction

Can custody officers be truly independent? The provisions of the Police and Criminal Evidence Act 1984 require the custody officer to remain impartial and independent from the investigation of a person in police detention. At the same time, however, s. 36(3) of the Act requires a custody officer to be 'at least the rank of sergeant', in other words a police officer.

Throughout this book, we will be referring to the custody officer as though he/she is a dedicated person, performing that function at all times (which is common in police forces who appoint dedicated custody staff at centralized custody offices). However, the reality is that sometimes, custody officers can be brought in to work at the last minute, sometimes to cover whole shifts, or sometimes for only a few hours. Whoever does act as a custody officer will have to take full-time responsibility for detainees at the custody office, and may be held liable for actions taken for and against such persons, even by other people.

This chapter examines the role of the custody officer in this context, whether the detainee is taken to a designated station or a non-designated station. We will also be looking at the issue of non-appointed custody officers dealing with detainees and the rare occasions that an investigating officer may also perform the role of a custody officer. It must be emphasized that an officer who does perform this role must at all times comply with the *Codes of Practice*, and protect the human rights of the detainee.

The Police Reform Act 2002 allowed the appointment of non-police officers to act as detention officers and their powers are examined in this chapter.

Section 120 of the Serious Organised Crime and Police Act 2005 (appointment of 'staff custody officers') has now been repealed and is removed from this section.

This chapter also makes some references to the *Review of PACE*, which is yet to be published and finalized at the time of writing this edition.

Lastly, the chapter examines the leadership skills that must be displayed by custody officers. Some of these skills are particularly relevant when the custody officer finds himself/herself in dispute with an officer of a higher rank who makes a decision which is 'at variance' with the one made by him or her.

The Human Rights Act 1998

Article 5 of the Human Rights Act 1998 states that everyone has the right to liberty and security of the person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.

The custody officer has a duty under this Act to protect the arrested person's human rights. Any arrest and subsequent detention must be lawful, with the ultimate intention of bringing him/her before a 'competent legal authority'.

1.2 Responsibility and Liability

1.2.1 Legislative provisions

Section 39(1) PACE

Subject to s. 39(2) and (4) below, it shall be the duty of the custody officer at a police station to ensure—

- (a) that all persons in police detention at a station are treated in accordance with this Act and any code of practice issued under it and relating to the treatment of persons in police detention; and
- (b) that all matters relating to such persons which are required by this Act or by such codes of practice to be recorded are recorded in the custody records relating to such persons.

Section 39(2) PACE

If the custody officer, in accordance with any code of practice issued under this Act, transfers or permits the transfer of a person in police detention—

- (a) to the custody of a police officer investigating an offence for which that person is in police detention; or
- (b) to the custody of an officer who has charge of that person outside the police station

the custody officer shall cease in relation to that person to be subject to the duty imposed on him by s. 39(1)(a) above; and it shall be the duty of the officer to whom the transfer is made to ensure that he is treated in accordance with the provisions of the Act and any such codes of practice as are mentioned in s. 39(1) above.

1.2.2 Responsibility

Section 39(1) above makes it clear that the custody officer has overall responsibility for ensuring that detainees are treated in accordance with PACE and the *Codes of Practice*, whilst in police detention. There are two exceptions to this rule.

First, when a detainee is delivered to the investigating officer—usually for interview; or to another officer who takes the detainee outside the custody office—possibly to go to court, to visit the scene of a crime, or for an intimate search at a hospital.

The only other exception, referred to in s. 39(1) above, is where a detainee is transferred to the care of the local authority, under s. 38(6) of the Act (see **Chapter 15—Continued Detention After Charge** for full details of this section).

Where the custody officer does release a detainee to the custody of another officer, the custody record should be endorsed as to the detainee's location. When the officer returns the detainee to the custody officer, he or she must report to the custody officer as to whether PACE and the *Codes of Practice* have been complied with, and the custody record must be updated.

1.2 Responsibility and Liability

It should be noted that any other time the custody officer releases the detainee to the care of other people in the custody office, he/she still retains responsibility under PACE; for example, when the detainee is being fingerprinted and photographed, undergoing examination by a doctor, or undergoing a station breath test procedure.

1.2.3 Liability

We have established that the custody officer is responsible for the treatment and welfare of a person held in police detention, but can the custody officer be held personally liable for everything that happens to the detainee? What if the detainee is assaulted while he/she is being fingerprinted by another officer? Would the custody officer be liable? What if the custody officer informs the detention officer to make visits every fifteen minutes and rouse the detainee and the detention officer doesn't actually go in the cell? Would the custody officer be liable if the detainee died from positional asphyxia?

Obviously, each case will be taken on its own merits, but even though the custody officer is responsible for what happens in the custody office, it will be difficult to see them being held liable for the actions of others who act illegally.

Custody officers often face difficult situations that will require the use of force and whilst this is covered by s. 117 of PACE, custody officers' actions are frequently examined in court. For example, in the case of *Butcher v DPL* [2003] EWHC 580 (Admin), the custody officer physically escorted the detainee's appropriate adult from the custody suite as she had entered the custody suite without being invited and had been verbally abusive and aggressive. The court held that the custody sergeant had not detained the appropriate adult, but had merely used reasonable force to remove her in order to maintain the operational effectiveness of the custody suite. The court held that the custody sergeant was entirely entitled to ask her to leave and use reasonable force when she failed to comply with that request.

Such use of force was further examined in *R v Jones* (1999) *The Times*, 21 April, where it was held that, although s. 117 of PACE confers a power to use force on a constable, it is not a blanket power to use force. The court said that s. 117 should not be interpreted as giving a right to police to exercise force whenever the consent of a suspect was not required.

One of the biggest worries for custody officers has been whether or not they should take out insurance for personal liability because of decisions they make in work. As yet, there appears to be no precedent for custody officers themselves being sued regularly for breaches of the *Codes of Practice*, with cases still being brought against chief officers on behalf of forces.

However, it should be remembered that if a custody officer is found to have committed a deliberate act contrary to PACE or the *Codes of Practice*, they may not receive protection from their own chief officer, who may seek to persuade any court that the custody officer was responsible for his/her own actions.

1.2.4 Leadership

A Google search for the word 'leadership' brings back a phenomenal 126,000,000 hits. This section concentrates on matters a little closer to home.

The *Practitioner Guide to the Police Leadership Qualities Framework (PLQF)*, developed by Centrex and Skills for Justice®, identified that:

The Police Service is almost unique amongst organizations in that everyone from the newest constable to the highest ranks understands that from the moment they choose to serve, they accept the leadership responsibility that goes along with that.

Leadership in the custody office is vital. Visitors, whether they are detainees, solicitors, arresting officers or senior officers, must be left in no doubt that the custody officer is in charge.

The guide identified that leadership is not confined to ‘taking command’ at times of critical need and research into PLQF showed that there were three general behaviours associated with effective leadership that were fundamental to an individual’s ability to operate effectively:

Personal Integrity—outstanding leaders possess high levels of integrity and moral courage, which inspires trust and loyalty

Personal Awareness—outstanding leaders have high levels of personal awareness that look beyond themselves and include an understanding of others and how others perceive them

Passion to Achieve—outstanding leaders are driven by an inner desire to achieve objectives and to constantly improve.

The *Practitioner Guide* identified the following domains, to complement the PLQF:

Leading People

Communication	<i>Communicates ideas and information effectively, both verbally and in writing. Uses language and a style of communication that is appropriate to the situation and people being addressed. Makes sure that others understand what is going on.</i>
Team Working	<i>Develops strong working relationships inside and outside the team to achieve common goals. Breaks down barriers between groups and involves others in discussions and decisions.</i>
Maximizing Potential	<i>Actively encourages and supports the development of people. Motivates others to achieve organizational goals.</i>

Leading the Organization

Problem Solving	<i>Gathers information from a range of sources. Analyses information to identify problems and issues, and makes effective decisions.</i>
Planning and Organization	<i>Plans, organizes and supervises activities to make sure resources are used efficiently and effectively to achieve organizational goals.</i>
Community and Customer Focus	<i>Focuses on the customer and provides a high-quality service that is tailored to meet their individual needs. Understands the communities that are served and shows an active commitment to policing that reflects their needs and concerns.</i>

1.2 Responsibility and Liability

Leading the Way

Negotiation and Influencing	<i>Persuades and influences others using logic and reason. Sells the benefits of the position they are proposing, and negotiates to find solutions that everyone will accept.</i>
Strategic Perspective	<i>Looks at issues with a broad view to achieve the organization's goals. Thinks ahead and prepares for the future.</i>
Respect for Race and Diversity	<i>Considers and shows respect for the opinions, circumstances and feelings of colleagues and members of the public, no matter what their race, religion, position, background, circumstances, status or appearance.</i>

Personal Qualities and Values

Personal Responsibility	<i>Takes personal responsibility for making things happen and achieving results. Displays motivation, commitment, perseverance and conscientiousness. Acts with a high degree of integrity.</i>
Resilience	<i>Shows resilience, even in difficult circumstances. Prepared to make difficult decisions and has the confidence to see them through.</i>
Openness to Change	<i>Recognizes and responds to the need for change, and uses it to improve organizational performance.</i>

The 2004 Home Office report, *Police Leadership: Expectations and Impact* (the catalyst for the PLQF research), showed wide variations in the standards of leadership being experienced by people working in the police service, including examples of 'leaders' who were lazy, unethical, disinterested, or who failed to deal with poor performers.

However, the report found a lot of common ground in terms of the kinds of behaviour which were perceived as 'good leadership'—

- being committed to achieving a high quality service to the community and supporting staff to achieve this;
- displaying high personal and professional standards and challenging poor behaviour;
- enabling, valuing and developing staff;
- having relevant knowledge and skills.

It is difficult not to conclude that custody officers must strive to achieve the highest levels of leadership in all areas, in order to deliver a quality service to internal and external customers.

1.3 Designated and Non-Designated Police Stations

1.3.1 Legislative provisions

Section 35(1) PACE

The chief officer of police for each police area shall designate the police stations in his area which, subject to s. 30(3) and (5), are to be the stations in that area to be used for the purpose of detaining arrested persons.

Section 30(3) PACE

A constable to whom this subsection applies may take an arrested person to any police station unless it appears to the constable that it may be necessary to keep the arrested person for more than six hours.

Section 30(4) PACE

Subsection (3) above applies—

- (a) to a constable who is working in a locality covered by a police station which is not a designated police station; and
 - (b) to a constable belonging to a body of constables maintained by an authority other than a police authority.
-

Section 30(5) PACE

Any constable may take an arrested person to any police station if—

- (a) either of the following conditions is satisfied—
 - (i) the constable has arrested him without the assistance of any other constable and no other constable is available to assist him;
 - (ii) the constable has taken him into custody from a person other than a constable without the assistance of any other constable and no other constable is available to assist him; and
 - (b) it appears to the constable that he will be unable to take the arrested person to a designated police station without the arrested person injuring himself, the constable or some other person.
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1.3 Designated and Non-Designated Police Stations

1.3.2 Designated police stations

The *Modernising Police Powers Consultation Paper and Proposals*, released in March 2007, identified that:

- the vast majority of people arrested spend less than 24 hours in police detention;
- the average time spent is normally between 2–4 hours;
- part of the necessity criteria for arrest under s. 24 of PACE is that a person fails or refuses to give a satisfactory name or address, resulting in people being taken to the police station. This clogs up the custody system and takes officers away from front line duties.

The subsequent *Review of PACE* suggested that one potential solution in dealing with high volume offending would be to enable the police to use ‘short-term holding facilities’ (STHFs) located in shopping centres or town centres. The STHFs would be under the supervision of a custody officer and would consist of a number of secure holding areas, but would not equate to the standard cell design.

Persons would be subject to a maximum period of detention of 4 hours, to enable fingerprinting, photographing and DNA sampling. The STHFs would not be used in cases where the arresting officer considers that an investigation was required and authority to transfer a person from a STHF to a designated police station would require the authority of an inspector. The aim would be to locate STHFs in busy areas to allow quick access and processing of suspects to enable the officer to resume operational duties as quickly as possible.

Opponents to STHFs were concerned about the risks to operational officers and detainees, particularly those who are vulnerable, and the effective implementation of the safeguards provided by PACE. Further, that STHFs may simply be used as an alternative to designated police stations when their custody areas were full and the overall impression was that speed was being put before the individual.

Under s. 30(1A) of PACE, when a person is arrested for an offence at any place other than a police station, he or she shall be taken to a police station as soon as practicable after the arrest. Changes in legislation allow officers to seek alternatives to arresting people at the scene of offences and conveying them directly to the custody office. For example, s. 4 of the Criminal Justice Act 2003 inserted s. 30A to s. 30D into PACE, providing the power to grant an arrested person immediate bail at the scene. This power is commonly known as ‘street bail’ and is covered in depth in 16.7 ‘Street Bail’.

Part 3 of the Serious Organised Crime and Police Act 2005 amended s. 24 of PACE and repealed s. 25. The term ‘arrestable offence’ no longer exists and potentially, a person may be arrested for any offence, whether indictable or summary. However, s. 24(4) of PACE states that the power of arrest is exercisable only if the constable has reasonable grounds for believing that it is *necessary* to arrest the person in question. Once again, police officers are forced to consider alternatives, such as proceeding by way of summons or Penalty Notices for Disorder. Indeed, Code G, para. 1.3 of the *Codes of Practice* states that the use of the power to arrest must be fully justified and officers exercising the power should consider if the necessary objectives can be met by other, less intrusive means. If an offender is dealt with by either of these methods (and they have not been arrested), they will not be subject to s. 30(1A) of PACE.

Under s. 30(2) of the Act, where a person is arrested and taken to a police station, they shall be taken to a ‘designated’ police station, which is suitable for detaining

arrested persons (unless the exceptions in **1.3.3 Non-designated police stations** below apply).

KEYNOTE

Subsection (1) above will not apply, when the presence of that person elsewhere is necessary in order to carry out such investigations as it is reasonable to carry out immediately (see s. 30(10)). The point that the investigation must be immediate was addressed in *R v Kerawalla* [1991] Crim LR 451.

A chief officer of police may only designate a police station which appears to 'provide enough accommodation for that purpose' (see s. 35(2)).

Some flexibility is allowed by the Act, as a chief officer may choose to designate a police station which was not previously designated, or may direct that a designation of a police station previously made shall cease to operate (see s. 35(3)).

KEYNOTE

A 'designated police station' means a police station for the time being designated under this section (see s. 35(4)).

1.3.3 Non-designated police stations

There are three general exceptions to the rule that all arrested persons must be taken to a designated police station:

1. where the constable works in an area covered by a police station which is not a designated police station (e.g. a rural police station, or a temporary detention area at a football ground), *or*
2. where a constable works for a police force which is not maintained by a police authority (e.g. British Transport Police); *or*
3. where any constable, wherever they work, has arrested a person while they are working alone, and it appears that to take the person to a designated police station would expose that person, the officer, or some other person to injury.

In all of the above cases, the detainee must have been arrested for an offence, for which the constable believes the detainee will not be in police detention for longer than six hours.

Some police areas have set rules which prevent an arrested person being taken to a non-designated police station, whatever the circumstances. This approach would appear to be sensible, if those stations lack the facilities to detain a person safely.

Additionally, if such stations do not have a custody officer available, the integrity of the detention process may be compromised (see **1.6.3 Custody officers at non-designated police stations** below for the situation regarding custody officers at non-designated police stations).

1.4 Appointment of Custody Officers

KEYNOTE

The Criminal Justice Act 2003 inserted s. 45A into PACE to allow remote reviews of detainees. It was intended that technology could also be used to allow custody officers in designated stations to use video-conferencing facilities to oversee the detention of a person detained at a non-designated police station.

In the responses to the *Review of PACE*, it was considered that this placed a huge responsibility on custody officers, particularly if the non-designated station was holding vulnerable detainees.

The Home Office (Policing Powers and Protection Unit) Paper, *Summary of responses to the public consultation on the Review of PACE*, published in March 2010, concluded that there was unanimous support from all respondents (including police, defence, courts and civil liberty groups) for the repeal of the existing provisions, primarily due to concerns about the pressure it would place on custody officers and the inconsistency with the drive towards safer detention.

The paper recommended that the existing provisions relating to remote reviews of detainees in non-designated police stations, under S.45A, be repealed.

If there is no option other than to take a person to a non-designated police station for safety reasons, their actions would be covered by s. 30(5) above. If this situation does occur, it is recommended that this should be viewed as a temporary measure only, and the officer should arrange to transport the arrested person as soon as possible to a designated police station.

In other police areas, arrested persons are taken routinely to non-designated police stations, when the offence is straightforward (e.g. shoplifting), and the detainee is unlikely to be held in police detention for longer than six hours. (See **flow chart 1 in Appendix 1** for an easy guide).

1.4 Appointment of Custody Officers

1.4.1 Legislative provisions

Section 36(1) PACE

One or more custody officer shall be appointed for each designated police station.

Section 36(2) PACE

A custody officer for a designated police station shall be appointed—

- (a) by the chief officer of police for the area in which the designated police station is situated, or
- (b) by such other police officer as the chief officer of police for that area may direct.

Section 36(3) PACE

No person may be appointed a custody officer unless—

- (a) he is a police officer of at least the rank of sergeant; or
- (b) (repealed)

Section 36(4) PACE

An officer of any rank may perform the functions of a custody officer at a designated police station if a custody officer is not readily available to perform them.

1.4.2 Who should be appointed?

Although the chief officer of police is responsible for appointing custody officers, in practice, this function is generally delegated to the operational commander for the area covering the designated station (under s. 36(2)(b) above).

There is nothing preventing a police officer of any other rank performing the role of a custody officer, if one is not readily available (including an officer of a higher rank).

A custody officer should only be appointed once the chief officer is satisfied that he/she is trained, capable and competent.

The situation as regards a custody officer being 'readily available' was examined by the Court of Appeal, in *Vincent v Chief Constable of Dorset* [1993] 1 WLR 415. In this case, it was held that there was no requirement for a designated police station to appoint sufficient custody officers, so that one was available at all times (s. 36(1) merely requires one or more to be appointed). Further, the Court of Appeal held that a constable could perform the role, if there was no other sergeant available at the station and one could not be brought there without impacting on the operational capability of the police. This is something of a grey area; for example, what if there is a sergeant working in the police station in a non-operational role? It may be argued that such a person should take on the responsibilities of a custody officer, as this would not affect the operational capability of the police. In the absence of any further guidance, it would be sensible to follow this course of action. If no other sergeants are available, as a last resort a constable may perform these duties.

In most designated police stations, more than one sergeant will be appointed as custody officers, in order to supply 24-hour coverage and to account for leave and sickness.

KEYNOTE

Any references in PACE and the *Codes of Practice* to a custody officer, will also include those performing the functions of a custody officer (when they have not been appointed as one) (see Code C, para. 1.9).

1.5 Designated Persons

1.5.1 Legislative provisions

Code C, para. 1.13

In this Code:

- (a) 'designated person' means a person other than a police officer, designate under the Police Reform Act 2002, Part 4, who has specified powers and duties of police officers conferred or imposed on them;
- (b) reference to a police officer includes a designated person acting in the exercise or performance of the powers and duties conferred on them by their designation.

1.5.2 The Police Reform Act 2002

The concept of 'designated persons' was introduced by the Police Reform Act 2002, with a view to 'civilianizing' some police functions. Under the Act, chief officers of police may appoint the following:

- Police Community Support Officers (to deal with crime and disorder issues whilst on patrol);
- Investigating Officers (to assist in investigation and interviewing in some specialist areas);
- Detention Officers (to act as gaolers in custody offices);
- Escort Officers (to assist in transporting arrested persons to and from police stations, and to other locations as directed by the custody officer).

This book will concentrate on the powers given to detention officers, as they apply in the custody office.

1.5.3 Powers given to detention officers

Prior to the introduction of the 2002 Act, some custody offices utilized 'civilian' detention officers as gaolers. However, those members of staff did not share many of the powers given to police officers, such as taking fingerprints by force. In order to circumvent this, police forces would appoint 'civilian' detention officers as Special Constables.

KEYNOTE

Note that there is nothing preventing police forces from utilizing any civilian member of staff who is employed by a police force to perform tasks in the custody office, provided that PACE allows them to do so (see Code C, para. 1.15).

These functions could include:

- administrative duties;
- conducting visits;
- providing meals and refreshments;
- itemizing property.

Schedule 4, Part 3 of the 2002 Act provides detention officers with a range of powers which may be utilized in the custody office. The table below outlines the powers available:

Power	PACE Section	Police Reform Act 2002
Require person to attend the police station to have their fingerprints taken	s. 27(1)	Para. 25
Conduct non-intimate searches	s. 54	Para. 26
Conduct searches and examinations to establish identity, or photograph identifying marks	s. 54A	Para. 27
Seize items during non-intimate searches	s. 54	Para. 28
Conduct intimate searches	s. 55	Para. 28
Take fingerprints without consent	s. 61	Para. 29
Give warning before an intimate sample is to be taken (no power to actually take the sample)	s. 62(7)	Para. 30
Take non-intimate sample	s. 63	Para. 31
Require a person who has been charged with or convicted of a recordable offence to attend the station to provide a DNA sample	s. 63A(4)	Para. 32
Photograph a detainee	s. 64A	Para. 33

It should be noted that under Code C, para. 1.14 of the *Codes of Practice*, if any of the above powers allow the reasonable use of force by a constable, a detention officer may also use reasonable force in the exercise of their powers. Paragraph 1.14 provides

1.6 Custody Officers and Impartiality

particular examples of when reasonable force may be used by a designated person, as follows:

- (a) when exercising a power conferred on them which allows a police officer exercising that power to use reasonable force, a designated person has the same entitlement to use force; and
- (b) at other times when carrying out duties conferred or imposed on them that also entitle them to use reasonable force, for example:
 - when at a police station carrying out the duty to keep detainees for whom they are responsible under control and to assist any other police officer or designated person to keep any detainee under control and to prevent their escape;
 - when securing, or assisting any other police officer or designated person in securing, the detention of a person at a police station;
 - when escorting, or assisting any other police officer or designated person in escorting, a detainee within a police station;
 - for the purpose of saving life or limb or preventing serious damage to property.

KEYNOTE

Detention officers or any other civilian members of staff must have regard to any of the relevant *Codes of Practice* when performing their duties (see Code C, para. 1.16).

1.6 Custody Officers and Impartiality

1.6.1 Legislative provisions

Section 36(5) PACE

Subject to the following provisions of this section and to s. 39(2) below, none of the functions of a custody officer in relation to a person shall be performed by an officer who at the time when the function falls to be performed is involved in the investigation of an offence for which that person is in police detention at that time.

Section 36(7) PACE

Where an arrested person is taken to a police station which is not a designated police station, the functions in relation to him which at a designated police station would be the functions of a custody officer shall be performed—

- (a) by an officer who is not involved in the investigation of an offence for which he is in police detention, if such an officer is readily available; and

- (b) if no such officer is readily available, by the officer who took him to the station or any other officer.

Section 36(9) PACE

Where by virtue of subs. (7) above an officer of a force maintained by a police authority who took an arrested person to a police station is to perform the functions of a custody officer in relation to him, the officer shall inform an officer who—

- (a) is attached to a designated station; and
- (b) is of at least the rank of inspector,

that he is to do so.

1.6.2 Impartial investigation

The custody officer must be seen to uphold a detainee’s rights and welfare. For that reason, it is clear from PACE and the *Codes of Practice* that the custody officer is expected to remain independent from the investigation.

KEYNOTE

Although custody officers must remain impartial, there is nothing preventing them giving procedural advice and guidance, for example in areas relating to preservation of evidence from the detainee (walking scene of crime).

Consider the following:

Case Study

Sergeant PRING worked at a large station in the centre of a town, as the patrol sergeant. She started work on a day shift one day, to find that the regular custody officer had reported sick. As Sergeant PRING was the only other qualified officer, she had to work in the custody office for that shift.

During the morning, THOMPSON attended the custody office, having answered bail in relation to an offence of assault. Coincidentally, the arresting officer for that offence was Sergeant PRING, the custody officer that day. THOMPSON was due to be charged with the offence, due to evidence obtained from further witnesses.

Would Sergeant PRING be able to act as custody officer in relation to THOMPSON, in these circumstances?

.....

1.6 Custody Officers and Impartiality

We can find the answer to the question in s. 36(5) of PACE (see above). Although there is a general expectation that the custody officer will remain independent from the investigation, the set of circumstances above could easily happen.

Under s. 35(6), the functions of a custody officer should not be performed if at the time when the function falls to be performed, he or she is involved in the investigation of an offence for which that person is in police detention at that time. It could be argued, therefore, that whilst it is not ideal for the arresting officer to later become the custody officer, in the circumstances, the custody officer will not be investigating the offence at this time, but will merely be making a decision as to charging and bailing.

It would be a different matter if it was necessary to re-interview the detainee. In those circumstances, the custody officer should not be involved in the interview, and should either find another custody officer to perform that role, or delegate the investigation to another officer.

KEYNOTE

Under s. 36(6), a custody officer will not be prevented from conducting some functions which by their nature may be seen as being part of the investigative process, for example:

- searching detainees;
- removing property from detainees;
- taking fingerprints or DNA;
- taking photographs or searching the detainee for identification purposes;
- carrying out a station breath test procedure;
- serving forms on a detainee for an identification parade.

1.6.3 Custody officers at non-designated police stations

We examined the circumstances in which an arrested person may be taken to a non-designated station in 1.3.3 **Non-designated police stations** above. In this section, we will discuss the situation in respect of custody officers when this happens.

Where an arrested person has been taken to a non-designated police station, the custody officer's functions should be performed by an officer who is not involved in the investigation. This is in keeping with the provisions of s. 36(5) above, but what if there is no-one else available to act as a custody officer in the station? This situation is covered by s. 36(7)(b) above, which allows for either the arresting officer to perform these duties, or any other officer. Clearly, if another officer is available, it would be preferable for that person to act as the custody officer, but as a last resort, the arresting officer may do so under this subsection.

If it is necessary for an arresting officer to perform the duties of a custody officer at a non-designated station, the officer must inform an inspector at a designated station, as soon as practicable (see s. 36(9)–(10)). This provision ensures that the arrested person's

detention will effectively be reviewed by an inspector at the earliest opportunity, who may decide that it is appropriate to transport the person to a designated police station.

KEYNOTE

Note that the requirement to inform an inspector under s. 36(9) above only applies where the arresting officer intends performing the duties of a custody officer and where the officer is employed by a force maintained by a Police Authority.

1.7 Explaining the Term 'At Variance'

1.7.1 Legislative provisions

Section 39(6) PACE

Where—

- (a) an officer of a higher rank than the custody officer gives directions relating to a person in police detention; and
- (b) the directions are at variance—
 - (i) with any decision made or action taken by the custody officer in the performance of a duty imposed on him under this Part of this Act; or
 - (ii) with any decision or action which would but for the direction have been made or taken by him in the performance of such a duty,

the custody officer shall refer the matter at once to an officer of the rank of superintendent or above who is responsible for the police station for which the custody officer is acting as custody officer.

1.7.2 Custody officers' authority

Throughout this chapter and the rest of the book, it can be seen that the custody officer has full authority under PACE to deal with detainees in the custody office. Of course, the policing structure expects officers and staff of a lower rank to follow orders from senior officers, so how does this fit in with the custody officer's authority in respect of detainees?

Section 39(6) above ensures that the custody officer cannot be ordered by an officer of a higher rank to make a decision he or she is uncomfortable about. This will apply to any decision already made, or one that the custody officer is about to make. However, the above will not apply when a decision is made by an inspector to release a detainee, when the inspector is conducting a review and considers the grounds for detention no longer exist. In these cases, the inspector will have primacy over the decision.

In practice, issues relating to s. 39(6) above usually occur when the investigating officer is in dispute with a custody officer. The investigating officer may consult with his/her own

1.8 Summing Up

senior officer, who will be of a higher rank than the custody officer. The officer of a higher rank may then try to persuade the custody officer to change their decision. If this happens, the custody officer will have the option to either change their mind or not. If the senior officer orders the custody officer to change their decision, it will be for the custody officer to contact the superintendent responsible for the station. The superintendent should mediate and then make the final decision and the custody record should be endorsed accordingly. It should be noted that similar provisions exist under s. 40(11) of the Act, which protect inspectors who are conducting reviews from directions which are at variance with their decisions. As with s. 39(6) above, a superintendent should be called to mediate.

1.8 Summing Up

Responsibility

1. It is the custody officer's duty to ensure:
 - (a) all detainees are treated in accordance with PACE and the *Codes of Practice*; and
 - (b) that all matters relating to such are recorded in the custody records of detainees.

(s. 39(1) PACE)

2. The custody officer ceases to have the above responsibility if he/she transfers the custody of the detainee to:
 - the investigating officer;
 - a person who is in charge of the detainee outside the police station;
 - the local authority in the case of a juvenile.

(s. 39(2) PACE)

Designated and non-designated police stations

1. When a person has been arrested, he or she should be taken to a designated police station as soon as practicable after the arrest.

(s. 30(1)–(2) PACE)

2. An arrested person may be taken to any police station if it appears that the person may only be in police detention for less than six hours, and:
 - the constable is working in a locality covered by a police station which is not a designated police station; or
 - the constable belongs to a police force which is not maintained by a police authority; or
 - where any constable, wherever they work, and while they are working alone, has arrested a person, and it appears that to take the person to a designated police station would expose that person, the officer, or some other person to injury.

(s. 30(3)–(5) PACE)

Appointment of custody officers

1. No officer may be appointed a custody officer unless he/she is of at least the rank of sergeant.

(s. 36(3) PACE)

2. An officer of any rank may perform the functions of a custody officer at a designated police station if a custody officer is not readily available to perform them.

(s. 36(4) PACE)

Designated persons

1. A 'designated person' means a person other than a police officer, designate under the Police Reform Act 2002, Part 4, who has specified powers and duties of police officers conferred or imposed on them.

(Code C, para. 1.13)

2. A designated person has the power to:
 - require a person to attend a police station to have their fingerprints taken;
 - carry out non-intimate searches;
 - carry out searches and examinations to establish identity; photograph identifying marks;
 - seize items taken during non-intimate searches;
 - carry out intimate searches;
 - take fingerprints without consent;
 - to give warning required before an intimate sample is taken (no power to actually take the sample);
 - take non-intimate samples;
 - require a person who has been charged with or convicted of a recordable offence to attend a station to provide a DNA sample; and
 - photograph a detained suspect.

(Police Reform Act 2002, Sch. 4, Pt 3)

3. Force may be used by a designated person:
 - when exercising a power which would allow a police officer exercising that power to use reasonable force; and
 - when carrying out duties conferred or imposed on them that also entitle them to use reasonable force, for example:
 - when at a police station keeping detainees under control and to assist any police officer or designated person to keep any detainee under control and to prevent their escape;
 - when securing, or assisting a police officer or designated person in securing, the detention of a person at a police station;
 - when escorting, or assisting a police officer or designated person in escorting, a detainee within a police station;
 - to save life or limb or preventing serious damage to property.

(Code C, para. 1.14)

1.8 Summing Up

Impartiality

1. None of the functions of a custody officer in relation to a detainee shall be performed by an officer who at the time when the function falls to be performed is involved in the investigation of an offence for which that person is in police detention at that time, unless the arrested person is taken to a non-designated police station, when the functions of a custody officer shall be performed:
 - (a) by an officer who is not involved in the investigation of an offence for which the person is in police detention, if such an officer is readily available; and
 - (b) if no such officer is readily available, by the officer who took the person to the station or any other officer.
2. Where an officer does perform custody duties as above, he/she shall inform an inspector at a designated police station as soon as practicable.

(ss. 36(7), (9) & (10) PACE)

'At variance'

Where an officer of a higher rank than the custody officer gives directions relating to a person in police detention; and the directions are at variance:

- with any decision made or action taken by the custody officer, or
- with any decision or action, which the custody officer is about to make,

the custody officer shall refer the matter at once to a superintendent, who is responsible for the police station.

(s. 39(6) PACE)

LOCAL PROCEDURES

1. Does your force have a policy relating to the detention of persons at a non-designated police station?

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