



Prifysgol Cymru
Y Drindod Dewi Sant
University of Wales
Trinity Saint David

PIP 1 Suspect Interviewing Day 2



By the end of this lesson you will be able to:

1. State the role of legal advisors and the role they play within a suspect interview
2. Explain Special Warnings and when to introduce them
3. Explain Bad Character and how this can be used as part of interviewing
4. Summarise the concept of Pre-charge engagement

Legal Advisers



What term/ word would you use to describe a legal adviser?



QTS – what word would you use to describe a legal adviser?

Trainer to discuss these terms

Working with Legal Advisers

Investigators have a duty to maximise the amount of material available to the courts

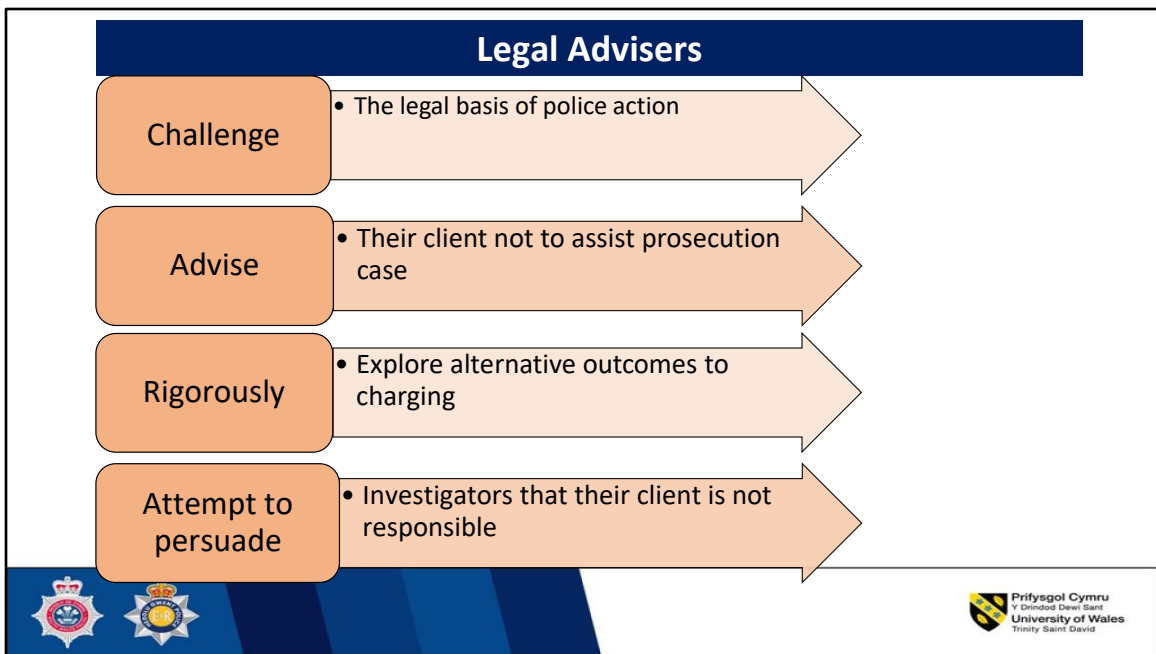


Legal advisers will try to obtain as much information as possible from their investigator, custody staff & their client, while working within their legal framework

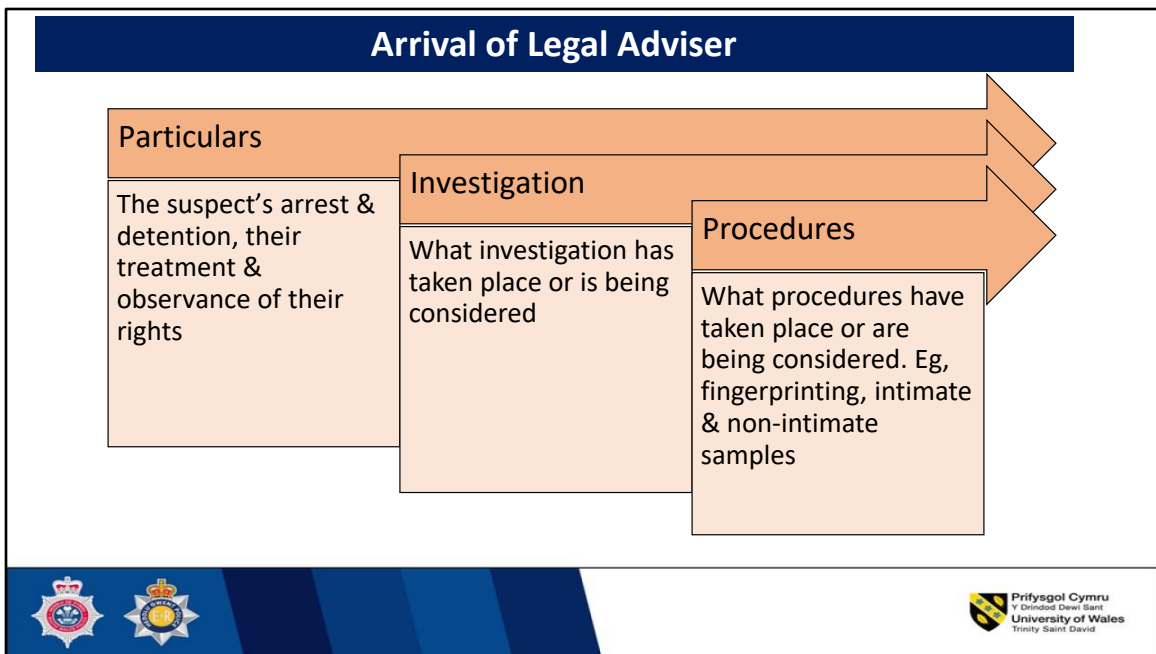


This helps them to prepare & plan a strategy for advising their client in the police station particularly during an interview. Legal advisers act in the best interests of their clients



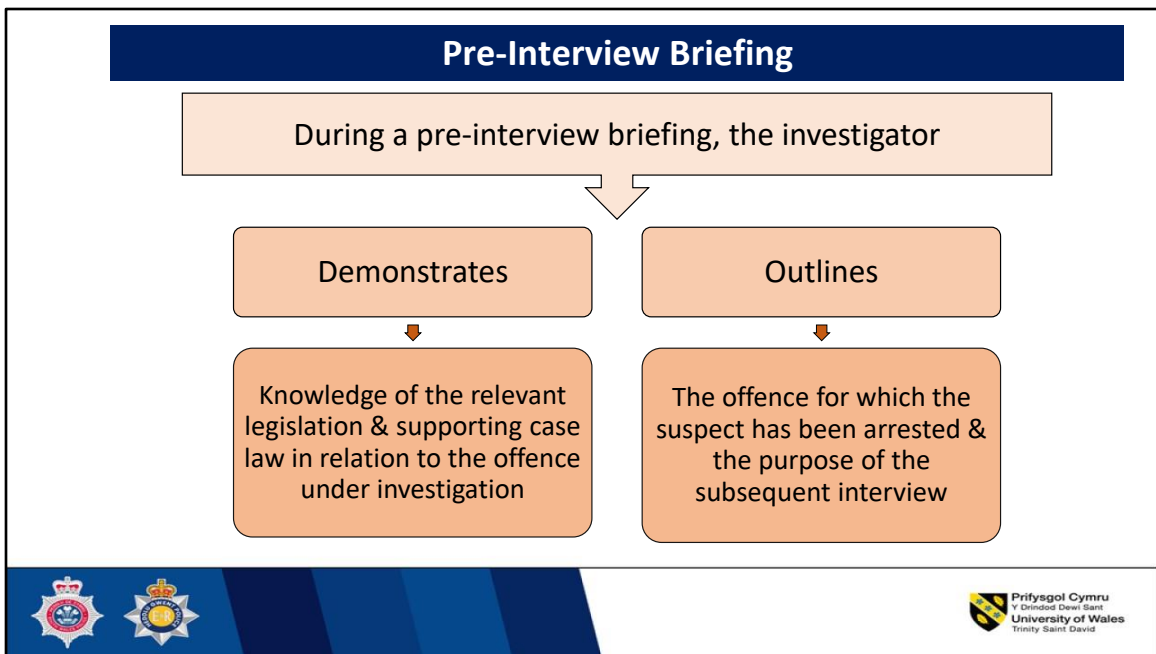


QTS – what are the best interests of their clients?



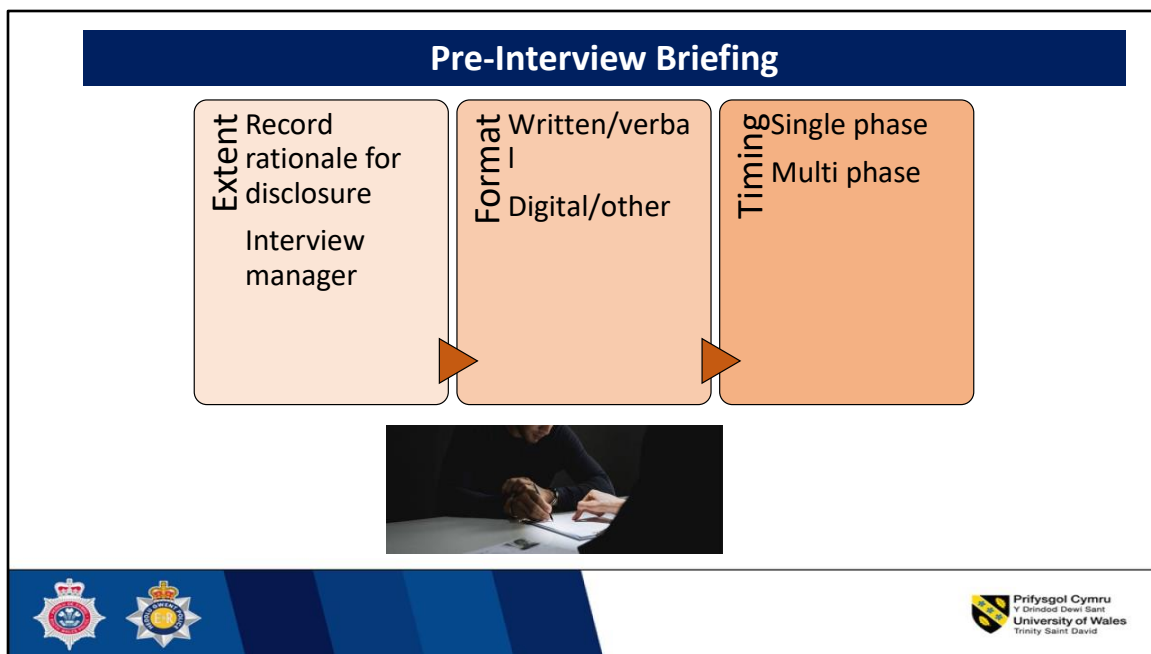
Particulars– will be custody record

OIC will discuss with legal advisor.. remember 'grooming' by solicitor, they are not your friend, maintain professional boundaries



QTS – What do you think the benefits of a pre-interview briefing are?

Trainer to give students “Example of MG 6A document” handout



Extent refers to how much info will be disclosed, trainer to give examples of disclosure such as CCTV.

DO NOT hand over statements to the solicitor, chose what to disclose and when.

Discuss how disclosure best practice is to write it on an MG6a but if verbally to record discussion

The minimum standard for Pre-Interview briefing is that it is now a written briefing given to the solicitor. In the briefing the officer should also record any questions that the solicitor has asked them and record their responses to it.

When listing your interview objectives during the briefing use your own language not police jargon.

Your Case .. Your Decision

Rests with the
investigating officer
who has sufficient
knowledge of the case

The officer who
discloses the interview
shall make a record of
the information
disclosed

And when it was
disclosed

MG6A

Digital

There is no obligation
to disclose our case
but sufficient
information must be
given



Pre-Interview Briefing

The investigator is not legally required to provide the legal adviser with any material prior to the interview of the suspect

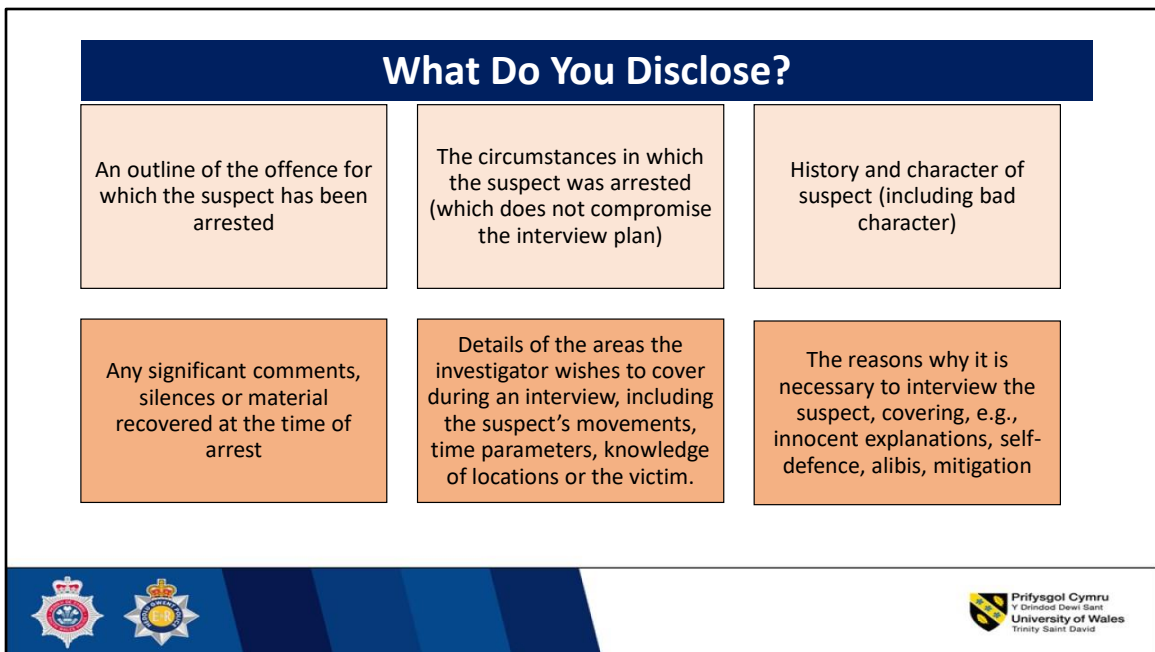
There is legal no requirement to explain to the legal adviser the reason for withholding material from the pre-interview briefing, although officers may need to subsequently explain their reasons to the court.

NDM

If the case then proceeds to a prosecution, there is a requirement on the prosecution team to disclose all material that is likely to undermine the prosecution or assist the defence

File Preparation by the disclosure officer – Form MG6C, D & E





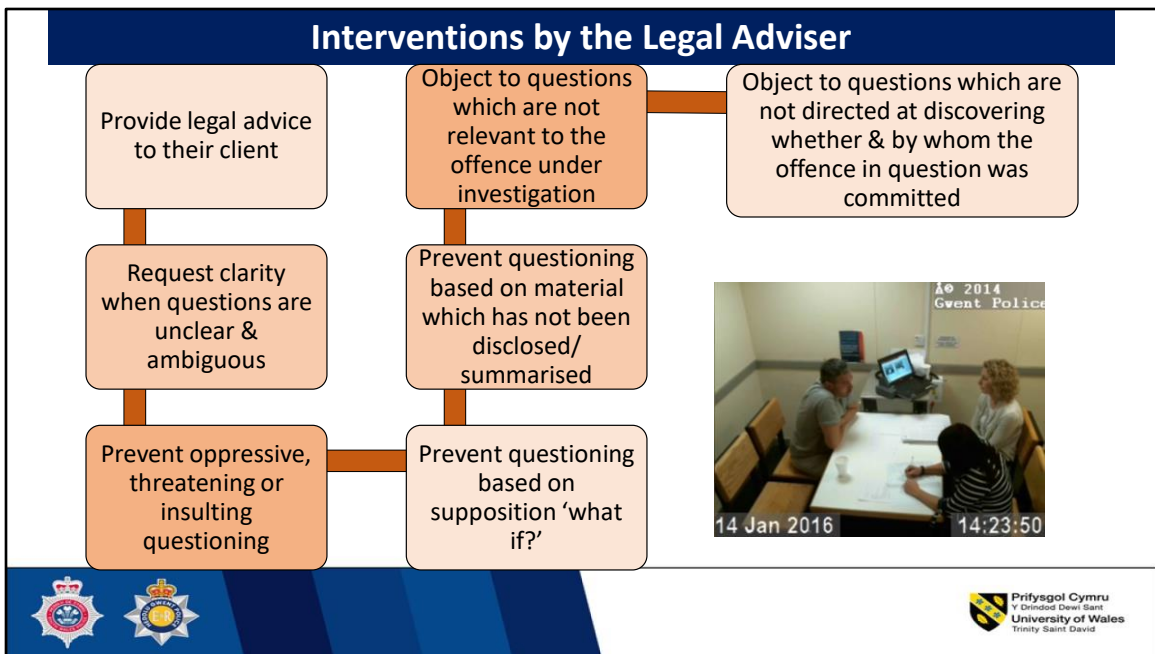
The investigator is not legally required to provide the legal adviser with any material prior to the interview of a suspect.

There is also no requirement to explain to the legal adviser the reason for withholding material from the pre-interview briefing, although officers may subsequently need to explain their reasons to the court. NDM

If the case then proceeds to a prosecution, there is a requirement on the prosecution team to disclose all material that is likely to undermine the prosecution or assist the defence.

File Preparation by disclosure officer - Form MG6 C&D&E

Trainer to mention giving a copy of the custody record, first description of suspect



QTS – when you are interviewing, a legal adviser may intervene. Why and when do you think they can do this?

QTS – how do you think you'll manage the situation?

Advising their Clients



Prevent the suspect from answering questions if they choose to do so.



Answer questions on behalf of the suspect.



QTS – at what point do you think you could remove a legal adviser and why?

Removal of a Legal Adviser

Removing a legal adviser from an interview is an extreme step



This should be taken only if the legal adviser's approach or conduct prevents, or unreasonably obstructs questions being put to the suspect

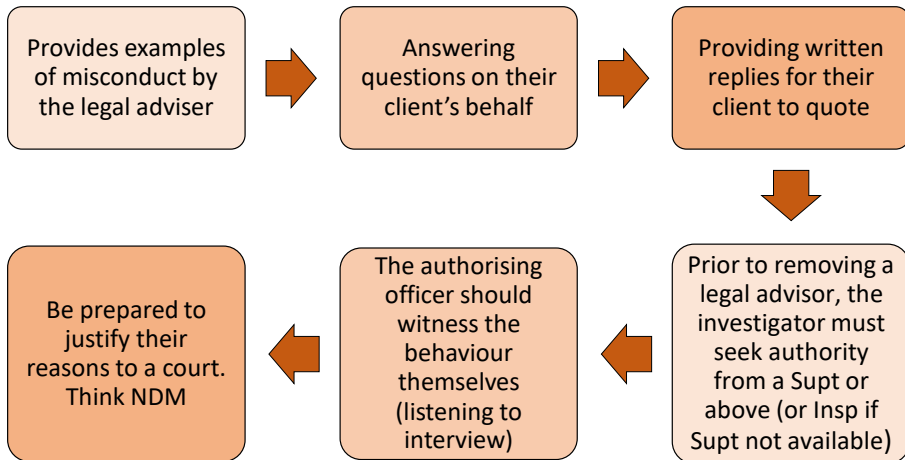


It may also be necessary if the legal adviser prevents the suspect's response from being recorded by talking over them or constantly interrupting them

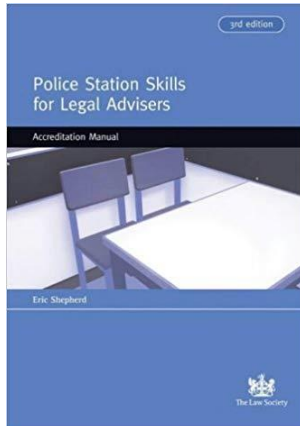


QTS – do you think you need permission from a senior rank to do this?

PACE Code C Note 6D



Representations by Legal Advisers



Representation is made when the legal adviser wishes to bring a critical matter to the attention of the custody officer, any officer or civilian employed or instructed by the police

Law Society (2004) Police Station Skills for Legal Advisers



Representations can be made in relation to ...



Any risk or disadvantage to the defence of the suspect

The suspect's legal position

The suspect's psychological or physical wellbeing or integrity

A representation can be based on a fact or law, putting forward the suspect's point of view. They can be made by the legal adviser. A third party acting on behalf of the suspect or by the suspect specifically in respect of detention reviews

Rep's may be made to custody officers, investigators, reviewing officers, identification officers, any police officer or member of police staff concerned with the investigation or detention of the suspect.



Recording any representation



The police officer or member of police staff should accurately record the content & context of the representation in the custody or identification parade record or in their PNB



The facts or arguments presented by the legal adviser may become a matter of issue in legal proceedings



Maintaining records of all representations & how they were resolved will assist in the event of any subsequent interview



Offences Taken Into Consideration (TIC's)



A suspect in custody may be aware that they have committed further offences that they may wish to admit in interview allowing them to have a 'clean slate' allowing persistent offenders to admit their total criminality whilst in custody. A suspect may wish to admit offences at an early stage rather than the prospect of forensic/CCTV evidence coming into police possession at a later date – rendering them liable to future arrest. They may wish to take advantage of admitting further offences in that they will no longer be liable for future arrest and prosecution if new evidence comes to light. Advancement in forensic techniques, court practices, etc. result in individuals being arrested for historic offences. This can properly be explained to suspects and their legal advisors. The possibility of any TIC interview should be included in the pre interview briefing to the legal adviser.

No attempts should be made to persuade or

induce suspects to admit any offence by oppression or by the offering of any inducement

Offences to be TIC'd are those for which there is insufficient evidence to arrest without an admission from the suspect that he/she is responsible for its commission. ***If there is direct evidence to link the suspect to an offence, they must be arrested and interviewed.***

Planning and preparation prior to interview is one of the most important phases in effective interviewing and is particularly relevant to TIC interviews. To conduct a meaningful and effective interview it is essential appropriate research is conducted into the suspect including their previous convictions, offending history and evidence of bad character. Research should also be conducted to identify other potential offences through intelligence gathering, analysis and investigative activity such as searches and identification of forensic opportunities. Proper

investigation and preparation prior to interview relating to a suspects' pattern of offending will allow that suspect (and legal advisor) to make an informed decision as to whether to admit to further offences.

If the suspect admits their involvement in the primary offence and there is sufficient evidence to charge there is an opportunity to capture TICs. HOWEVER PACE states that interviewers must cease questioning when they reasonably believe that there is sufficient evidence to provide a realistic prospect of conviction for the offence. Therefore, further questioning for the purpose of obtaining TICs *could* be unlawful. However, it is lawful to ask the suspect whether they wish to admit further offences. If yes, they should be questioned to ascertain what offence they are admitting and reminded of the caution immediately for that offence and each subsequent offence admitted.

Police officers are entitled to interview suspects for offences other than those which resulted in the initial arrest/allegation as long as there are reasonable grounds for suspecting their involvement in those other offences, such a suspicion should be informed as a result of the material gained during the planning phase. Interviews for TICs fall within the scope of Code C of the Codes of Practice to the Police and Criminal Evidence Act (PACE) 1984 because it defines an interview as 'the questioning of a

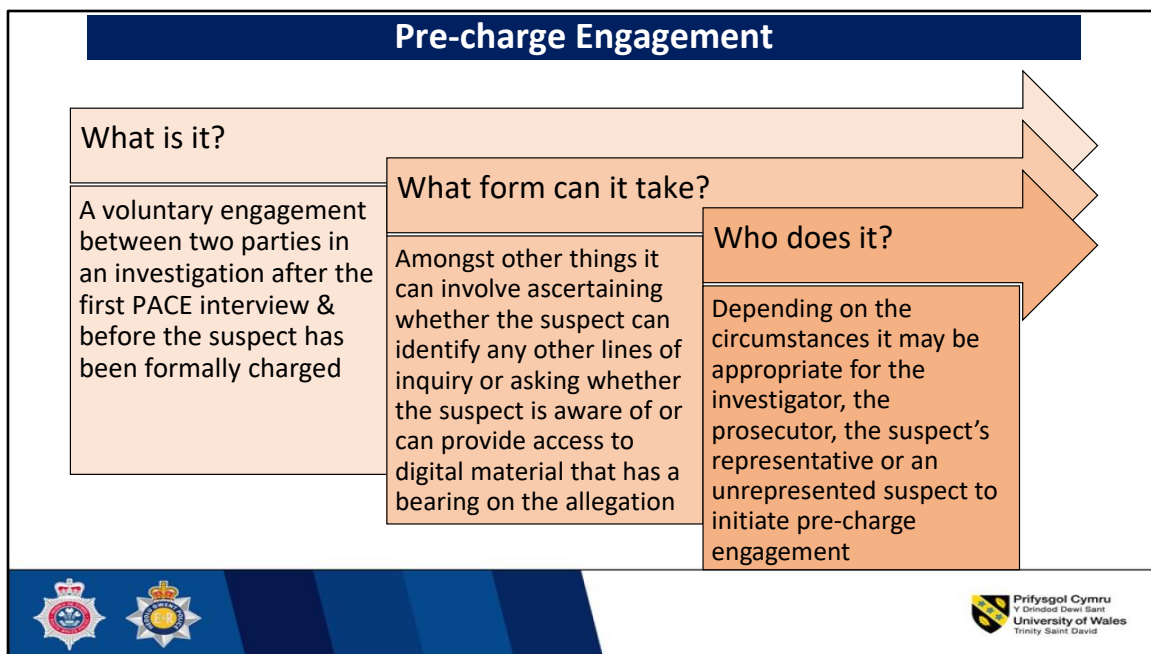
person regarding his involvement or suspected involvement in a criminal offence or offences' which would need to be carried out under caution by virtue of paragraph 10.1 of the Code.

The interview relating TICs should not take place until the conclusion of the interview relating to the main offence(s) for which the suspect has been arrested. The interview plan should however, cater for admissions to other offences.

Benefits of TIC's for stakeholders –

- the **defendant** is able to "clear the slate" to avoid the risk of subsequent prosecution for those offences and put the past behind him which can support rehabilitation;
- Although the presence of TICs may increase the sentence , the additional penalty will be less severe than if the offences were prosecuted separately;
- the **court** has a fuller and more accurate picture of the offending and is able to give a longer sentence than it would if it were dealing only with the substantive charge;
- the **victim** has an opportunity to claim compensation in respect of an offence admitted by the defendant, detected and acknowledged by the criminal justice system;
- the **police** gain valuable intelligence, increase clear up rates, record a fuller picture of offending for possible use in future cases or to support applications for CR/ASBOs or other restrictive orders;
- the **prosecution** has a fuller and more accurate picture of the offender's criminal history when considering the public interest stage of the full Code Test, bail decisions, bad character, dangerousness etc;
- resources** are used efficiently; and,
- the **public's** confidence in the criminal justice system is improved.

***SWP only – Trainer to distribute/ email/ direct students to the SWP TIC policy on Moodle**



Trainer to provide overview of pre-charge engagement which as come into being as of 1st January 2021. Trainer to provide more detailed handout to students.

What is it?

Pre-charge engagement refers to voluntary engagement between the parties to an investigation after the first PACE interview, and before any suspect has been formally charged. Pre-charge engagement is a voluntary process and it may be terminated at any time. It does not refer to engagement between the parties to an investigation by way of further PACE interviews, and none of this guidance is intended to apply to such circumstances. Should a defendant choose not to engage at this stage, that decision should not be held against him at a later stage in the proceedings.

What form can it take?

Pre-charge engagement may, among other things, involve:

- Giving the suspect the opportunity to comment on any proposed further lines of inquiry.
- Ascertaining whether the suspect can identify any other lines of inquiry.
- Asking whether the suspect is aware of, or can provide access to, digital material

that has a bearing on the allegation (this is also now included in the memo card and interview planning booklet)

- d. Discussing ways to overcome barriers to obtaining potential evidence, such as revealing encryption keys.
- e. Agreeing any key word searches of digital material that the suspect would like carried out.
- f. Obtaining a suspect's consent to access medical records.
- g. The suspect identifying and providing contact details of any potential witnesses.
- h. Clarifying whether any expert or forensic evidence is agreed and, if not, whether the suspect's representatives intend to instruct their own expert, including timescales for this.

Pre-charge engagement is encouraged by the Code for Crown Prosecutors and may impact decisions as to charge^{37F}

When is pre-charge engagement appropriate?

It may take place whenever it is agreed between the parties that it may assist the investigation. Where a suspect is not yet represented, an investigator should take care to ensure that the suspect understands their right to legal advice before the pre charge engagement process commences. Sufficient time should be given to enable a suspect to access this advice if they wish to do so.

Pre-charge engagement should not, however, be considered a replacement to a further interview with a suspect. Investigators and prosecutors should be conscious that adverse inferences under section 34 of the Criminal Justice and Public Order Act 1994 are not available at trial where a suspect failed to mention a fact when asked about a matter in pre-charge engagement.

*****When a suspect is released from custody on bail (either for further enquiries, or for CPS advice), or released under investigation a **[Pre-Charge Engagement \(PCE\) Notice](#) will be automatically attached to the custody disposal notice which will be handed to the suspect**, when they leave custody. When a suspect is released from voluntary attendance the OIC must ensure that the suspect is handed the notice after the interview.

The notice explains what PCE is, and what to do if they wish to engage, as well as the PCE template. If they do wish to engage, then the Defence will send the completed template to new group emails which are administered by the CPU's or OSU's in each Division.

➡ The Officer in the Case (OIC) and Supervisor will then receive notification via

Niche task that a PCE request has been made by the defence. That PCE request will detail reasonable lines of enquiry made by the defence. The OIC will then consider the PCE request, and if appropriate make further enquiries in response to the PCE. This may include a further PACE interview. In considering the PCE request, the OIC must be alert to any attempt to frustrate or delay the investigation. Advice can be sought from the Case Progression Units, or from the CPS (through early investigative advice) if required.

All actions taken (or not taken) by the OIC in regards to a PCE request must be detailed on the Investigative Management Document (section 3), so that the CPS are aware of the request, and subsequent actions of the investigator. The PCE notice must then be included on the MG6 schedules.*****

Trainer to hand out/ distribute/email/ direct students on Moodle to the PCE notice (this is the same for each force), the Pre Charge Engagement GWP guidance (Gwent), the Pre Charge Engagement SWP Guidance V3 (SWP) and the SWP Triage guidance for OSU CPU (SWP only)

VA: Voluntary Attendance



- **OIC Responsibility:**
- *If your VA is being booked in by a BCU Sergeant enter their details on the appointment entry.*
- Each appointment entry will require the following information:
- **VA Station Name**
- **Occurrence Number**
- **VA Persons Name**
- **OIC collar number & Name-contact number any VA vulnerabilities**
- **Length of time interview room required to be amended accordingly**

The OIC should carry out relevant checks on the suspect before he or she is brought into a VA suite. PNC and Niche Warning markers should be carried out in advance of the VA appointment and both the OIC and VA sergeant should fully understand who they are dealing with and the risks they may present, not least to themselves. If it is considered that the risk presented is sufficiently concerning, arrangements should be made by the OIC to take the VA to a location where a face to face record can be created with a designated VA sergeant, rather than have a remote record created. The OIC should always consider the fitness of a VA to be interviewed—remembering that the individual will on most occasions be invited to attend for interview at an

appropriate time for all parties.

KEY POINTS

The VA is entitled to leave the police station at any time unless they are placed under arrest. If the necessity to arrest is met under PACE Code G)

RIGHTS

When a suspect has attended a police station voluntarily for interview under caution, he/she must be given a copy of form "Remember your rights – Voluntary Interview." – " and advised that:

They are not under arrest,

They are not obliged to remain at the police station.

If they remain, they may obtain free and independent legal advice.

Urgent and Safety Interviews

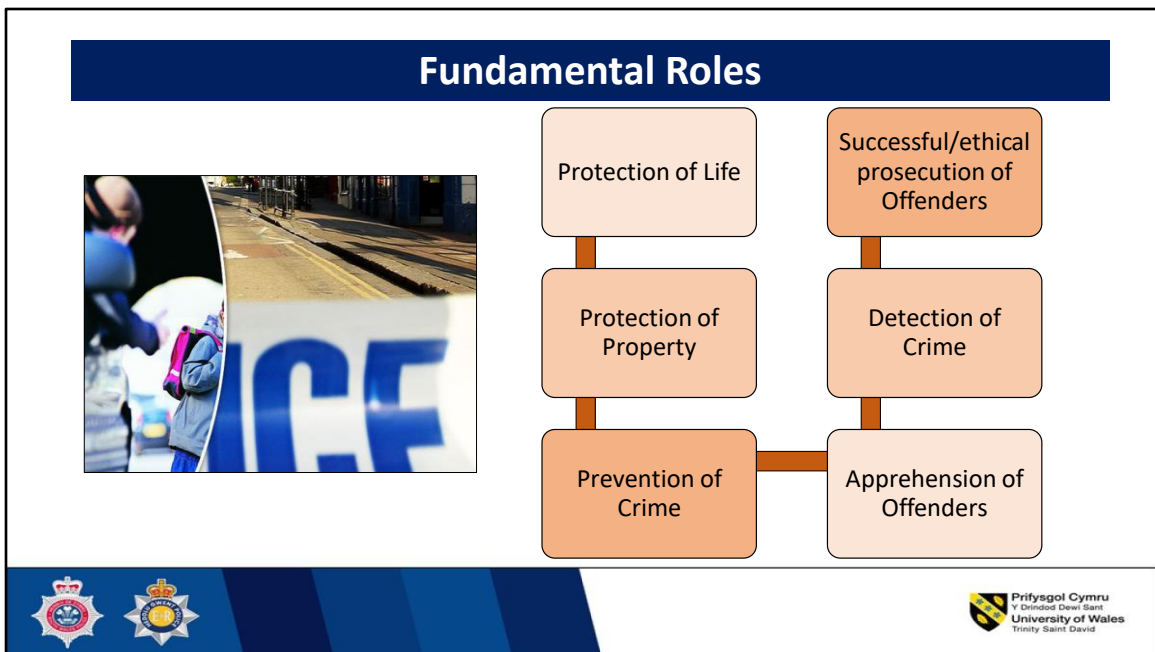


Taken from the ACPO Position statement, National Investigative Interviewing, Strategic steering group (NISSG)

Urgent interviews are often seen as an interview conducted exclusively in Counter Terrorism Investigations but their use is often relevant to more usual criminal investigations. Urgent interviews can be conducted either prior to arrival at the police station or once at the police station and prior to receiving any requested legal advice but they should not be confused with questioning concerning general officer safety prior to searches of persons, vehicles or property or with questioning to aid the effectiveness of a search. Urgent interviews should not be seen as an opportunity to ask lines of investigation questions it must be remembered that questioning must cease once the relevant risk has been averted or the necessary questions have been put in order to attempt to avert that risk.

The legislation setting out the circumstances under which these interviews can be conducted can be found at: Crime & PACE 11.1 Code C PACE1 - Prior to arrival at police station & PACE 6.6 Code C PACE - After rights but prior to any requested legal advice & PACE 11.18 Code C PACE - Vulnerable suspects: urgent interviews at police stations Terrorism (if arrested under S.41 Terrorism Act 2000) & PACE 11.2 Code H PACE - Prior

to arrival at police station ¶ Para 6.7 Code H PACE - After rights but prior to any requested legal advice ¶ Para 11.11 Code H PACE - Vulnerable suspects: urgent interviews at police stations



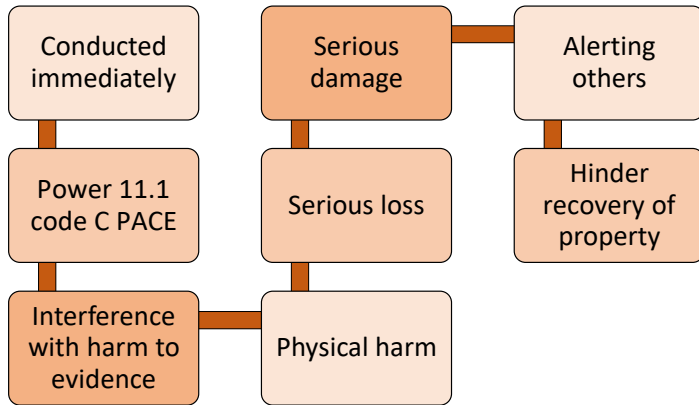
QTS- what is your role as a PC? (Debrief using PPT slide 21)

Taken from the NIISG

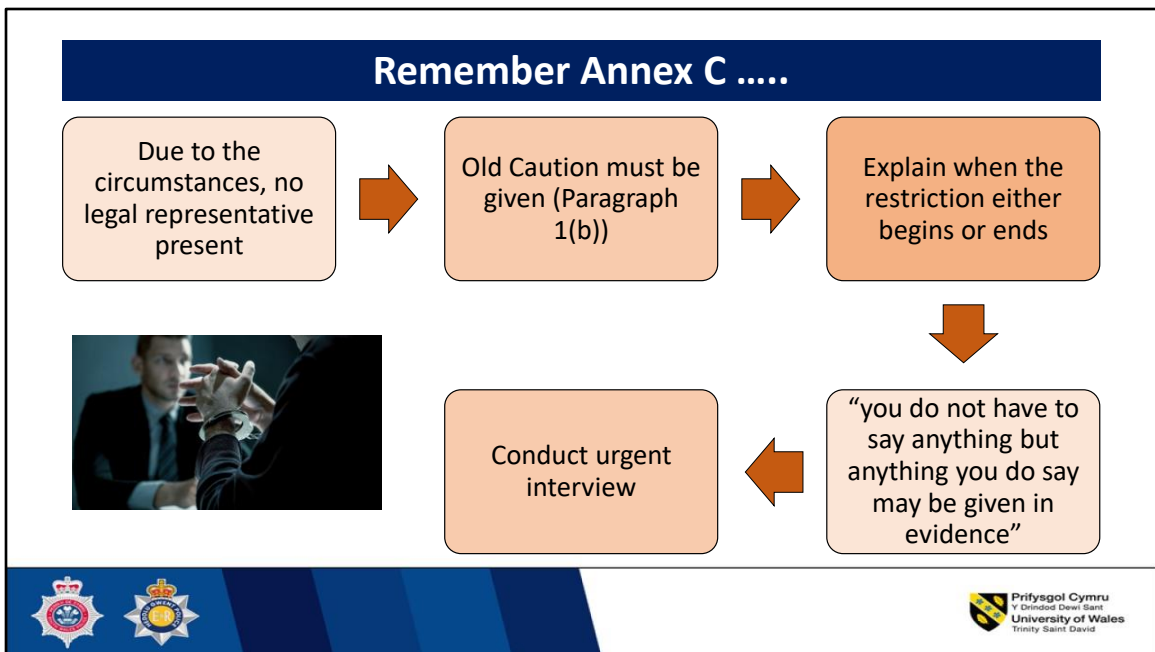
Urgent Interviews Prior to Arrival at Police Station In certain circumstances it may be appropriate to plan for conducting an urgent interview. The exact nature of what is to be covered within it should be made clear. In unplanned situations, however, officers can consider whether it is necessary to conduct an urgent interview immediately after arrest and prior to arrival at a police station. Such an interview does not need to be authorised by a Superintendent but the officer conducting the interview should be satisfied one or more of the grounds exist at the time of the arrest.

The line of questioning should reflect the grounds for the interview e.g. “You have been arrested on suspicion of kidnap and the victim has not been found, where is”. There is no requirement to caution the suspect again for the purposes of an urgent interview prior to arrival at the police station. A brief reference to the fact that an urgent interview has taken place should be made on the custody record when the suspect arrives at the police station.

Public Safety at time of Arrest



QTS – Thinking back to your session on Powers of Arrest, briefly discuss what circumstances allow you to exercise this power



11.1 Code C PACE 1984 - Following a decision to arrest a suspect, they must not be interviewed about the relevant offence except at a police station or other authorised place of detention, unless the consequent delay would be likely to:

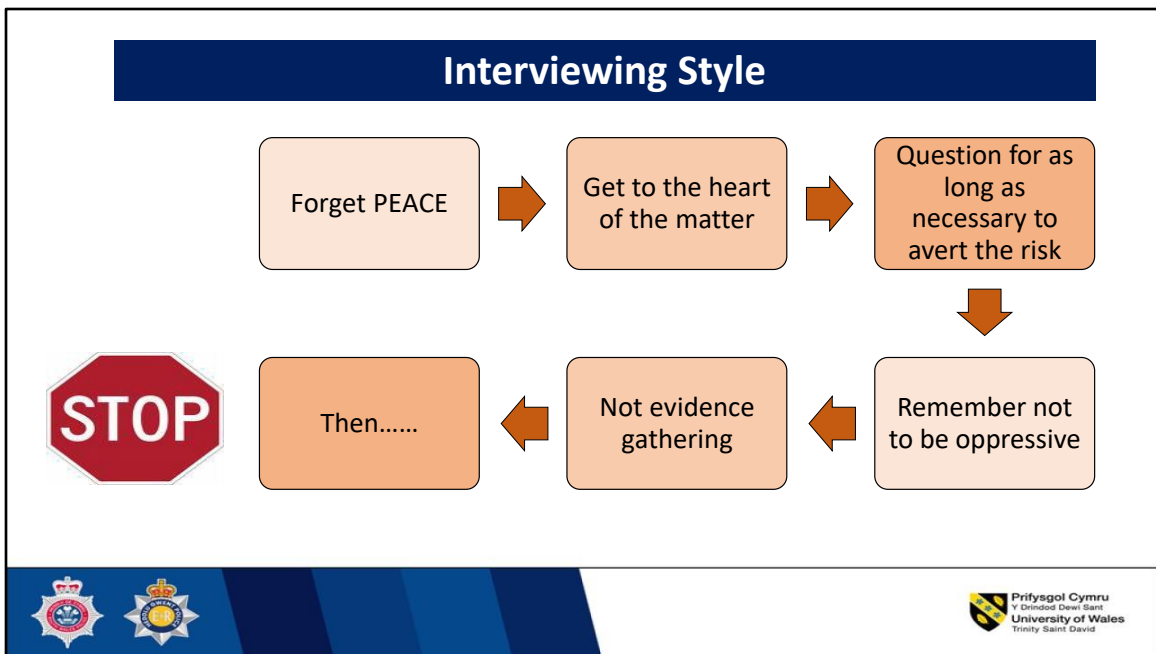
(a) lead to:

- interference with, or harm to, evidence connected with an offence;
- interference with, or physical harm to, other people; or
- serious loss of, or damage to, property;

(b) lead to alerting other people suspected of committing an offence but not yet arrested for it; or

(c) to hinder the recovery of property obtained in consequence of the commission of an offence.

Interviewing in any of these circumstances shall cease once the relevant risk has been averted or the necessary questions have been put in order to attempt to avert that risk.



Taken from NISSG

The decision to caution the detainee is a decision for the officer in charge of the investigation and should be based on the circumstances that exist at the time of the interview being conducted. If the detainee is to be cautioned prior to the 'urgent interview' being conducted the old, no inference caution should be used. The detainee should be provided with an explanation which gives the reasons for conducting the interview. An example of a suitable form of words is shown below: I am aware that you have requested a solicitor. However, I have been authorised to conduct an urgent interview with you as there is a real concern for (insert words relevant to the authority e.g. the safety of the public). You will get the opportunity to speak to a solicitor later. **I must caution you that you not have to say anything, but anything you do say may be given in evidence. That means you don't have to answer my questions but if you do, your answers may be told to the court if you are later charged.**

Urgent Interview at Designated Police Station



PACE paragraph 6.6 Code C

Suspect who wants legal advice may not be interviewed or continued to be interviewed unless Annex B applies



QTS – when do you think a suspect can be held incommunicado? (next slide)

Taken from Annex B PACE

A Person detained under PACE

1. The exercise of the rights in Section 5 or Section 6 or both, may be delayed if the person is in police detention, as in PACE, section 118(2) in connection with an indictable offence, has not yet been charged with an offence and an officer of superintendent rank or above, or inspector rank or above only for the rights in Section 5, has reasonable grounds for believing their exercise will:

(i) lead to:

interference with, or harm to, evidence connected with a indictable offence; or interference with, or physical injury to, other people; or

(ii) lead to alerting other people suspected of having committed an indictable offence but not yet arrested for it; or

(iii) hinder the recovery of property obtained in consequence of the commission of

such an offence.

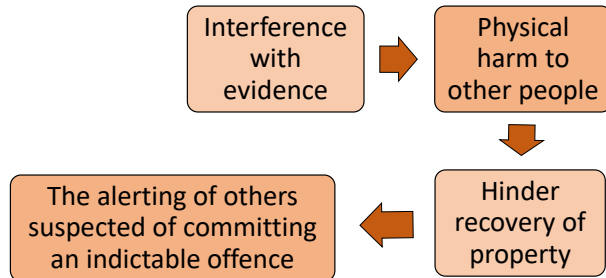
2. These rights may also be delayed if the officer has reasonable grounds to believe that:

- (i) the person detained for an indictable offence has benefited from their criminal conduct (decided in accordance with Part 2 of the Proceeds of Crime Act 2002); and
- (ii) the recovery of the value of the property constituting that benefit will be hindered by the exercise of either right.

3. Authority to delay a detainee's right to consult privately with a solicitor may be given only if the authorising officer has reasonable grounds to believe the solicitor the detainee wants to consult will, inadvertently or otherwise, pass on a message from the detainee or act in some other way which will have any of the consequences specified under paragraphs 1 or 2. In these circumstances the detainee must be allowed to choose another solicitor. See Note B3.

Annex B

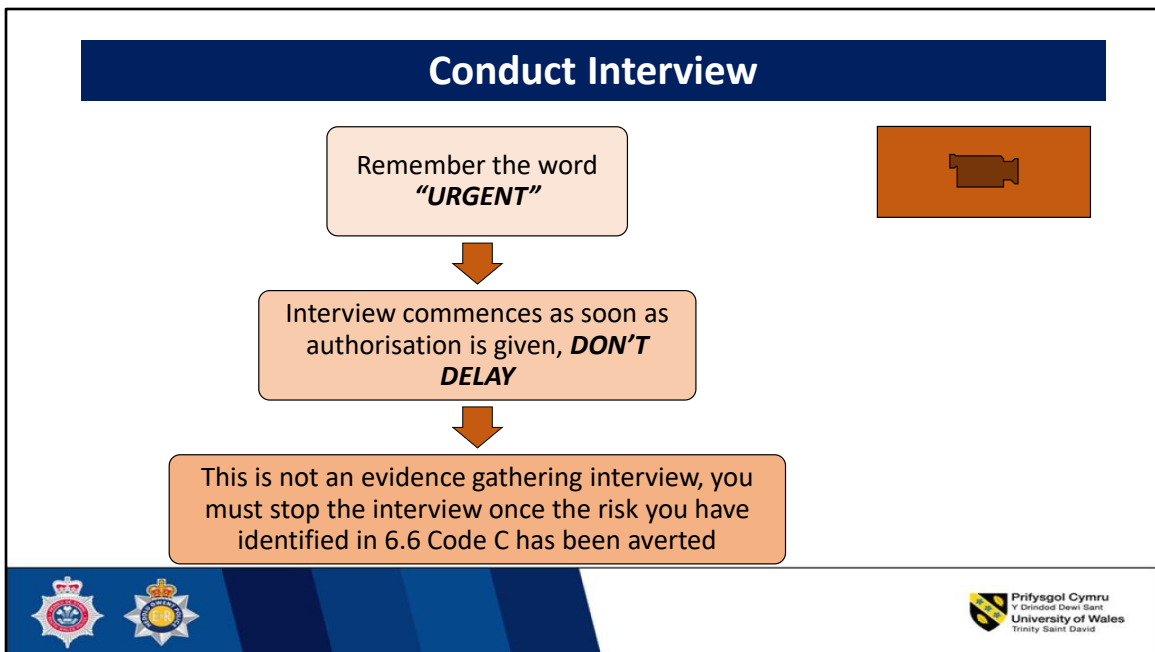
Superintendent or above may authorise that a suspect is held incommunicado & have his right to legal advice delayed for an indictable offence & not yet charged as long as they have reasonable grounds for believing the exercise of either right will have one of the following consequences:-



QTS - What ranking officer do you think can authorise incommunicado?

Taken from NIISG

When a detainee requests legal advice on their arrival at the Police Station no interviews can take place until they have received that advice unless the grounds exist as listed under Code C Para 6.6 or Code H Para 6.7. When legal advice is requested and an urgent interview is necessary an officer of the rank of superintendent or above (but not necessarily one independent of the investigation) will need to authorise it. The authorising officer must record each of relevant grounds and the time of the authority on the custody record.



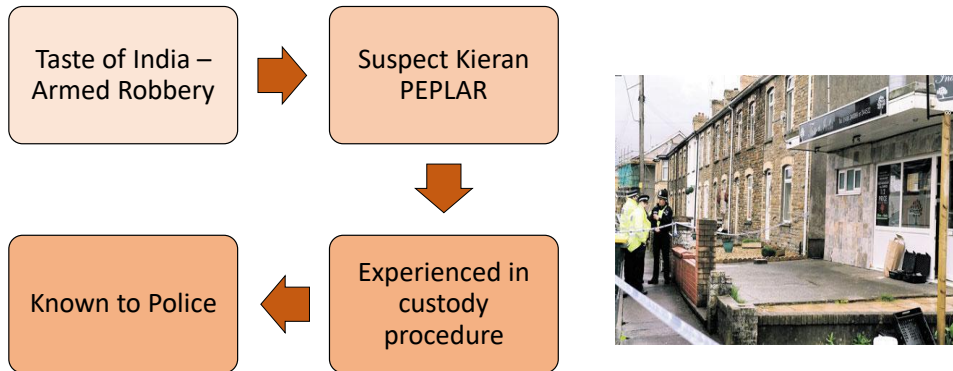
Taken from NIISG

Interviewers must be made aware of each of the grounds that have been given for the urgent interview to be conducted and the interview must commence without delay once the authority has been given. Attempts must be made to contact the legal adviser who should be informed that the interview has been authorised and will not be delayed for the purpose of consultation.

The following slide is a Gwent example. If SWP or Gwent Trainers wish to use this link on this PPT slide as an addition/alternative, it is the Wayne Couzens urgent interview conducted at his home address.

QTS – How did the Officers questioning style differ in this interview as oppose to the techniques we have discussed?

Gwent Case Study: Armed Robber



Gwent Trainer to play ...'Urgent interview video example' video which is the interview in relation the Armed Robber case study that occurred in the Caerphilly area.

Reference- <http://www.caerphillyobserver.co.uk/news/566243/two-to-appear-in-court-over-armed-robbery-at-pentwynmawr-takeaway/>

On-line newspaper article- Caerphilly Observer Published in News at 09:00, Tuesday May 1st, 2012. Last updated at 10:15, Saturday May 5th, 2012

Two appear in court over robbery at Pentwynmawr takeaway

Two men have appeared in court charged over the robbery of an Indian takeaway in Pentwynmawr.

Daniel Burston, 23, of Llanarth Road, Pontllanfraith, and Kyran Peplar, 21, of Bryn House, Crumlin, are accused of stealing £300 from The Taste of India restaurant, in High Street.

Bueston is charged with one count of robbery, while Peplar is charged with robbery and possession of an imitation forearm.



Both men were remanded in custody at Caerphilly Magistrates' Court on Monday April 30 and will appear at Newport Crown Court on May 10.

The Taste of India restaurant was raided at about 9.50pm on Sunday April 23 when male staff members were inside the premises. Two men came into the restaurant and demanded money.

The men made off with cash and it is believed they ran down a lane opposite which leads to a sports field.

No one was injured in the incident and there were no members of the public inside the restaurant at the time.

A third man arrested in connection with the crime, aged 25 from Pontllanfraith, has been released on bail pending further enquiries

Another article reference-

[http://www.southwalesargus.co.uk/news/9989797.____Masked_men_walked_into_Pe
ntwynmawr_takeaway_with_fake_gun_____court_hears/](http://www.southwalesargus.co.uk/news/9989797.____Masked_men_walked_into_Pe
ntwynmawr_takeaway_with_fake_gun_____court_hears/)

QTS – How did the Officers questioning style differ in this interview as oppose to the techniques we have discussed?

What is a Special Warning?

S36 of the Criminal Justice & Public Order Act 1994 puts an onus on a suspect to account for objects, marks or substances found on him at the time of arrest

S37 of the Criminal Justice & Public Order Act 1994 puts the onus on a suspect to account for their presence in suspicious circumstances at the time of arrest

And you as the investigating officer

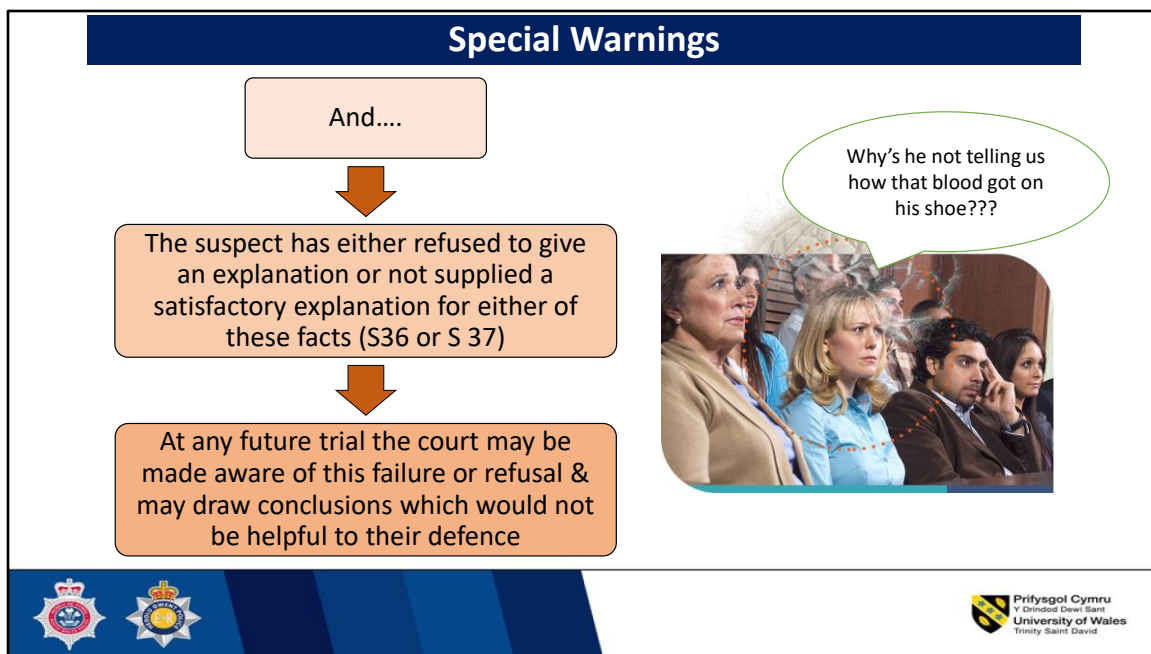
Believe either the presence of the object, mark or substance located on him **OR**

believe his presence in suspicious circumstances at the time of arrest

May be because he took part in that offence



QTS – what is a special warning?



Trainer to hand out full breakdown of sect 36 and 37 ..handout

In serious cases consideration should be given to the preparation of an adverse inference pack. The interview booklet forms part of the inference pack,
Six conditions

There are six conditions which must be met when showing adverse inference:

1. The alleged failure to mention a fact which they later rely on in their defence must occur when the suspect is being questioned under caution.
2. The failure to mention these facts must occur before or on being charged.
3. The questions which were not answered were posed in an attempt to discover whether or by whom the offence had been committed.
4. The suspect failed to mention a fact which was later relied on in their defence.
5. The suspect could, in the circumstances existing at the time, reasonably have been expected to mention the facts they relied on at trial.
6. The provision only applies to criminal proceedings.

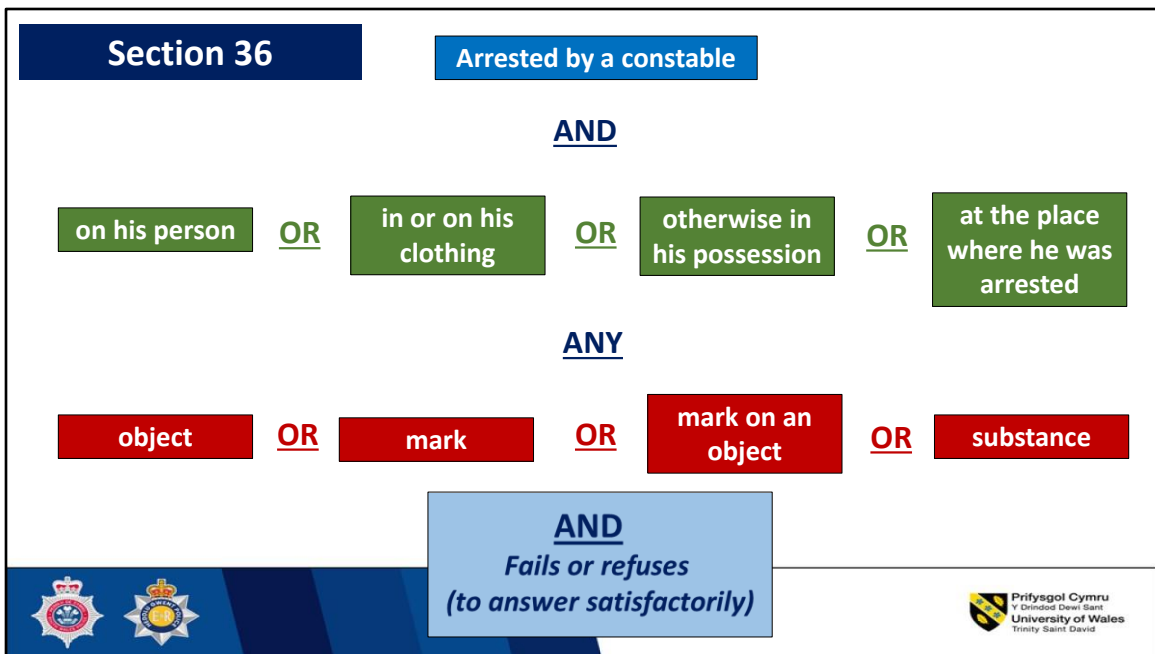
The CJPOA 1994 gave us the new caution

S34 discretionary inference

S35 failing to take the stand – discretionary inference

S36 Special Warning – automatic inference

S37 Special Warning – automatic inference



Trainer to hand out 'Special Warnings definitions' Handout
Trainer to supply students 'Special Warning sect 36 wording' handout
Trainer to supply students 'special warning sect 37 wording' handout

Section 37

A person is arrested by a constable

AND

Was found by him

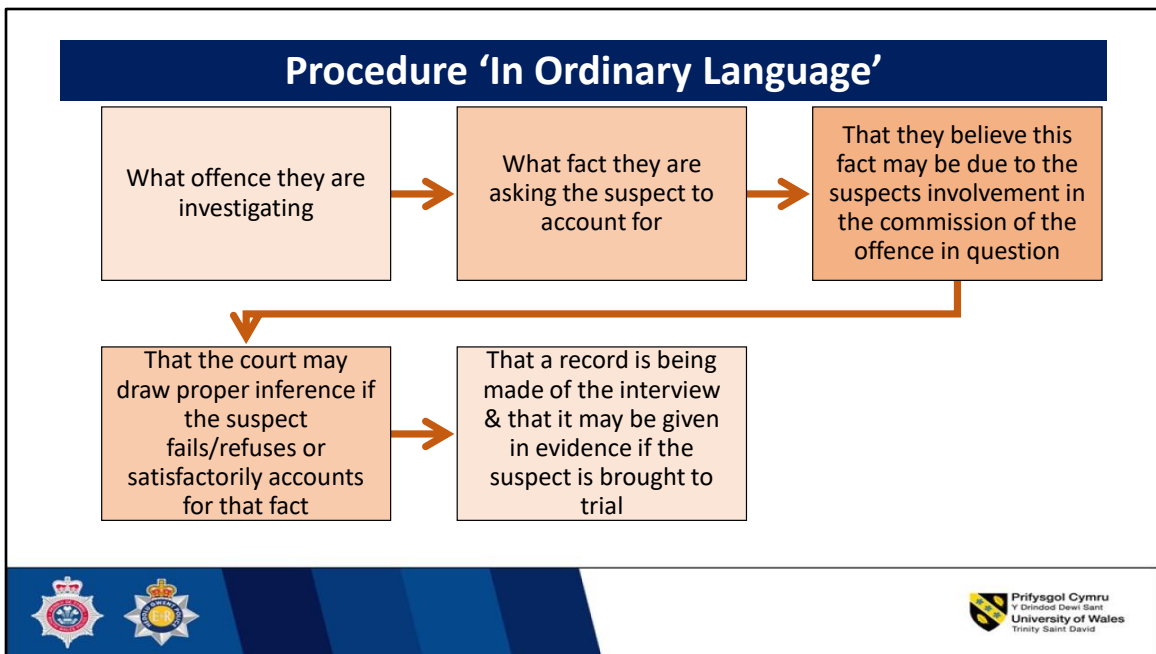
At a place

At or about the time that the alleged offence was committed

AND

He fails or refuses to answer satisfactorily
(to account for his presence)





Trainer to handout “ Special Warning Sect 36 wording handout” and “Special Warning Sect 37 wording handout”

Trainer to discuss and debrief student contributions

The Requirements

To comply with these requirements, the investigator must ensure that the suspect is at an authorised place of detention and has been told that they have the right to consult a legal representative prior to being questioned, charged or informed that they may be prosecuted.



When to Introduce a Special Warning

What does the APP suggest? Discuss



At the end of a relevant topic in the early stages of the interview.

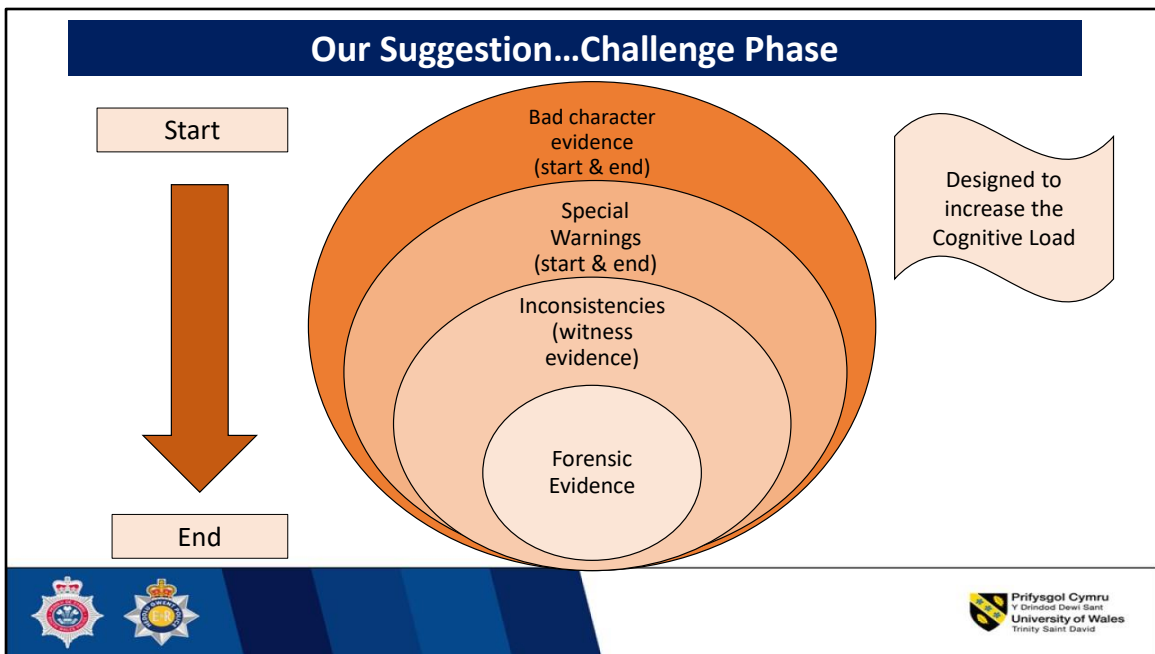
'Investigative Interviewing, the Conversation Management Approach' – Eric Shepperd & Andy Griffiths



In the latter stages of the interview prior to the challenge phase



QTS – when do you think it is best to introduce special warnings?



Activity 2 - Group work, Trainer to get students to practice writing out the first parts of the Special Warning spiel completing points a, b and c as in the interview booklet (but not to actually write in the interview booklet) using the circumstances from the scenarios (3 of them) in the Special warning exercise that has previously been done.

Criminal Justice Act 2003

Bad Character Evidence (Sections 98-112)



Section 98 of the Criminal Justice Act 2003 defines the sort of evidence whose admissibility is to be determined under the statutory scheme relating to evidence of 'bad character'.

98(1) References in this chapter to evidence of a person's 'bad character' are to cover evidence of, or of a disposition towards, misconduct on his part, other than evidence which -

(a) has to do with the alleged facts of the offence with which the defendant is charged, or

(b) is evidence of misconduct in connection with the investigation or prosecution of that offence.

i) The term misconduct is further defined in section 112 as the 'commission of an offence or other reprehensible behaviour'. The definition includes evidence such as previous convictions, as well as evidence on charges being tried concurrently, and evidence relating to offences for which a person has been charged, where the charge is not prosecuted, or for which the person was subsequently acquitted. Behaviour which is not contrary to criminal law (such as a poor disciplinary record at work or on

a sports field) could also be considered 'reprehensible behaviour' and could be admitted under these provisions.

(ii) The criteria relating to the admissibility of any 'bad character' evidence is laid out in section 100 (non defendant) and section 101 (defendant).

(iii) The scheme does not affect the admissibility of evidence of the facts of the offence nor that which is closely related in time, place or circumstances to those facts. This is excluded from the definition as is evidence of misconduct in connection with the investigation or prosecution of the offence. This evidence is therefore not governed by the new statutory rules.

Thus, if the defendant were charged with burglary, the prosecution's evidence on the facts of the offence, any witnesses to the crime, forensic evidence etc would have to be judged admissible/inadmissible outside the terms of these provisions. So too would evidence of an assault that had been committed in the course of the burglary, as evidence to do with the facts of the offence. Evidence that the defendant had tried to intimidate prosecution witnesses would also be admissible/inadmissible outside this scheme as evidence of misconduct in connection with the investigation or the prosecution of the offence, as would allegations by the defendant that evidence had been planted. However, evidence that the defendant had committed a burglary on another occasion or that a witness had previously lied on oath would not be evidence to do with the facts of the offence or its investigation or prosecution and would therefore not be excluded and its admissibility would be dealt with under this Act's provisions.

Definition of Bad Character

• Evidence of or a disposition towards misconduct

• Misconduct

• The commission of an offence or other reprehensible conduct



Aims of the Act

To rebalance the Criminal Justice System towards the victims and witnesses

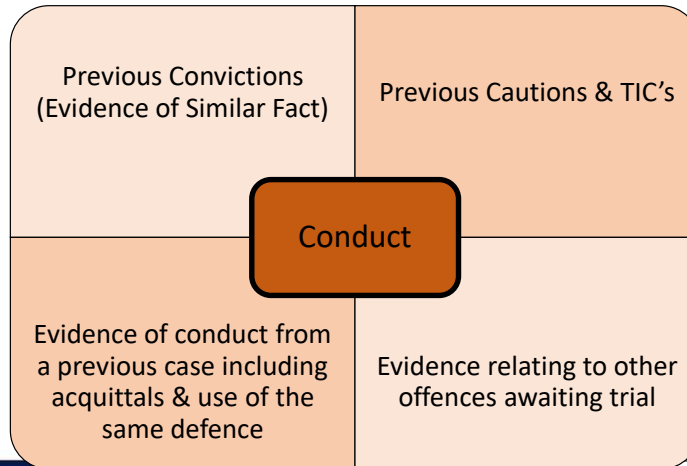
To make it easier , where relevant , for the prosecution to introduce evidence of a defendant's bad character

To make it harder for the defence to discredit victims and witnesses by reference to their character

To alter the way courts allow evidence to be presented

To emphasise that BCE should in many cases be included as part of the prosecution case

Bad Character



Bad Character

Reprehensible conduct – a particular kind of conduct which may be regarded as reprehensible by the public



Known instances of racism

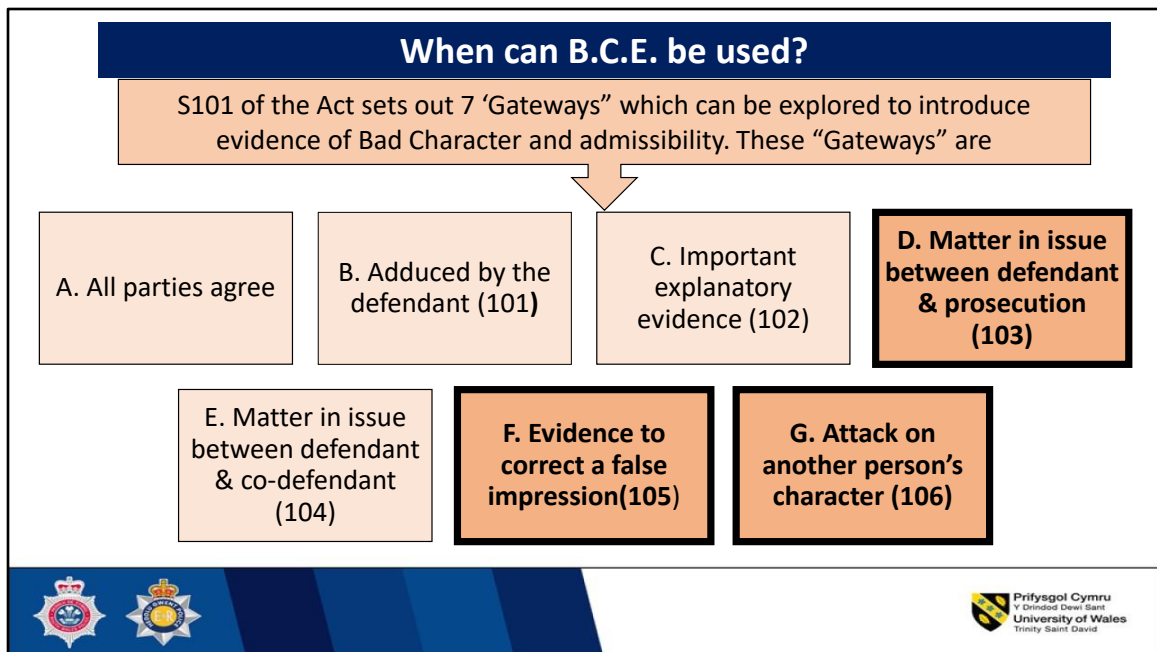
Known instances of bullying

Parent who has a child taken into care

Bad disciplinary record at work

Minor pilfering from work





Points D, F & G are the ones that are relevant to the suspect interview which will be explained on the next slide. The remaining will be issues raised in court.

S101 of the Criminal Justice Act 2003 provides that evidence of a defendant's bad character is admissible in specific circumstances. The categories of admissible 'bad character' evidence are laid out in subsection (1) below; commonly referred to as 'gateways' as above

101(1) In criminal proceedings evidence of the defendant's bad character is admissible if, but only if -

(a) all parties to the proceedings agree to the evidence being admissible, (b) the evidence is adduced by the defendant himself or is given in answer to a question asked by him in cross-examination and intended to elicit it, (c) it is important explanatory evidence, (d) it is relevant to an important matter in issue between the defendant and the prosecution, (e) it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant, (f) it is evidence to correct a false impression given by the defendant, or (g) the defendant has made an attack on another person's character.

S102 For the purposes of section 101(1)(c) evidence is **important explanatory evidence** if -

- (a) without it, the court or jury would find it impossible or difficult properly to understand other evidence in the case, and
- (b) its value for understanding the case as a whole is substantial.

S103 relates to issues between the defendant and the prosecution. 103(1) For the purposes of section 101(1)(d) the matters in issue between the defendant and the prosecution include -

- (a) the question whether the defendant has a propensity to commit offences of the kind with which he is charged, except where his having such a propensity makes it no more likely that he is guilty of the offence;
- (b) the question whether the defendant has a propensity to be untruthful, except where it is not suggested that the defendant's case is untruthful in any respect.

S104 relates to evidence of a defendant's bad character that is admissible because it is relevant to an important matter at issue between the defendant and a co-defendant.

104(1) Evidence which is relevant to the question whether the defendant has a propensity to be untruthful is admissible on that basis under section 101(1)(e) only if the nature or conduct of his defence is such as to undermine the co-defendant's defence.

104(2) Only evidence -

- (a) which is to be (or has been) adduced by the co-defendant, or
- (b) which a witness is to be invited to give (or has given) in cross-examination by the co-defendant,

is admissible under section 101(1)(e).

Section 105 of the Criminal Justice Act 2003 relates to evidence that is admissible under section 101(1)(f) to correct a false impression given by the defendant.

105(1) For the purposes of section 101(1)(f) -

- (a) the defendant gives a false impression if he is responsible for the making of an

express or implied assertion which is apt to give the court or jury a false or misleading impression about the defendant;

(b) evidence to correct such an impression is evidence which has probative value (it's relevance) in correcting it.

S106 of the Criminal Law Act 2003 deals with evidence that becomes admissible as a result of the defendant attacking another person's character (section 101(1)(g)).

106(1) For the purposes of section 101(1)(g) a defendant makes an attack on another person's character if -

(a) he adduces evidence attacking the other person's character,

(b) he (or any legal representative appointed under section 38(4) of the YJCEA1999 to cross-examine a witness in his interests) asks questions in cross-examination that are intended to elicit such evidence, or are likely to do so, or

(c) evidence is given of an imputation about the other person made by the defendant -

(i) on being questioned under caution, before charge, about the offence with which he is charged, or

(ii) on being charged with the offence or officially informed that he might be prosecuted for it.

106(2) In subsection (1) 'evidence attacking the other person's character' means evidence to the effect that the other person -

(a) has committed an offence (whether a different offence from the one with which the defendant is charged or the same one), or

(b) has behaved, or is disposed to behave, in a reprehensible way;

and 'imputation about the other person' means an assertion to that effect.

How will Bad Character Evidence be used?

The most useful aspects of this legislation for the Police are likely to be the ability to show the defendant has:

A propensity to commit a certain type of crime **(D or F)**

or

A propensity to be untruthful **(D, F or G)**

The most likely way of admitting B.C.E is by use of previous convictions which may be admitted if they demonstrate the above points.

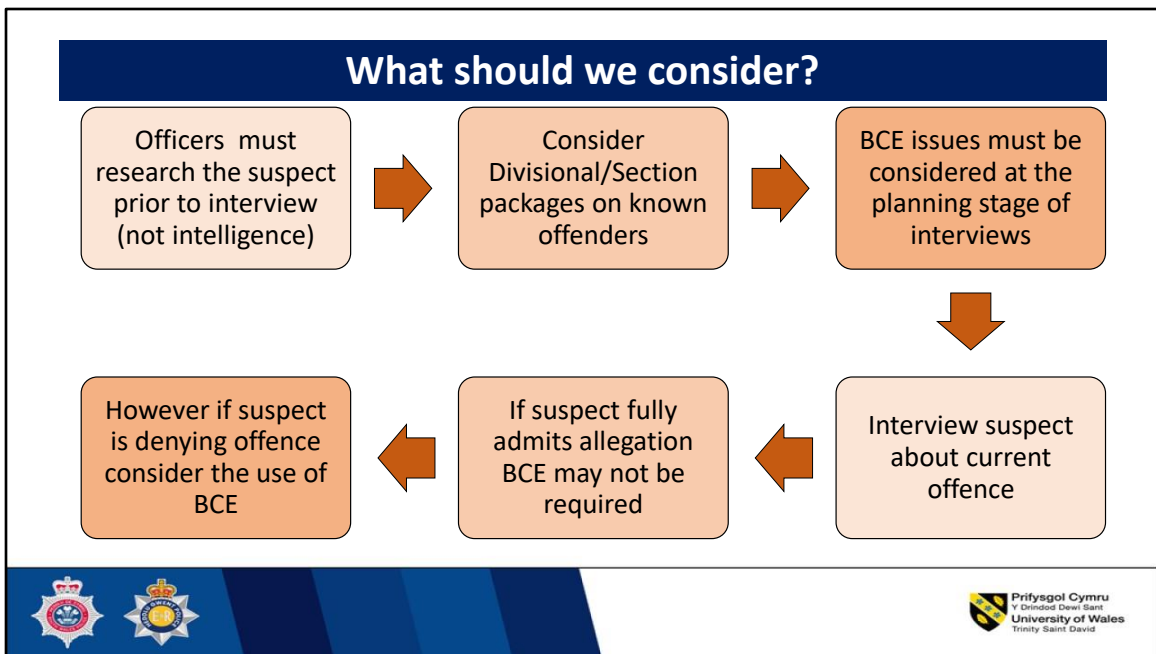


The examples below illustrate when BCE could be used during a suspect interview

D (it is relevant to an important matter in issue between the defendant and prosecution) – e.g. where the defendant has a propensity to commit a certain type of offence with a similar MO, excuses when arrested or PPN's recording reports of previous domestic violence.

F (Evidence to correct a false impression -) E.G "I'm not a violent man, I've never assaulted anyone"" but their pre cons include assaults.

G (Attack on another person's character) - where they attack the victim's or another persons character. EG, "I can't believe that you believe John as they are a convicted criminal and liar' However, the John is of clean character with no previous convictions.



Trainer to give students “Example of evidence of bad character” handout

Wording

"Bad Character"
Pre-interview Briefing
Interview
Challenge



Trainer to supply handout 'wording for Bad Character evidence' and discuss including on planning document/ MG6A and interview plan. Challenge part is on the following slide

Admissibility in Court



For B.C.E to be admissible in court it must meet the rules of evidence



It may be subject to legal argument



It may involve calling witnesses from previous cases to give evidence



It is the responsibility of the investigating officer to bring relevant B.C.E to the attention of the CPS



Bad Character

