

# LIBERTY

PROTECTING CIVIL LIBERTIES  
PROMOTING HUMAN RIGHTS

## **Liberty Response to the PACE Codes of Practice**

**April 2004**

## **About Liberty**

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

## **Liberty Policy**

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent funded research.

Liberty's policy papers are available at

[www.liberty-human-rights.org.uk/resources/policy-papers/index.shtml](http://www.liberty-human-rights.org.uk/resources/policy-papers/index.shtml)

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1. Liberty welcomes the opportunity to comment on the draft of the 2004 edition of the PACE Codes of Practice. Some of the changes are to be effected to correct typographical errors and many reflect the provisions of the Criminal Justice Act 2003. As Liberty had opportunities to comment on the substantive provisions Criminal Justice Bill, the scope of this paper is confined to amendments other than those related to the 2003 Act and the correction of typographical errors.

## **CODE A**

### **Amendment number 4:**

#### **Draft paragraphs A4.11 – 4.19, recording of encounters not involving the use of statutory powers.**

2. The implementation of the recommendation 61 of the Lawrence Report, which provided that Police Services should ensure that a record is made by police officers of all ‘stops’ and ‘stops and searches’ and ‘voluntary stops’ is an overdue and welcome measure.
3. The proposed amendment to Code A (inserting paragraphs A4.11 to 4.19) satisfies the recommendation of the Report concerning the recording of (i) the reason for the stop, (ii) the outcome, (iii) and the self-defined ethnicity of the person stopped. However, we note that while it was recommended in the Report that a copy of the record be given to the person stopped, paragraph 4.15 requires an officer only to inform the person stopped of their entitlement to a copy of the record.
4. Research has suggested that rates of non-compliance with the duty to record searches using powers conferred under Section 1, Police and Criminal Evidence Act are as high as 50-60%.<sup>1</sup> In light of this the prospects of a respectable degree of compliance with the duty to record encounters in which

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<sup>1</sup> See A. Crawford, T. Jones, T. Woodhouse and J. Young, *The Second Islington Crime Survey (1990: Middlesex University, Centre for Criminology)*; K. Painter *et al.*, *The Hammersmith Crime Survey, (1989: Middlesex University, Centre for Criminology)*.

members of the public are asked to account for themselves but which do not entail the use of any statutory power are not encouraging.

5. It has been suggested that the completion of records of search is dependant on whether police officers perceive that their own interests require safeguarding rather than for the purpose of safeguarding the rights of suspects. Officers will have obvious incentives to complete records of search where there is a risk of an ensuing complaint or where the search results in an arrest.<sup>2</sup> Encounters in which persons are asked to account for themselves are less intrusive, embarrassing and confrontational than those involving the use of search powers and, therefore, less likely to lead to complaints. If this is reflected in police officers perceptions of the risks attending such encounters then the level of recording of stops that do not involve the use of statutory powers is likely to be considerably lower than that relating to the recording of searches.
6. If these measures are intended to have substantive rather than symbolic effect, then steps ought to be taken to obtain data on to recording practices after 1<sup>st</sup> April 2005 and procedures reviewed in the light of the findings.

## **CODE B**

### **Amendment 12: Paragraph B6.14**

#### **Removal of the requirement for an officer of the rank of inspector to be in charge of a search.**

7. This represents a further watering down of important safeguards. The requirement for the officer in charge of searches under Schedule 1, PACE and Schedule 5, Terrorism Act 2000, to be an officer of the rank of inspector ensures a degree of oversight by an experienced officer.

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<sup>2</sup> See A. Sanders and R. Young, *Criminal Justice*, 2<sup>nd</sup> edition, (2000: Butterworths), pp.106-107.

## CODE C

### **Amendment 19: Paragraph C3.4**

**Arresting officer's account to be made available to custody officer where arresting officer not physically present when arrestee brought to a police station.**

8. It is proposed that the following be inserted into paragraph C3.4:

*“If the arresting officer is not physically present when the detainee is brought to a police station, the arresting officer's account must be made available to the custody officer remotely or by a third party on the arresting officer's behalf.”*

9. Section 37(2) PACE provides that where a custody officer determines that he does not have sufficient evidence before him to charge a person arrested with an offence the person arrested must be released. This requirement is subject to qualification insofar the custody officer may authorise detention where he believes that this is necessary to secure or preserve evidence relating to an offence, or obtain evidence by questioning.
10. Despite any prevailing practice to the contrary,<sup>3</sup> the authorisation of suspects' detention is not a task that ought to be performed in a perfunctory manner. The arresting officer's account of the circumstances surrounding an arrest ought to be of considerable importance. It provides the first opportunity for a custody officer to assess whether or not there is sufficient evidence to charge the suspect, or whether detention will provide an opportunity to obtain or secure such evidence. If it does not exist and there would be no prospect of obtaining it through the continued detention of the suspect then the suspect ought to be released at that point without unnecessary delay.

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<sup>3</sup> See I. McKenzie, R. Morgan and R. Reiner, “Helping the Police with Their Inquiries: the Necessity Principle and Voluntary Attendance at the Police Station, [1990] Crim. L.R. 22.

11. Liberty has no objection to the arresting officer's account being communicated by the arresting officer remotely, for example, via telephone or police radio system. This would still afford an adequate opportunity for the custody officer to inquire into the circumstances surrounding arrest in order to satisfy himself of whether the detention of the suspect would be justified.
12. The proposed amendment goes further, however, and would permit the arresting officers account to be relayed through a third party. If the third party was someone who was present when the suspect was arrested, though not the arresting officer, he might possess sufficient knowledge to provide satisfactory answers to any questions that the custody officer might pose.
13. In the schedule of amendments accompanying the draft Codes it is explained that the amendment will "enable officers to remain on front-line duties without being 'taken off the street' to travel to and from the police station [and] enable greater use of designated detention officers under sections 38 & 39 of the Police Reform Act 2002.
14. It is not clear what the role of the *designated detention officers* might be in such circumstances. The powers that may be conferred on a detention officer do not extend to escorting arrested persons to a police station; a power which may be conferred on an *escort officer*.<sup>4</sup> Whether a detention officer or an escort officer is the 'third party' through which the officer's account is relayed, that person is unlikely to have first-hand knowledge of the relevant facts and it is doubtful whether he would be in a position to provide any information that might be requested by the custody officer.
15. Liberty takes the view that where an officer has exercised his powers to deprive an individual of his liberty he ought to be required to give an account of the circumstances of arrest directly to the custody officer. If, however, third-hand accounts are to be permitted then these ought to be subject to the

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<sup>4</sup> See paragraphs 34 and 35, Schedule 4, Police Reform Act 2002.

restriction that they should only be given by someone with first-hand knowledge of the circumstances of arrest, i.e. someone who was present at the scene and witnessed for themselves what occurred.

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