



HOME OFFICE

Judges' Rules
and
Administrative Directions
to the Police

HOME OFFICE CIRCULAR No. 89/1978

LONDON
HER MAJESTY'S STATIONERY OFFICE
30p net

© *Crown copyright 1978*
First published 1964
Second Edition 1978

ISBN 0 11 340242 2

HOME OFFICE CIRCULAR No. 89/1978:
JUDGES' RULES AND ADMINISTRATIVE DIRECTIONS TO THE
POLICE

Home Office
Queen Anne's Gate,
LONDON SW1

June, 1978

The Chief Officer of Police

Sir,

I am directed by the Secretary of State to say that he is anxious to ensure that the Judges' Rules and the related Administrative Directions to the police are known by all police officers and readily available to all members of the legal profession and others who may be concerned with them. He has accordingly decided, with the agreement of the Lord Chief Justice, to re-issue the Rules and Directions taking account of related Home Office circulars issued since new Rules were made in 1964.

2. The Rules which are reproduced in Appendix A to this circular are identical to those issued under cover of Home Office circular No. 31/1964. The Judges have made it clear that the Rules are concerned with the admissibility in evidence against a person of answers, oral or written, given by that person to questions asked by police officers and of statements made by that person. In giving evidence as to the circumstances in which any statement was made or taken down in writing, officers must be absolutely frank in describing to the court exactly what occurred, and it will then be for the Judge to decide whether or not the statement tendered should be admitted in evidence. The Rules should constantly be borne in mind, as should the general principles which the Judges have set out before the Rules. But in addition to complying with the Rules, interrogating officers should always try to be fair to the person who is being questioned, and scrupulously avoid any method which could be regarded as in any way unfair or oppressive.

3. Appendix B contains the Administrative Directions to the Police, which have been revised to take account of relevant Home Office circulars issued since 1964. Attention is drawn to the following points at which the Directions differ from those issued in 1964:

- (i) Home Office letter of May 31, 1968 on interviewing, fingerprinting and photographing children and young persons made it clear that the advice contained in the first sentence of paragraph 4 of the Directions should be taken as relating to all persons under 17 years of age. Paragraph 4 of the Directions has been amended accordingly.
- (ii) Home Office circular No. 66/1976 clarified the second paragraph of Administrative Direction 7 (a), by pointing out, for the avoidance of doubt, that the sending of telegrams and letters by persons in police

custody should be subject to the same proviso as telephone communications with the person's solicitors and friends (covered by the first paragraph of Direction 7 (a)). Administrative Direction 7 (a) has now been recast accordingly.

- (iii) Home Office circular No. 109/1976 gave guidance on the need for special care in the interrogation of mentally handicapped persons. A new paragraph, 4A, now incorporates that guidance. The reference to a "social worker" as an example of the sort of person who might be asked to be present should not be narrowly interpreted—any person with a professional interest in the mentally handicapped would be suitable. Chief officers of police may find that if the Director of Social Services is approached locally it may be possible to make suitable arrangements in advance.

In addition, the heading but not the sense of Administrative Direction 5 has been altered.

4. Home Office circular No. 148/1977 set out arrangements for obtaining the services of competent interpreters in cases where police enquiries involve the questioning of a deaf person. For convenience, the substance of this circular is set out in Appendix C attached.

5. Section 62 of the Criminal Law Act provides that where any person has been arrested and is being held in custody in a police station or other premises, he shall be entitled to have intimation of his arrest and of the place where he is being held sent to one person reasonably named by him without delay or, where some delay is necessary in the interest of the investigation or prevention of crime or the apprehension of offenders, with no more delay than is so necessary. Guidance to the police on section 62 is contained in Home Office circular No. 74/1978. Paragraph 1 of that circular makes it clear that the provision in section 62 in no way detracts from the Judges' Rules and Administrative Directions.

I am, Sir,

Your obedient Servant,

R. T. ARMSTRONG.

APPENDIX A
JUDGES' RULES

NOTE

The origin of the Judges' Rules is probably to be found in a letter dated October 26, 1906, which the then Lord Chief Justice, Lord Alverstone, wrote to the Chief Constable of Birmingham in answer to a request for advice in consequence of the fact that on the same Circuit one Judge had censured a member of his force for having cautioned a prisoner, whilst another Judge had censured a constable for having omitted to do so. The first four of the pre-1964 Rules were formulated and approved by the Judges of the King's Bench Division in 1912; the remaining five in 1918. They were much criticised, *inter alia* for alleged lack of clarity and of efficacy for the protection of persons who were questioned by police officers; on the other hand it was maintained that their application unduly hampered the detection and punishment of crime. A Committee of Judges devoted considerable time and attention to producing, after consideration of representative views, a new set of Rules which was approved by a meeting of all the Queen's Bench Judges and issued in 1964.

The Judges control the conduct of trials and the admission of evidence against persons on trial before them; they do not control or in any way initiate or supervise police activities or conduct. As stated in paragraph (e) of the introduction to the present Rules, it is the law that answers and statements made are only admissible in evidence if they have been voluntary in the sense that they have not been obtained by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression. The Rules do not purport to envisage or deal with the many varieties of conduct which might render answers and statements involuntary and therefore inadmissible. The Rules merely deal with particular aspects of the matter. Other matters such as affording reasonably comfortable conditions, adequate breaks for rest and refreshment, special procedures in the case of persons unfamiliar with the English language or of immature age or feeble understanding, are proper subjects for administrative directions to the police.

JUDGES' RULES

These Rules do not affect the principles

- (a) That citizens have a duty to help a police officer to discover and apprehend offenders;
- (b) That police officers, otherwise than by arrest, cannot compel any person against his will to come to or remain in any police station;
- (c) That every person at any stage of an investigation should be able to communicate and to consult privately with a solicitor. This is so even if he is in custody provided that in such a case no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by his doing so;
- (d) That when a police officer who is making enquiries of any person about an offence has enough evidence to prefer a charge against that person for the offence, he should without delay cause that person to be charged or informed that he may be prosecuted for the offence;

- (e) That it is a fundamental condition of the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression.

The principle set out in paragraph (e) above is overriding and applicable in all cases. Within that principle the following Rules are put forward as a guide to police officers conducting investigations. Non-conformity with these Rules may render answers and statements liable to be excluded from evidence in subsequent criminal proceedings.

RULES

I. When a police officer is trying to discover whether, or by whom, an offence has been committed he is entitled to question any person, whether suspected or not, from whom he thinks that useful information may be obtained. This is so whether or not the person in question has been taken into custody so long as he has not been charged with the offence or informed that he may be prosecuted for it.

II. As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person or cause him to be cautioned before putting to him any questions, or further questions, relating to that offence.

The caution shall be in the following terms:—

“ You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence.”

When after being cautioned a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any such questioning or statement began and ended and of the persons present.

III. (a) Where a person is charged with or informed that he may be prosecuted for an offence he shall be cautioned in the following terms:—

“ Do you wish to say anything? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence.”

(b) It is only in exceptional cases that questions relating to the offence should be put to the accused person after he has been charged or informed that he may be prosecuted. Such questions may be put where they are necessary for the purpose of preventing or minimising harm or loss to some other person or to the public or for clearing up an ambiguity in a previous answer or statement.

Before any such questions are put the accused should be cautioned in these terms:—

“ I wish to put some questions to you about the offence with which you have been charged (or about the offence for which you may be prosecuted). You are not obliged to answer any of these questions, but if you do the questions and answers will be taken down in writing and may be given in evidence.”

Any questions put and answers given relating to the offence must be contemporaneously recorded in full and the record signed by that person or if he refuses by the interrogating officer.

- (c) When such a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any questioning or statement began and ended and of the persons present.

IV. All written statements made after caution shall be taken in the following manner:—

- (a) If a person says that he wants to make a statement he shall be told that it is intended to make a written record of what he said. He shall always be asked whether he wishes to write down himself what he wants to say; if he says that he cannot write or that he would like someone to write it for him, a police officer may offer to write the statement for him. If he accepts the offer the police officer shall, before starting, ask the person making the statement to sign, or make his mark to, the following:—

“ I, _____, wish to make a statement. I want someone to write down what I say. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence.”

- (b) Any person writing his own statement shall be allowed to do so without any prompting as distinct from indicating to him what matters are material.

- (c) The person making the statement, if he is going to write it himself, shall be asked to write out and sign before writing what he wants to say, the following:—

“ I make this statement of my own free will. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence.”

- (d) Whenever a police officer writes the statement, he shall take down the exact words spoken by the person making the statement, without putting any questions other than such as may be needed to make the statement coherent, intelligible and relevant to the material matters; he shall not prompt him.

- (e) When the writing of a statement by a police officer is finished the person making it shall be asked to read it and to make any corrections, alterations or additions he wishes. When he has finished reading it he shall be asked to write and sign or make his mark on the following Certificate at the end of the statement:—

“ I have read the above statement and I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it of my own free will.”

- (f) If the person who has made a statement refuses to read it or to write the above mentioned Certificate at the end of it or to sign it, the senior police officer present shall record on the statement itself and

in the presence of the person making it, what has happened. If the person making the statement cannot read, or refuses to read it, the officer who has taken it down shall read it over to him and ask him whether he would like to correct, alter or add anything and to put his signature or make his mark at the end. The police officer shall then certify on the statement itself what he has done.

V. If at any time after a person has been charged with, or has been informed that he may be prosecuted for an offence a police officer wishes to bring to the notice of that person any written statement made by another person who in respect of the same offence has also been charged or informed that he may be prosecuted, he shall hand to that person a true copy of such written statement, but nothing shall be said or done to invite any reply or comment. If that person says that he would like to make a statement in reply, or starts to say something, he shall at once be cautioned or further cautioned as prescribed by Rule III(a).

VI. Persons other than police officers charged with the duty of investigating offences or charging offenders shall, so far as may be practicable, comply with these Rules.

APPENDIX B

ADMINISTRATIVE DIRECTIONS ON INTERROGATION AND THE TAKING OF STATEMENTS

1. *Procedure generally*

- (a) When possible statements of persons under caution should be written on the forms provided for the purpose. Police officers' notebooks should be used for taking statements only when no forms are available.
- (b) When a person is being questioned or elects to make a statement, a record should be kept of the time or times at which during the questioning or making of a statement there were intervals or refreshment was taken. The nature of the refreshment should be noted. In no circumstances should alcoholic drink be given.
- (c) In writing down a statement, the words used should not be translated into "official" vocabulary; this may give a misleading impression of the genuineness of the statement.
- (d) Care should be taken to avoid any suggestion that the person's answers can only be used in evidence against him, as this may prevent an innocent person making a statement which might help clear him of the charge.

2. *Record of interrogation*

Rule II and Rule III(c) demand that a record should be kept of the following matters:—

- (a) when, after being cautioned in accordance with Rule II, the person is being questioned or elects to make a statement—of the time and place at which any such questioning began and ended and of the persons present;

- (b) when, after being cautioned in accordance with Rule III(a) or (b) a person is being questioned or elects to make a statement—of the time and place at which any questioning and statement began and ended and of the persons present.

In addition to the records required by these Rules full records of the following matters should additionally be kept:—

- (a) of the time or times at which cautions were taken, and
- (b) of the time when a charge was made and/or the person was arrested, and
- (c) of the matters referred to in paragraph 1(b) above.

If two or more police officers are present when the questions are being put or the statement made, the records made should be countersigned by the other officers present.

3. *Comfort and refreshment*

Reasonable arrangements should be made for the comfort and refreshment of persons being questioned. Whenever practicable both the person being questioned or making a statement and the officers asking the questions or taking the statement should be seated.

4. *Interrogation of children and young persons*

As far as practicable children and young persons under the age of 17 years (whether suspected of crime or not) should only be interviewed in the presence of a parent or guardian, or in their absence, some person who is not a police officer and is of the same sex as the child. A child or young person should not be arrested, nor even interviewed, at school if such action can possibly be avoided. Where it is found essential to conduct the interview at school, this should be done only with the consent, and in the presence, of the head teacher, or his nominee.

4A. *Interrogation of mentally handicapped persons*

- (a) If it appears to a police officer that a person (whether a witness or a suspect) whom he intends to interview has a mental handicap which raises a doubt as to whether the person can understand the questions put to him, or which makes the person likely to be especially open to suggestion, the officer should take particular care in putting questions and accepting the reliability of answers. As far as practicable, and where recognised as such by the police, a mentally handicapped adult (whether suspected of crime or not) should be interviewed only in the presence of a parent or other person in whose care, custody or control he is, or of some person who is not a police officer (for example a social worker).
- (b) So far as mentally handicapped children and young persons are concerned, the conditions of interview and arrest by the police are governed by Administrative Direction 4 above.

- (c) Any document arising from an interview with a mentally handicapped person of any age should be signed not only by the person who made the statement, but also by the parent or other person who was present during the interview. Since the reliability of any admission by a mentally handicapped person may even then be challenged, care will still be necessary to verify the facts admitted and to obtain corroboration where possible.

5. *Statements in languages other than English*

In the case of a person making a statement in a language other than English:

- (a) The interpreter should take down the statement in the language in which it is made.
- (b) An official English translation should be made in due course and be proved as an exhibit with the original statement.
- (c) The person making the statement should sign that at (a).

Apart from the question of apparent unfairness, to obtain the signature of a suspect to an English translation of what he said in another language can have little or no value as evidence if the suspect disputes the accuracy of this record of his statement.

6. *Supply to accused persons of written statement of charges*

- (a) The following procedure should be adopted whenever a charge is preferred against a person arrested without warrant for any offence:—

As soon as a charge has been accepted by the appropriate police officer the accused person should be given a written notice containing a copy of the entry in the charge sheet or book giving particulars of the offence with which he is charged. So far as possible the particulars of the charge should be stated in simple language so that the accused person may understand it, but they should also show clearly the precise offence in law with which he is charged. Where the offence charged is a statutory one, it should be sufficient for the latter purpose to quote the section of the statute which created the offence.

The written notice should include some statement on the lines of the caution given orally to the accused person in accordance with the Judges' Rules after a charge has been preferred. It is suggested that the form of notice should begin with the following words:—

“ You are charged with the offence(s) shown below. You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence. ”

- (b) Once the accused person has appeared before the court it is not necessary to serve him with a written notice of any further charges which may be preferred. If, however, the police decide, before he has appeared before a court, to modify the charge or to prefer further charges, it is desirable that the person concerned should be formally charged with the further offence and given a written copy of the charge as soon as it is possible to do so having regard to the particular circumstances of the case. If the accused person has then been released on bail, it may not always be

practicable or reasonable to prefer the new charge at once, and in cases where he is due to surrender to his bail within forty-eight hours or in other cases of difficulty it will be sufficient for him to be formally charged with the further offence and served with a written notice of the charge after he has surrendered to his bail and before he appears before the court.

7. Facilities for defence

- (a) A person in custody should be supplied on request with writing materials. Provided that no hindrance is reasonably likely to be caused to the processes of investigation or the administration of justice:
- (i) he should be allowed to speak on the telephone to his solicitor or to his friends;
 - (ii) his letters should be sent by post or otherwise with the least possible delay;
 - (iii) telegrams should be sent at once, at his own expense.
- (b) Persons in custody should not only be informed orally of the rights and facilities available to them, but in addition notices describing them should be displayed at convenient and conspicuous places at police stations and the attention of persons in custody should be drawn to these notices.

APPENDIX C

POLICE INQUIRIES INVOLVING DEAF PERSONS

When, in the course of police inquiries, it becomes necessary to ask questions of a deaf person, there is sometimes difficulty in arranging for the proceedings to be interpreted with sufficient clarity, especially when such persons have no useful hearing and can only communicate manually by means of finger-spelling and signing. In these circumstances the services of competent interpreters for the deaf may be required. It has been agreed with the Association of Directors of Social Services and the Royal National Institute for the Deaf that Directors of Social Services will, on request, designate points of contact (which may, depending on local circumstances, be an office of the local authority or of a voluntary organisation) through which arrangements for securing the services of interpreters can be made. Chief officers of police are therefore requested to get in touch with Directors of Social Services locally so that arrangements for designating a point of contact can be made.

In cases of difficulty The Royal National Institute for the Deaf, 105 Gower Street, London WC1E 6AH (telephone number 01-387 8033) will be glad to advise.

HER MAJESTY'S STATIONERY OFFICE

Government Bookshops

49 High Holborn, London WC1V 6HB

13a Castle Street, Edinburgh EH2 3AR

41 The Hayes, Cardiff CF1 1JW

Brazennose Street, Manchester M60 8AS

Southey House, Wine Street, Bristol BS1 2BQ

258 Broad Street, Birmingham B1 2HE

80 Chichester Street, Belfast BT1 4JY

*Government Publications are also available
through booksellers*

ISBN 0 11 340242 2