

An Garda Síochána



Code of Practice on Access to a Solicitor by Persons in Garda Custody

APRIL 2015

1 Introduction

The purpose of this Code of Practice is to ensure that members of An Garda Síochána (“members”) develop constructive, professional and courteous relationships with solicitors while engaging with arrested/detained persons. An appreciation of each other’s role is important. This Code of Practice aims to streamline the interaction between An Garda Síochána and solicitors in relation to arrested/detained persons. It aims to ensure consistency of approach, taking into account a suspect’s right to a fair trial and to provide practical guidance for the member in charge and those tasked with interviewing suspects.

The solicitor’s only role in the Garda station should be to protect and advance the legal rights of their client. The responsibility of An Garda Síochána is much wider than that of the solicitor. In addition to a legal duty to be fair to suspects, members have the added responsibility of fairly representing the interests of victims/witnesses of crime and society generally. In turn, members are entitled to expect that solicitors will discharge their duties to their clients in a courteous and professional manner and that they will understand the responsibilities and duties of members, as they would wish to be understood themselves.

To assist in streamlining the interaction between An Garda Síochána and solicitors this Code of Practice will be shared with the Law Society of Ireland.

The Code of Practice is timely because of the recent advice of the Director of Public Prosecutions that a suspect may have a solicitor present during interview.

2 The Law

The Criminal Justice Act 1984 (the 1984 Act) and the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 and 2006 (the Custody Regulations) provide that where a person is arrested/detained at a Garda station he/she must be informed “*that he is entitled to consult a solicitor.*” Consultation includes by means of telephone. The member in charge must ensure that the detainee is informed without delay of his entitlement to consult a solicitor and, at the request of the detainee, that the solicitor be informed accordingly. The Supreme Court in the case of **DPP v Healy** [1990] ILRM 313¹, established the right of reasonable access to a solicitor as a constitutional right.

The Supreme Court in the case of **People (DPP) v Gormley**² examined the entitlement not to be interrogated without first having access to a solicitor. The following can be gleaned from this case:

- “... *the need for basic fairness, which is inherent in the requirement of trial in due course of law under Article 38.1 of the Constitution, carries with it, at least in general terms and potentially subject to exceptions, an entitlement not to be interrogated after a request for a lawyer has been made and before that lawyer has become available to tender the requested advice*”³
- “*the entitlement not to self-incriminate incorporates an entitlement to legal advice in advance of mandatory questioning of a suspect in custody.*”⁴
- “... *[t]he right to a trial in due course of law encompasses a right to early access to a lawyer after arrest and the right not to be interrogated without*

¹ See also *DPP v Madden* [1977] IR 336; *DPP v Buck* [2002] 2 IR 268; *DPP v McCrea* [2010] IESC 60.

² 6th March 2014, Supreme Court, Mr Justice Clarke, para 9.2.

³ *Ibid*, para 9.2.

⁴ *Ibid*, para 9.13.

*having had an opportunity to obtain such advice. The conviction of a person wholly or significantly on the basis of evidence obtained contrary to those constitutional entitlements represents a conviction following an unfair trial process.*⁵

- *If any exceptions to the right to legal advice before interrogation “are to be recognised, then it would be necessary that there be wholly exceptional circumstances involving a pressing and compelling need to protect other major constitutional rights such as the right to life”.*⁶

Following the decision of the Supreme Court in the Gormley case (and the related case of White) the Director of Public Prosecutions advised the Garda Commissioner that if requested a suspect was entitled to have a solicitor present during interview in custody. This was in addition to the right to consult a solicitor before interview. Furthermore, the Director of Public Prosecutions has advised that all suspects detained in Garda stations for questioning be advised, in advance of any questioning, that they may request a solicitor to be present at interview.

Therefore, a suspect in Garda custody, unless he/she expressly waives his/her right to be given legal advice, should not be interviewed prior to him/her obtaining legal advice except in wholly exceptional circumstances involving a pressing and compelling need to protect other major constitutional rights such as the right to life or where there is a clear waiver of the right by the suspect.⁷

3 Solicitor

The 1984 Act and the Custody Regulations, in relation to an arrested/detained persons' entitlement to legal advice, refers to an entitlement to consult a **solicitor**. In this respect, reference to a solicitor means a solicitor who is qualified to practice.⁸ It should be noted that no solicitor shall practise as a solicitor unless a practising certificate in respect of him/her is in force.⁹ If a member has any doubt as to the professional standing of any person claiming to be a solicitor, a complete list of practising solicitors is available on the Law Society Website: www.lawsociety.ie¹⁰ Legal executives or apprentice solicitors (on their own) are not permitted to sit in on an interview. If practicable and accommodation permitting and with the agreement of the member in charge and the suspect, an apprentice solicitor may accompany a solicitor during an interview or a trainee member may be present during an interview however, an apprentice solicitor or a trainee member is not permitted to take any part in the interview. All attempts to contact a solicitor should be recorded in the Custody Record.

The issue of payment is a matter between the solicitor and client. In certain circumstances the detainee would be eligible for legal aid.

4 Interaction with a Solicitor

Members involved in the arrest, investigation or detention of a suspect must also ensure that they plan and prepare for any interaction with a solicitor.

An attempt should be made to contact the solicitor without delay after a request has been made by the suspect.

⁵ *Ibid*, para 9.13.

⁶ *Ibid*, para 9.14.

⁷ See paragraph 8 in relation to waiver.

⁸ Section 54 of the Solicitors Act 1954 as substituted by section 62 of the Solicitors (Amendment) Act 1994.

⁹ Section 56(1) of the Solicitors (Amendment) Act 1994.

¹⁰ A list of available solicitors on a Divisional basis will be available on this website in early 2015 which will be updated on a regular basis by the Law Society.

Unless there is a reason which may prevent a suspect from being able to receive an initial telephone consultation with a solicitor, for example, due to intoxication/violent behaviour, there is an expectation that the telephone consultation will take place within 30 minutes of the call from the Garda station to the solicitor. Where this does not happen, the member in charge should telephone the solicitor again to assess when a telephone call from a solicitor can be expected. Where after repeated attempts it is not possible to contact the solicitor, the suspect should be offered an opportunity to choose another solicitor.

In the event that a suspect does not know or nominate a solicitor, but is seeking legal advice, it will fall to An Garda Síochána to contact a solicitor on his/her behalf. In these circumstances it is prudent for the member in charge to provide the suspect with a list of solicitors practising in the locality and contact the solicitor of his/her choice. The detention of a suspect may be considered unlawful if An Garda Síochána deliberately contacts a solicitor who, on account of distance¹¹ from the station or some other factor, is likely to take a considerable time to arrive at the station.

Members must be cognisant of the manner in which they deal with suspects in Garda stations; ensuring that they do not say or do anything that could be construed as attempting to dissuade the suspect from availing of their entitlements.

To facilitate visits and ensure visitor safety, a solicitor should only be admitted past the reception/public area of the station for the purpose of consultation with the person detained, consultation with an investigating Garda or presence during interview. Solicitors are permitted to remain in the reception/public area of the station between interviews.

The solicitor should be facilitated, with all consultations being held in an interview room or a consultation room as appropriate.

In order to protect the solicitor from contact with other potentially violent prisoners, to protect prisoners' privacy rights and to protect ongoing business of An Garda Síochána, a solicitor should not be left unattended inside the reception area of the station. A solicitor will not be permitted to visit the cell area to impart information to their client. The fact of any interactions between the solicitor and the detainee should be recorded in the Custody Record of the prisoner concerned.

On arrival at the station the solicitor should be asked not to provide any item to any prisoner without the permission of the member in charge. The solicitor should be informed that the prisoner is not permitted to make a phone call during his/her detention except as arranged by the member in charge.

5 General Principles

All members should adhere to the following general principles when dealing with solicitors:

- Understand their role in the investigation process including legislation concerning arrest, detention and interview of suspects;
- Understand the role of the solicitor (*which is to act in the best interests of their clients*);
- Plan and prepare;
- Must not deliberately provide misleading information;
- Must not misrepresent the strength of available evidence;

¹¹ *People (DPP) v O' Brien* [2005] 2 IR 206.

- Must fully consider the likely effect of the provision of information;
- Must make a record of all information disclosed to the solicitor including the time of such disclosure.

This last point needs to be particularly emphasised as it may become a contentious issue in a subsequent trial. Ideally, the solicitor should acknowledge receipt of any documents disclosed.

6 Disclosure to Solicitor

As a general principle solicitors will seek to obtain as much information as possible about the case. Members should be aware that solicitors may seek information which they consider essential to assist them to act in the best interests of their client. An Garda Síochána is not obliged to disclose any information that could prejudice an investigation. In this regard, the premature disclosure of information/details may sometimes impede or interfere with the investigation. It must be remembered that an interview is part of the investigation process and there must be some spontaneity about the actual interview. If information is handed out first, the suspect can make up his/her answers and there is no spontaneity about the matter.

The information which is readily available and which should as a general principle be provided to solicitors include the following:

- Confirmation of the suspect's identity;
- The alleged offence;
- The suspect's state of health or physical condition (*information concerning medical or vulnerability issues relating to the suspect which may have a bearing on the solicitor's contact with the suspect or have a bearing on the safety of the solicitor*);
- The names of the arresting member(s);
- Time of arrest;
- Reason for arrest;
- Time of arrival at the Garda station;
- Whether an interview has already taken place;
- When legal advice was first requested;
- Salient points - admissions/denials made by the suspect;
- Any available material evidence provided it does not prejudice an investigation.

Solicitors should, where possible, be advised when samples are to be taken from their client. Ideally where samples have been taken, they should be mentioned in the next recorded interview as having been taken.

In the context of a suspect interview, it is very likely that investigating members/Senior Investigating Officer will be asked by solicitors to provide what is sometimes termed as "*pre-interview disclosure*". Members should be aware that any reference to pre-interview disclosure is distinct from disclosure before a hearing/trial, where An Garda Síochána has a duty to reveal all relevant evidence in an investigation. There is no legal requirement to have a meeting with a suspect's solicitor, or to provide information prior to interview. Whilst there is no requirement to meet or share information with a suspect's solicitor, not doing so may increase the likelihood of a 'no comment' interview, or interviews being interrupted by the suspect requesting a consultation with his/her solicitor. Matters of significance disclosed to a solicitor pre interview should be repeated at the commencement of the electronically recorded interview to avoid any dispute arising at a later stage.

It should be noted that An Garda Síochána is not obliged to provide a solicitor with copies of notes of interviews on an ongoing basis while a person is in Garda custody.¹² Under the Custody Regulations, after a suspect has been released from Garda custody, the suspect and/or his solicitor is entitled to request and obtain a copy of the suspect's Custody Record. Section 56 of the Criminal Justice Act 2007 deals with the disclosure of interview tapes/DVD's.

7 Pre - Interview Briefing (Adverse Inference Interview)

7.1 Inference Provisions Requirements

The adverse inference provisions provide that a detained person must be afforded a reasonable opportunity to consult with a solicitor where the adverse inference provisions have been invoked or are likely to be invoked. In addition, the operation of the inference provisions requires that the suspect must be informed of the intention to invoke/invocation of the inference provisions, reminded of his/her right to remain silent, must have explained to him/her in ordinary language the relevant inference provision(s) step by step to the suspect and their effect (*inform suspect that if he/she chooses to exercise his/her right to silence it may have consequences, in particular, that a court may use the failure/refusal to answer questions as evidence against the suspect. However, a person cannot be convicted of an offence if the failure or refusal to answer a question or questions is the only, or the main, evidence against the suspect*), must be informed that the member reasonably believes the facts may link the suspect to the offence and that an electronic recording will be/is being made of the interview, unless the suspect consents in writing to it not being recorded, and that it may be given in evidence if the suspect is brought to trial.

The opportunity to draw an adverse inference from a suspect's silence or refusal to comment will not however apply if the suspect has **not** been afforded a reasonable opportunity to obtain legal advice. A suspect is entitled to exercise his/her right to silence and it is for the solicitor to advise what they consider best.

7.2 Planning and Preparation Stage - Pre - Interview Briefing

During the planning and preparation stage of the pre - interview briefing the investigator should consider (i) What may be disclosed?, (ii) Why disclose and how it will affect the interview and investigation?, (iii) What should not be disclosed and why?, and (iv) How An Garda Síochána will engage with the solicitor?

7.3 Provision of Information

A pre - interview briefing with the investigator and the solicitor should take place prior to conducting an adverse inference interview. The provision of information in these circumstances should not be confused with the duty on the prosecutor to disclose all relevant material, post charge, which might reasonably be considered capable of undermining the case for the prosecution, or assisting the case for the defence. It is essential that during this briefing the investigator demonstrates knowledge of the relevant legislation and supporting case law in relation to the offence under investigation. If the solicitor attempts to enter into a debate over the admissibility of evidence or the questions the member intends putting to their client, the member should not engage in a discussion. The member should explain that the questions he/she intends asking are relevant to the investigation and the issue of admissibility may well arise in court at a later date if a prosecution ensues.

¹²*Lavery v Member in Charge, Carrickmacross Garda station [1999] 2 IR 390.*

The provision of information to a solicitor at a pre - interview briefing has its basis in the suspect's right to a fair trial. This does not mean that the member has to detail every aspect of what he/she has uncovered but enough information that enables the solicitor to perform his/her role without compromising the interview process. In this respect, where the relevant adverse inference provision(s) has been invoked or is likely to be invoked, the solicitor should be provided with **certain basic facts that contextualises the matters to which the questions are going to relate** in order for the solicitor to advise appropriately in relation to the suspect's decision to answer or remain silent.

7.4 Recording Details of Briefing

This briefing (*adverse inference interview pre briefing*) should if possible be electronically recorded using the suspect interview room electronic recording equipment. In the event that sufficient information is not provided, admissibility of silence or failure to comment may become an issue at trial. An overview of the operation of the inference provisions, inclusive of the pre - interview briefing and access to a solicitor, is set out at **Appendix A**. It is imperative that the time and details of the conversation with the solicitor and the information provided to him/her be noted as to what in fact was said and provided in order to obviate any potential issue arising later in Court. If the solicitor does not consent to the electronic recording, the solicitor should be asked for a countersigned receipt of the master copy of information and / or any document(s) disclosed to him/her.

8 Private Consultation

The suspect's consultation with the solicitor is a privileged conversation and the suspect must, therefore, be afforded privacy in accordance with the Custody Regulations, the Constitution and European Convention on Human Rights, unless it is the case that the suspect is so unruly or aggressive that he/she is required to be placed in a cell immediately for his/her own and others safety. Clearly, privacy needs to be considered having due regard to safety and security concerns.

In the first instance, the suspect should be permitted to speak privately to the solicitor by telephone to provide instructions to the solicitor and receive advice. This initial private telephone consultation may indicate if a personal private, face to face, consultation will subsequently take place. A consultation with a solicitor should be in private but at a minimum take place in the sight but out of the hearing of a member¹³.

9 Waiver of right of access to a lawyer

The right of access to a solicitor is the suspect's right. The suspect may say that they do not want a solicitor. In circumstances where a detained person waives his right of access to a solicitor, the waiver must be explicit, clear and documented. In the case of **Salduz v Turkey** 36391/02 [2008] ECHR 1542 (27 November 2008) at paragraph 59 it is stated that *"if it is to be effective for Convention purposes, a waiver of the right ... must be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance."*

The suspect could waive their right of access to a solicitor altogether or say that they are content to consult the solicitor over the phone or that they do not want a solicitor present during interview. Members are reminded that the suspect is entitled to change his/her mind and have a further consultation or have a solicitor present at any time during their detention or questioning. In this respect, at the commencement of each electronically recorded interview, the suspect should be reminded on the record

¹³ Regulation 11 of the Custody Regulations.

of his/her right or preference and he/she should be requested to confirm that he/she has waived that right or preference and that he/she has the right to change his/her mind. When a suspect, having waived his/her right to consult a solicitor or preference of consultation by telephone or presence during interview, changes his mind and wishes to exercise that right or preference, the fact shall be recorded in the Custody Record and the member in charge will ensure that the solicitor chosen is contacted without delay.

10 Presence of Solicitor during Suspect Interviews

The law did not provide for a right to have a solicitor present during interview.¹⁴ However, the Supreme Court indicated in the case of **People (DPP) v Gormley**¹⁵ that, in the future, the Court is likely to find that an arrested person has a right to have a lawyer present during Garda questioning. In light of the judgment in Gormley it is necessary to allow a solicitor to be present at interview if requested by the suspect. Furthermore, the Director of Public Prosecutions has advised that all suspects detained in Garda stations for questioning be advised, in advance of any questioning, that they may request a solicitor to be present at interview.

The practice regarding the presence of a solicitor during interview on the request of the arrested person will be as follows:

In relation to the seating arrangements of the solicitor, ideally the solicitor should sit within view of the camera immediately adjacent to the detainee/prisoner.

During the interview the arrested person's solicitor will be monitoring the interview process and may intervene during questioning. This may be to:

- Seek clarification,
- Challenge an improper question put to their client or the manner in which it was put,
- Advise their client not to reply to a particular question(s), or
- To request suspension of the interview if they wish to give their client further legal advice.

The solicitor cannot prevent the suspect from answering questions if they choose to do so. They cannot answer questions on their behalf or provide written replies for the suspect to quote, however, they can advise their clients not to answer certain questions or seek clarification in relation to same. The suspect may choose not to answer questions in an interview and may provide a prepared statement during the interview process or before charge. The statement or memorandum of interview should only be witnessed by members of An Garda Síochána present.

In circumstances where the solicitor has been provided access to their client to have a consultation, once the interview commences it would not be appropriate for the solicitor to stop the interview on every occasion after each question. If however a new avenue of inquiry or matter arises during interview, a solicitor could ask for a consultation to take place. Where a private consultation is acceded to during the course of an interview and the suspect and solicitor is provided with another room for that purpose by the member in charge, the tapes/DVD's may continue to run while the interviewing members remain in the interview room as long as it is not anticipated or expected that the consultation would be lengthy. At the end of the short private consultation it should be stated that the private consultation is over. It is envisaged

¹⁴ *Lavery v Member in Charge, Carrickmacross Garda station [1999] 2 IR 390; J.M v Member in Charge of Coolock Garda station, 3rd May 2013, High Court, Mr Justice Garrett Sheehan; Also noted in People (DPP) v Gormley, 6th March 2014, Supreme Court, Mr Justice Clarke, para 5.5.*

¹⁵ *6th March 2014, Supreme Court, Mr Justice Clarke, para 9.10 and Mr Justice Hardiman, para 3.*

that the short private consultation should not take any longer than 10 minutes. The investigating members need to be careful not to talk about the case or aspects of the case while the tape/DVD is running.

In circumstances where the solicitor has to leave the interview due to prior commitments or difficulties, the suspect should be advised that they are entitled to consult another solicitor.

Breaks should be dealt with in a practical way between the interviewing Gardaí, the solicitor and the detainee.

Should the solicitor raise an issue in relation to the fitness of their client for questioning before or during a recorded interview, the member in charge should be invited to deal with the matter on the same basis as they would deal with these types of issues at present, i.e. call a medical practitioner and have the detainee assessed. Please be advised that the services of Professor Harry Kennedy are available to the medical practitioner should he/she require further professional opinion.

A solicitor may be required to leave the interview room by the investigator where the solicitor's approach or conduct prevents or unreasonably obstructs proper questions being put to the suspect or prevents the suspect's response(s) from being recorded by talking over them or constantly interrupting them when they are trying to respond.

If the interviewer considers a solicitor is acting in such a way, they will stop the interview, report the matter to the member in charge and seek prior authorisation of the Superintendent, or Inspector if the Superintendent is not readily available, to require the solicitor to leave the interview room. After speaking to the solicitor, the Superintendent or Inspector, as the case may be, will decide if the interview should continue in the presence of that solicitor. If they decide it should not, the suspect will be given the opportunity by the member in charge to consult another solicitor before the interview continues and that solicitor given an opportunity to be present at the interview. The decision to require a solicitor to leave the interview room will be a measure of last resort.

The Superintendent or Inspector, as the case may be, making the decision to require a solicitor to leave the interview room must be in a position to be able to satisfy a Court subsequently that the decision was properly made.

A solicitor who disrupts an interview should be reported to the Law Society for unprofessional conduct.

These matters shall be recorded in the Custody Record.

11 Conflict of Interest or Multiple Suspects

Where two or more suspects are at a Garda station in relation to the same incident or incidents, the solicitor must decide for himself/herself whether a conflict exists. The decision whether a conflict of interest exists is not a matter for An Garda Síochána.

Likewise where two or more suspects are at a Garda Station in connection with unrelated matters and request the same solicitor it is for the solicitor, to decide whether it is practicable to advise both or if there is a risk of one suspect being prejudiced.

A solicitor cannot dictate Garda plans in relation to the sequencing of their interviews. If such a difficulty arises, the solicitor will have to nominate which detainee they will

be advising and the other detainees can be advised to seek access to another solicitor.

12 Standards of Conduct for Solicitors

Solicitors, like An Garda Síochána, who provide particular services, are regulated in what they do. The rules or principles of good conduct by solicitors are contained in [“A Guide to Good Professional Conduct for Solicitors, 3rd Edition, 2013”](#) which is available on the Garda Portal. In this regard, the rule of confidentiality and the rule in relation to conflict of interest between two clients are set out in the following terms:

12.1 Confidentiality

“The professional rule of confidentiality is wider than legal privilege and applies to all communications passing between a solicitor and their client, and to the existence of the relationship. It is also an implied term of the contract for legal services between the solicitor and the client.

Any matter relating to a client’s affairs can only be disclosed with the consent of the client, by the direction of a court or to a body requiring disclosure while exercising its statutory powers.

The solicitor’s professional duty of confidentiality should override a solicitor’s inclination as a dutiful citizen to report any matter to the authorities or to co-operate with them against the interest of the client.”¹⁶

12.2 Conflict of Interest between two clients

“If a solicitor, acting with ordinary care, would give different advice to different clients about the same matter, there is a conflict of interest between the clients, and the solicitor should not act for both. The solicitor is also likely to have a conflict if either client could reasonably take exception to what the other client has asked the solicitor to do.

Acting in a conflict of interest situation may involve the solicitor in a breach of the duty of undivided loyalty owed to each client, a breach of the duty to make full disclosure to each client in a matter, or a breach of the duty of confidentiality owed to each client.

A solicitor owes a duty to a client to disclose all relevant information to him. This follows from the fact that the solicitor is the agent of the client, who is the principal. In practice, this means that a solicitor must be careful not to accept information that is to be kept confidential from the client.

Where there may be a conflict of interest, it is a matter for the judgment of the solicitor whether or not he should act, based on the professional duty owed by a solicitor to every client. It is not a matter for the judgment of the clients.”¹⁷

¹⁶ A Guide to Good Professional Conduct for Solicitors, 3rd Edition, 2013. p30, para 4.4.

¹⁷ A Guide to Good Professional Conduct for Solicitors, 3rd Edition, 2013. p17, para 3.2.

13 Communication Devices

Prior to commencement of a consultation or an interview, attending solicitors should be requested by the member in charge to switch off their mobile phone or other communication/electronic devices for reasons of safety and security.

On commencement of an electronically recorded interview, the member conducting the interview should request that the solicitor confirm that any mobile phone or other communication/electronic devices in his or her possession is switched off. This applies to all other persons present including members of An Garda Síochána.

However, in exceptional cases it may be necessary to permit members and solicitors to leave their mobile phones on silent for the purpose of dealing with urgent matters. This will be a decision for the member in charge on a case by case basis.

14 Use of Interpreter by Suspect's Solicitor

The guidelines for use of an interpreter by a suspect's solicitor is provided for in the following document which is available on the Garda Portal "***A Guide for members of An Garda Síochána using Interpreters and Translation during Criminal Investigations.***" In this respect, the interpreter being used by An Garda Síochána to interview a suspect can be used by the suspect's solicitor to assist in the giving of legal advice. If the suspect and/or solicitor object to the use of the interpreter, the suspect/solicitor will be advised to make their own arrangements for an interpreter. An Garda Síochána will provide a reasonable opportunity for a further interpreter to be located. If no interpreter is present and a solicitor is of the opinion that one is required in order to facilitate the giving of legal advice, then that solicitor must arrange for the interpreter to be present.

15 Presence of Solicitor During Identification Parade

In conducting a formal identification parade, members of An Garda Síochána should be conscious of the need to ensure that procedures are fair and seen to be fair. A suspect may have a solicitor or friend present at the formal identification parade. The role of a solicitor during an identification parade is to ensure the interest of the suspect is protected and to ensure An Garda Síochána observe the rules concerning the Conduct of Formal Identification Parades. The member conducting the identification parade should record every circumstance connected with the parade, including any statement or request made by the suspect.

16 Review

This Code of Practice will be reviewed by An Garda Síochána in 12 months from the date of publication. The Director of Public Prosecutions and the Law Society of Ireland will be consulted as part of the review.

17 Human Rights

The fundamental principle underpinning this Code of Practice is that ***any action taken by a member of An Garda Síochána must comply with the fundamental principles of legality, necessity, proportionality and accountability and be applied in a non-discriminatory manner.***

Overview of Inference Interview Procedure

1. Inform suspect of intention to invoke/invocation of inference provisions;
2. Remind the suspect of his/her right to remain silent;
3. Read out and explain in ordinary language the relevant inference provision(s) step by step to the suspect and their effect (*inform suspect that if he/she chooses to exercise his/her right to silence it may have consequences in particular, that a court may use the failure/refusal to answer questions as evidence against the suspect. However, a person cannot be convicted of an offence if the failure or refusal to answer a question or questions is the only, or the main, evidence against the suspect*);
4. **Provide certain basic facts that contextualises the matters to which the questions are going to relate in order for the solicitor to advise appropriately in relation to the suspect's decision to answer or remain silent;**
5. Inform suspect that the member reasonably believes the facts may link him/her to the offence (section 18 & 19 Criminal Justice Act 1984);
6. State that an electronic recording will be/is being made of the interview, unless the suspect consents in writing to it not being recorded, and that it may be given in evidence if the suspect is brought to trial;
7. Pre – Adverse Inference Interview briefing with investigator and solicitor
8. Suspect consultation with Solicitor;
9. **Commence Adverse Inference Interview** following suspect/solicitor consultation.