



Standing Committee for Youth Justice

STANDING COMMITTEE FOR YOUTH JUSTICE (SCYJ)

PACE REVIEW: GOVERNMENT PROPOSALS IN RESPONSE TO THE REVIEW OF THE POLICE AND CRIMINAL EVIDENCE ACT 1984

November 2008

For further information please contact:

Sally Ireland, Chair, SCYJ
c/o JUSTICE, 59 Carter Lane, London EC4V 5AQ
Tel: (020) 7762 6414 Email: sireland@justice.org.uk

The **Standing Committee for Youth Justice (SCYJ)** is a membership body which:

- Provides a forum for organisations, primarily in the non-statutory sector, working to promote the welfare of children who become engaged in the youth justice system; and
- Advocates a child-focussed youth justice system that promotes the integration of such children into society and thus serves the best interests of the children themselves and the community at large.

Its members are: Action for Children, Association of YOT Managers, Barnardo's, Catch22, Children Law UK/TACT, The Children's Society, Children's Rights Alliance for England, Council for Disabled Children, The Howard League for Penal Reform, Just for Kids Law, JUSTICE, Nacro, National Youth Agency (NYA), National Association for Youth Justice (NAYJ), NCB, NSPCC, The Prince's Trust, Prison Reform Trust, Sainsbury Centre for Mental Health, Secure Accommodation Network, SOVA and VOICE.

The contents of this briefing do not necessarily reflect the views of all member organisations

The SCYJ welcomes the opportunity to comment on *the Review of the Police and Criminal Evidence Act (PACE) 1984*. The SCYJ welcomes the retention of the framework of PACE and the recognition of the importance of having something that clearly sets out the rights of an individual when in contact with the police and ensuring they are proportionate. Whilst sharing the view that clarity and consistency are necessary, the SCYJ would stress the importance of not letting simplification, administrative convenience or resource issues override or erode such rights. The SCYJ welcomes the intention for developments in PACE to reflect the government's health and social care agenda, including the five objectives of 'Every Child Matters'. The SCYJ response is set out under the chapter headings. For some of the issues the SCYJ reserves their position until detailed proposals are brought forward.

Chapters 1, 2, and 3 are a foreword from the Minister for Counter Terrorism, Crime and Policing, an introduction for Vic Hogg, Director Policing Policy and Operations Directorate at the Home Office, and a contents list respectively.

Chapter 4 – PACE – the Act

SCYJ welcomes the proposed code for those who have 'police type' or 'investigative' powers for certain offences and the concern over the need to prevent confusion between officers of other agencies and the police. However what is not clear is whether this is restricted to 'powers of entry' or could extend to any other aspects of the investigation. If the latter then it would be crucial that:

- a) Any provisions of the Code were to the same standard as those in PACE. For example interviewing for an offence, whether by a police officer or officer of another agency, should conform to the standards of Code C. To have less rigorous and exacting standards could be seen as creating a 'hierarchy' of offences -
- b) Special provisions for any members of the groups that receive special treatment under PACE Codes.
- c) Only accredited members of those agencies, who as part of the accreditation will have had to receive training of the same quality as that received by those subject to PACE Codes

SCYJ would consider supporting this as providing clarification to what has become an area of investigative activity, which can be confusing. However full comment cannot be made until detailed proposals are published.

Chapter 5 PACE – the Codes

Whilst awaiting the development of different formats before commenting definitively, SCYJ is of the view it is essential to retain the Codes in hard copy in custody suites to be available to detainees and others during detention.

Whilst efforts to make the Codes more comprehensible to the 'lay public' and groups who may have difficulty with English – not being a first language or reading / comprehension difficulties, are welcomed, caution needs to be exercised that any attempt to translate into 'simple English' does not result in changes to meaning or understanding.

SCYJ would expect the content, interpretation and status of support material to the Codes of Practice to be subject to the usual consultation with the stakeholders and interested parties in PACE. The status of such material vis a vis the Codes would be

crucially important, should be explicit, and the existence of the support material should not detract from the unfettered ability of access to a hard copy of PACE Codes when a detainee is in custody.

Whilst any effort to make the Codes more intelligible through innovative formatting and presentation, is welcome, this needs to be undertaken with the stakeholders and interested parties. What has to be borne in mind is that practitioners, once they have 'found their way' around them, can become extremely adroit in navigating them.

The SCYJ welcomes the aspiration to establish annual reviews as a laudable intent, and would wish to be involved in the process, and making representation over the annual round of proposals. SCYJ understood annual review was the intention post implementation of s11 Criminal Justice Act 2003 and would suggest that this is gradually worked towards.

Chapter 6 – Stop, Stop and Search

Whilst SCYJ recognises the development of mobile technology may be of significant value in ensuring the effective deployment of police resources, and reducing bureaucracy to a minimum, any such systems need to:

- a) Be versatile enough to provide hard copy of any electronic audit trail for verification and validation purposes should the need arise, which may be requested by the person stopped
- b) Be governed by procedures, which should form part of the Codes of Practice, which include special provisions for its use with members of groups deemed vulnerable under PACE
- c) Not be used to gather identification material, which can be used in speculative searches, nor be retained indefinitely, if there are no other reasons for retention.

Chapter 7 – Arrest

SCYJ welcomes the reservation over granting a power of entry to property for ALL offences. SCYJ questions whether for groups vulnerable under PACE, a power of entry for summary only offences is actually necessary. These are by definition the least serious of offences and it is difficult to envisage circumstances in which such a power would be required. Indeed these are precisely the offences where the use of 'reporting for summons' as opposed to arrest may be used.

Regarding the abolition for the 'immediate pursuit' requirement to effect entry, it is somewhat unfortunate that the example cited is exclusively related to vulnerable adults. It is difficult to see the rationale for asking for this power as in the event of the risk of harm to others an officer is still able to enter the premises. There is also the option to use s17 (1) (d) PACE or an arrest warrant under s135 Mental Health Act.

SCYJ believes the requirement for the wearing of uniform should be maintained in cases that involve children or members of other vulnerable groups. The Consultation document clearly accepts there may be circumstances when a constable needs to be readily identifiable, in SCYJ's view this is clearly one of them. The display of a warrant card is significantly less of a distinguishing feature than a police uniform.

SCYJ welcomes the clarification of the role of the appropriate adult vis a vis voluntary interviews.

SCYJ's view is that having criteria that rely on extrapolation of what a person's behaviour '...is likely...' to be, is inherently problematic. We will reserve detailed comment when the actual proposals are consulted on.

Chapter 8 – Entry, Search and Seizure

The SCYJ welcomes clarification of the common law powers to include vehicles by placing case law on a statutory footing.

Simplification of the basis for the issuing of search warrants would be welcomed by SCYJ, but there are no detailed proposals here, so SCYJ reserves comment for the consultation over detailed proposals.

SCYJ does not support proposals for searches to take place without arrest or warrant, but solely on the authority of a police inspector who could be closely involved with the case in point. Although it may require the grounds for arrest to be present, SCYJ maintains in such cases the required scrutiny should not be left to the Police, but be placed before a court.

SCYJ accepts that the authorisation of entry powers in relation to Missing Persons enquiries, but in cases involving children or members of other vulnerable groups, this should be by a superintendent, not connected with the investigation.

Chapter 10 – Detention

SCYJ welcomes the maintenance and commitment to the 'detention clock'.

SCYJ believes remote reviews and extensions of detention should not apply to vulnerable groups and cannot support these proposals. Similarly for members of vulnerable groups, in past changes where it was proposed to vary the level of authorisation from Superintendent to Inspector, the higher rank was retained. This principle should still be adhered to.

SCYJ does not support the first review being undertaken by the custody officer at 6 hours for members of vulnerable groups.

SCYJ does not support the use of Short Term Holding Facilities for any offending by members of groups deemed vulnerable under PACE Codes.

Chapter 11 – Bail

SCYJ generally supports codification of statutory provisions, but would wish to see a coherent, overview of all bail provision, court and police. They are inextricably linked, with the pre-court status having a powerful effect on outcomes of the first court appearance, and must form part of an integrated, coherent set of provisions.

SCYJ cannot see why it is seen as necessary to create two new offences of non-compliance with street bail conditions or issued pre-charge at the police station. Any individual when failing to comply with conditions is arrestable.

SCYJ would draw attention to the use of local authority residential and foster placements for children granted bail or remanded to local authority accommodation,

and hostels for vulnerable adults. Questions must be asked as to whether the power to enter premises in any circumstance where reasonable suspicion of failure to answer to or comply with the conditions of bail exists, and it is necessary for their enforcement. It implies the adults in charge of any placements would not grant permission for entrance in the circumstances outlined. In these circumstances SCYJ opposes this power.

SCYJ believes the proposal that the detention clock is 'suspended' if the child or young person is taken into detention at a different police station within the locality from the one they were bailed to, and only restarted when arriving at the correct one. This raises questions about the fundamental nature of the 'detention clock'. Is it related to the length of time a person can be 'deprived of their liberty', as is stated in 10.4 of this consultation, or the length of time the police need to complete their investigative processes? As this consultation clearly believes it is the former, this is contradictory and gears the length of deprivation of liberty to police needs.

SCYJ believes that the proposed power to arrest when failure to answer police bail to attend a police station or breach of any conditions of that bail is anticipated is potentially problematic and unnecessary. Criteria predicated on the likelihood of future offending do not necessarily provide a sound basis for law. The 'Dangerousness' provisions under the Criminal Justice Act 2003 are a case in point. Also SCYJ sees this as duplicitous to the provision that such a failure of breach should become an offence, as in that case the arrest condition to prevent offending would be satisfied. One gets the impression of attempting to obtain a pre-emptive power of arrest, not for actions but for presumed intent.

SCYJ opposes the use of postal charging process to cancel police bail and where necessary replace it with bail to attend court for children and young people and members of other vulnerable groups. This is partly because this circumvents the ability to make representations by the appropriate adult, legal adviser and child or young person themselves at the point of charge, including the imposition of conditions on any such bail. It also ignores such features as the ability to read, living in multi-occupancy accommodation within which there may be little security of mail etc. From the parental point of view it treats them as irrelevant to the process, with no commitment to inform them of the fact of their child's court appearance something a court could sanction them for. It ignores the fact that 'estrangement' can exist between children and their parents.

An issue not raised in the consultation, but which the SCYJ believes is of immense significance. is the use transfer to local authority accommodation in cases where bail is denied and the child or young person is to go before the next available court (under s38(6) PACE). Anecdotally the provision and use of this provision varies widely from locality to locality across England and Wales. Change to PACE Codes and the provision is not proposed in this review however SCYJ would be keen to explore with interested parties and stakeholders strategies to promote its fullest use.

Chapter 12 – Healthcare

SCYJ supports the commitment to work with key stakeholders in assessing application of PACE and health and social care needs.

Chapter 13 – Community Engagement in Custody

SCYJ welcomes the proposal for those acting as Appropriate Adults being limited to those who have had thorough training, preferably accredited and to receive proper support and supervision, whilst acting 'in situ' if necessary. This does mean a structure of accredited training needs to be put in place, which would require resources. SCYJ considers it is also a prerequisite for satisfactorily undertaking the role on behalf of children and young people that the appropriate adult approaches the role from a 'children first' perspective.

Whilst it may be true to say no one has overall responsibility of appropriate adults for vulnerable adults, it is not true to say this for children and young people. There is a clear statutory duty, thus an overall responsibility, for Youth Offending Teams to ensure this provision under s38(4)a Crime and Disorder act 1998. Thus the SCYJ would refute this as a contributory reason for the assertion that "...the current provision of appropriate adults within the custody suite was chaotic and unstructured." It ignores other contributory reasons for such as delay in processing a detainee (see below), and highlights the need for a careful, structured enquiry into the performance of appropriate adults. This is something a statutory duty on police forces to collate information could assist with.

Regarding the role of the appropriate adult vis a vis parents, guardians or other relatives or friends, in essence SCYJ feels there is merit in having an appropriate adult who is trained and skilled in the role involved in the detention of children and young people. However there could be significant, unwanted and possibly unintended difficulty, or difficulties, arising from a 'blanket' marginalising or exclusion of a child's parents, and SCYJ is extremely concerned about these. The suggestion of excluding a parent / carer or relative from acting as an appropriate adult is thought provoking. Presumably this is based on the fact that the vast majority of parents have little knowledge of the appropriate adult role and may possibly be too emotionally involved to act in the neutral, non-partisan manner with a focus on the adherence to the Codes of Practice to ensure fairness of treatment. However the child or young person, who may not be known to the YOT or Appropriate Adult service, and may have mental health or learning difficulties not immediately apparent to the appropriate adult. In such a case involvement of the parent could be crucial. Also what if it were the case that a parent was also a 'qualified' appropriate adult (in 'local' terms), would they be able to act for their own child? Exclusion of a parent also seems to be completely at odds with the government agenda of parents being held responsible for their children's behaviour, being involved in their children's lives and major events in them. There are advantages in having parents present, for example as parental responsibility holders, in accepting pre-court disposals, the giving of consents etc. However it is the case that concern has been expressed over the fact they are untrained and rarely conversant with the processes and roles involved. Permitting proceeding 'in absentia' of parent(s), if it became permissible, could be fraught with difficulties, even if it could only happen in the most exceptional circumstances. But the history of such provisions to promote 'expediency', particularly if accepted without question, shows it can quickly become the norm, which SCYJ would strenuously oppose.

The whole issue of delay is a contentious one. Anecdotally delay gets laid variously on the availability of Appropriate Adults, the availability of parents, the availability of legal advisers (and it has to be noted personal attendance advice is to be maintained for vulnerable groups), and delays in accessing CPS advice – an example of 8 hours from seeking advice of the duty CPS person, to receiving it involved a 12 year old in custody during one evening.

The SCYJ suggests more detailed and rigorous enquiry into the nature of delay is urgently required.

SCYJ is concerned about what being 'a facilitator' between police and parents means. SCYJ feels the definition of the role of 'appropriate adult' can be readily seen from the duties and responsibilities laid out in the Codes of Practice. Without examples of what is envisaged SCYJ cannot usefully comment, and awaits more detail.

SCYJ is unsure what is meant by a 'professional' appropriate adult agency and cannot comment until it receives detailed clarification. If it means a 'for profit' company then SCYJ would be extremely concerned. If it means the volunteer provision, then perhaps a survey of YOTs, possibly on the basis of them linking in with Police force areas, can be undertaken to see what their satisfaction levels are? SCYJ is aware of localities that have taken running of the service 'in house' not least because of police concerns over the service.

SCYJ feels giving a statutory role to ensure that an effective appropriate adult scheme is operating in their police area could be extremely problematic. Clearly it would be a total conflict of interest if police authorities took any part of the statutory responsibility for service provision, recruitment, training etc, although input in e.g. training is welcome and necessary. However if there were a statutory duty for the police to assist in the provision of the data to enable suitable monitoring of the performance and quality of the service by the service commissioners SCYJ would await detailed proposals before commenting. SCYJ understands that individual schemes should be monitoring this themselves, on a good practice basis. Perhaps it would be illuminating for monitoring to be undertaken by two different sources. The comparison, and understanding of why in a particular case there were difficulties, could be very interesting.

SCYJ is a little puzzled by the comment about developing local protocols with voluntary schemes on attendance and response times, with social services' departments and service level agreements with commercial companies. Does this apply to vulnerable adults rather than children and young people, as there are National Standards in place for YOTs to have these. SCYJ is concerned that commercial i.e. for profit companies should be providing this service for children, and would be opposed to any organisation that could not demonstrate a 'children first', as opposed to 'shareholder first' philosophy, being involved in the provision of appropriate adult services.

SCYJ whole-heartedly supports the proposal to treat all those under 18 in the same manner, and for them to be entitled to an appropriate adult. This would have significant resource implications.

SCYJ is not sure what this proposal means. If it is for appropriate adults to become part of the 'wider police family' then it could not be supported. It must be noted the Criminal Justice System as defined by e.g. the web sites of various agencies includes the organs of the state, but not of the defence. Indeed because of the essential neutrality and non-partisan nature of the role it is doubtful that incorporation into the CJS is desirable. However there are clear support needs for Appropriate Adults some of which the National Appropriate Adult Network provide.

SCYJ would support access to an appropriate adult during voluntary interviews, although conscious of resource issues.

SCYJ would support developing a national support structure for appropriate adults on recruitment and retention, communications, learning the lessons and monitoring and accountability, and would wish, along with other stakeholders, to be heavily involved in this.

Chapter 14 – Biometric Data & Identification Procedures

SCYJ is opposed to removal of the entitlement for the suspect's legal advisor or representative to be present when the victim or witness views the images. Identification can be a crucial part of a case and SCYJ believes the presence of an alleged offender with appropriate representation can be managed in a manner, which presents no threat to the victim, e.g. with a 'one way' viewing screen separating victim and alleged perpetrator and legal adviser so arranged that the whole process can be viewed.

SCYJ is opposed to adverse inferences from a person's refusal to co-operate in an ID procedure being applied to children or members of other vulnerable groups. Case law has established lack of understanding of the caution, and thus possible lack of awareness of the significance of something being unsaid, does not invalidate its delivery. However this involves actions, the nature and significance may well not be understood, and the reasons for not doing so may be completely unrelated to a wish not to co-operate.

Chapter 15 - Questioning After Charge

SCYJ is unclear how periods of detention after charge would interact with the 'detention clock'. Would it provide additional time in detention, or would it be a period, within the current maximum time limits on detention, which continued detention after charge or a decision to refer for a charging decision would be allowable? More clarity is needed for SCYJ to express a definitive view, but if it is a 'back door' route in extending the detention clock it would be opposed. Any authorisations of this nature for members of vulnerable groups should be made at Superintendent level. SCYJ does not understand the need for a police bail condition of a requirement to return to the police station for further questioning following a decision to refer the case to a prosecutor for a charging decision.

Chapter 16 - Workforce Modernisation

The SCYJ welcomes the intention to remove the ability of civilian staff to undertake the duties of the custody officer.

Overall SCYJ does not support the widening of tasks, previously reserved for constables, that civilian staff would be able to undertake under these proposals. In particular for members of vulnerable groups the 'process model' of investigation, with detainees passed between different functionaries undertaking their own specific task(s) could generate confusion and heighten any lack of understanding of what is happening. SCYJ accepts that this is part of the rationale for the presence of the appropriate adult, but does prevent the building of any rapport by the investigating officer and the child, which could allay potential difficulties.

SCYJ is opposed to the extension of the powers of civilian staff of the police 'family' beyond the home force area, to enable 'administrative' arrest within a police station and the powers to issue PNDs in custody for retail theft. Such extensions are seen as the 'thin end of the wedge' in creating powers, which previously were seen as so profound they required being issued with a warrant card. Children and young people and members of other vulnerable groups could be confused as to what any one individual's powers over them are.

SCYJ is concerned about the proposals relating to civilian staff managing what are described as 'low risk' sex offenders. What is meant by 'low risk'? What understanding will people have of civilian staff without a warrant card being able to detain for up to 30 minutes? Will the use of 'reasonable force' be involved? What consultation has there been with the lead agencies and charities involved in safeguarding and protection of children?