

Nuffield Foundation – Eyewitness Identification Evidence
Friday 30 January 2009

PACE Review

<http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/PACE-Review/>

Introduction

The PACE Review was launched by the then Home Secretary, the Rt Hon Dr John Reid MP, in his paper [Rebalancing the Criminal Justice System in Favour of the Law Abiding Majority](#). The focus of the paper was to deliver swifter fairer justice. Following ground level feedback from the police the Home Secretary's reference to PACE (in chapter 4) focussed on the need to ensure that PACE safeguards are appropriate but do not place overly bureaucratic demands on the police.

As the then Police Minister, the Rt Hon Tony McNulty MP, stated in the [first phase of the PACE Review consultation paper](#) the review "My aim is to re-focus the investigation and evidence gathering processes on serving the needs of victims and witnesses and helping raise the efficiency and effectiveness of the police service in delivering the drive of the Police Reform programme to have 21st century policing powers to meet the demands of 21st century crime."

The consultation paper contained no detailed proposals for change but sought comments from CJS practitioners on possible changes to PACE around the following strategic areas:

- Improving police efficiency and effectiveness through:
 - reducing bureaucracy and removing duplication and replication;
 - identifying workforce modernisation opportunities;
 - freeing up officers' time for operational activity on the street; and
 - improving communication and raising community confidence.

- Maintaining safeguards and enhancing accountability by:
 - raising public understanding and awareness;
 - ensuring powers are proportionate;
 - encompassing technology to improve recording and monitoring processes;
 - raising levels of reporting and accountability; and
 - protecting the balance between the rights of the individual and the needs of the criminal justice system.

- Increasing Usability and Accessibility by:
 - simplifying legislation and guidance;
 - providing consistency of approach on procedures and processes;
 - customising publications/materials for target groups; and

PACE Review Consultation

Over 700 suggestions were received in the 200 responses to the first phase. These were developed into detailed proposals for change with Ministers and the PACE Review Board (which is made up of high level representation from across police, prosecution, defence, courts, civil rights groups and academia).

These are set out in [second phase of the PACE Review consultation paper](#) which includes 66 proposals covering the entire PACE framework. In developing these proposals there was little focus on the identification process, other areas in relation to custody (clock, healthcare and appropriate adults), bail and entry, search and seizure have been the major issues.

However, there are a number of proposals which relate to identification and which address the dual strategic aims of reducing bureaucracy and supporting victims/witnesses, namely:

PACE – the Codes

- Material for the public, including detainees, to be made available in condensed and more accessible formats including the use of visual aids.
- Support material for practitioners and stakeholders to be provided and complementary to national guidance.
- Improved formatting and presentation of the Codes.

Biometric Data & Identification Procedures

- Require all video identification procedures to be video recorded and remove the entitlement for the suspect's legal advisor or representative to be present when the victim or witness views the images.
- Provide the ability for a court to draw adverse inferences from a person's refusal to co-operate in an ID procedure.

Workforce Modernisation

- Enable Chief Officers to employ Designated Identification Officers to undertake the Identification Officer role.

Although the consultation officially closed on 30 November 2008 a number of key respondents required more time. Therefore the summary of responses should be completed shortly and published on the [PACE Review web page](#).

Although not all of the 150 responses have been analysed yet the general feedback is:

PACE Codes – need to retain the Codes status and legal clarity, welcoming better information targeted to the needs of the public and suspects, but this information must not replace, or change the meaning of, the Codes.

Biometric Data & Identification Procedures – broadly police, CPS and defence do not favour removal of defence (concern over increase of challenges at court, safeguard to ensure propriety and recognition that it's not a passive role), general acceptance that non-legal representatives should be excluded, procedures should be routinely recorded, data protection concerns mean that access should be supervised rather than providing copies. Strong support from police for adverse inferences as non-co-operation has a significant impact on resources (e.g. Northumbria identified that 25% of 2,700 procedures a year are carried out without co-operation). Defence practitioners opposed.

The consultation paper also makes reference to the S & Marper case. Following [the judgement in the ECtHR on 4 December 2008](#) the Home Office are currently working to implement the court's decision. Although primarily in relation to DNA/fingerprints the judgement will also have an impact on images taken and retained under s64A PACE. The Home Secretary has already set out

the broad approach she intends to take in her [speech to the Intellectual Trade Association on 16 December](#). It's intended that any new framework will seek to ensure a consistent approach for taking and retention across all identification information but this will lead to the destruction of some existing information/records.

Workforce Modernisation – Recognition of the benefits of freeing up Inspectors, many felt there should be no recourse to a Supt or at most an Insp. Balanced with some concerns about extending role to taking of DNA/fingerprints, training and ability of DIdOs to effectively resist pressures from senior investigating officers.

Next Steps

The summary of responses will be submitted to Ministers and the PACE Review Board for consideration and publication on the [Home Office PACE Review webpage](#).

The majority of proposals require primary legislation and work will be taken forward with Ministers and the PACE Review Board to identify priorities and a possible legislative vehicle in the fifth session (starts Oct 2008).

Regular updates on progress will be placed on the [Home Office PACE Review webpage](#).

Neil Curtis
Policing Powers and Protection Unit
Home Office
e-mail: neil.curtis@homeoffice.gsi.gov.uk
tel: 020 7035 0881