

## ASSESSING FITNESS TO BE INTERVIEWED BY THE POLICE – MENTAL HEALTH SERVICE USERS

### 1.0 INTRODUCTION

Psychiatric opinion is needed at various stages in the criminal process. Fitness to be interviewed by the Police is concerned with the provision of a psychiatric opinion to the Police at the stage of the investigation of an alleged offence by interviewing a suspect. This is the stage at which, having gathered sufficient evidence, usually including the interviewing of witnesses, the Police conduct a formal interview with the suspect. The purpose of the interview is to obtain admissible evidence that will enable the Police to seek advice from the Crown Prosecution Service as to whether to charge the individual with an offence or offences and that will, if the accused pleads not guilty, enable the prosecution to present its case at trial.

The enactment of the Police and Criminal Evidence Act 1984 (PACE) and the application of its Code of Practice represent important steps towards preventing miscarriages of justice at the time of the Police interview. Section 76(2) of the Police and Criminal Evidence Act 1984 requires the Judge to exclude confession evidence if the prosecution cannot prove *beyond reasonable doubt* that it was not obtained by oppression or in consequence of something said or done which was likely to have made it unreliable, notwithstanding that it may be true.

### 2.0 THE APPROPRIATE ADULT

The Police and Criminal Evidence Act 1984, Code C at para. 1.4 states:

“If an officer has any suspicion, or was told in good faith that a person ... may be mentally disordered or otherwise mentally vulnerable, in the absence of clear evidence to dispel that suspicion, the person shall be treated as such for the purposes of this Code”.

It goes on to state that, in these circumstances, the custody officer must, as soon as practicable, inform the appropriate adult of the grounds for the person's detention, their whereabouts and ask the adult to come to the Police station to see the detainee.

It is therefore clear that if a person has a mental disorder, whether or not affecting fitness to be interviewed, the appropriate adult provisions should be followed, including the presence of an appropriate adult at the interview. On this basis, it is the status of the detainee, whether or not they have a mental disorder or mental vulnerability that activates the appropriate adult safeguards rather than any clinical assessment as to the affect of the disorder or vulnerability.

**Assessing Psychiatrists are therefore advised to recommend the presence of the appropriate adult, during any interview, in all cases where there is mental disorder or mental vulnerability, whether or not they have judged the detainee to be fit to be interviewed.**

### 3.0 FITNESS TO BE INTERVIEWED AND CAPACITY

Fitness to be interviewed, like, for example, fitness to plead and stand trial, is a capacity issue. The Mental Capacity Act 2005 has given a statutory basis to capacity being approached in terms of function rather than status or outcome. The functional approach is already adopted by the Code of Practice of the Police and Criminal Evidence Act 1984 where Annex G of Code C states:

“... it is essential health care professionals who are consulted, consider the functional ability of the detainee rather than simply relying on medical diagnosis, e.g. it is possible for a person with a severe mental illness to be fit for interview ...”

It is not the case that someone lacks capacity just because they have a mental disorder. What is critical is the effect of that disorder on the ability to participate in the interview process.

In carrying out an assessment of fitness to be interviewed, Annex G of Code C suggests the following considerations:

- How the detainee's physical or mental state might affect their ability to understand the nature and purpose of the interview, to comprehend what is being asked and to appreciate the significance of any answers given and make rational decisions about whether they want to say anything;
- The extent to which the detainee's replies may be affected by their physical or mental condition, rather than representing a rational and accurate explanation of their involvement in the alleged offence;
- How the nature of the interview, which could include particularly probing questions, might affect the detainee.

The Code states that the assessing health professional is required to also advise on the need for an appropriate adult to be present (which should always be the case), advise whether or not reassessment of fitness to be interviewed may be necessary if the interview lasts beyond a specific time and advise on further specialist opinion.

When the potential risks in relation to fitness are identified, Annex G requires the healthcare professional to quantify these risks and the custody officer must be informed of them along with any advice or recommendations. **Advice and recommendations have to be made in writing and are to be recorded** (in the custody record if the detainee is in police custody or in the clinical notes if on the ward).

Annex G also provides for the additional safeguard, if indicated, of having an appropriate healthcare professional present in addition to the appropriate adult, “in order constantly to monitor the person's condition and how it is being affected by the interview”.

**4.0 QUESTIONS TO BE ANSWERED IN ASSESSING FITNESS TO BE INTERVIEWED**

The assessment of fitness is essentially a capacity test for that particular individual at that particular interview. The assessing psychiatrist must be able to answer the following questions through carrying out the assessment:

1. Can the detainee:
  - Understand the questions being put to him / her?
  - Understand the nature and significance of the Police caution?
  - Understand the nature and purpose of the interview?
  - Understand the significance of what is being asked?
  - Understand the significance of any answers given?
  - Make reasoned and rational decisions about whether they want to say anything?
2. Does the detainee's mental state adversely affect their capacity to be accurate or tell the truth?
3. Would the process of interview lead to significant deterioration in the detainee's condition?

The psychiatrist should prepare by obtaining as much information as possible before the examination of the detainee, considering information from the arresting Police Officers and Custody Officer; information in the custody record; the observations of the Forensic Medical Examiner and/or appropriate adult; and if possible, information from the detainee's General Practitioner or Psychiatrist or other mental health professional.

As with any other medico-legal examination, having introduced him or herself, the psychiatrist should seek valid consent. Where the detainee lacks the capacity to provide consent, a formal assessment should take place, in accordance with The Mental Capacity Act 2005, as to whether it is in the best interests of the detainee to proceed with the examination. There would need to be very persuasive reasons for not proceeding, given that the purpose of the assessment is to ensure that potentially vulnerable suspects are treated fairly and are afforded safeguards where necessary.

The assessment of fitness to be interviewed is based on the standard psychiatric history, mental state and appropriate physical examination. The enquiry should be made as to the history of mental illness, including admissions to hospital, treatment, adherence and typical symptoms. Their history of dependence on or recent use of, drugs and alcohol, including any current or anticipated withdrawal symptoms should be sought. Pointers as to the presence of personality disorder may be apparent from the history and examination, and should be pursued accordingly. Examination of the mental state is essential. Testing of cognitive function, including the Folstein's Mini Mental State Examination may be necessary.

Understanding of the Police caution should be assessed. This can be explained in simple terms if necessary. The person should then be asked to explain the caution in their own words.

The Police caution according to Code C of The Police and Criminal Evidence Act 1984, para. 16.2 states:

“You do not have to stay anything, but it may harm your defence if you do not mention now something which you later rely on in court. Anything you say may be given in evidence”

It is important to note that history and examination may reveal other features that may affect reliability, such as bereavement, extreme anxiety, tiredness or fatigue, or pain. Craving for alcohol or drugs may also affect reliability. These, although not mental disorders per se, may make the detainee “mentally vulnerable” as described in Code C of The Police and Criminal Evidence Act 1984. The presence of a mental disorder or other “mental vulnerability” is sufficient to trigger the safeguards of code C, including the provision of an appropriate adult.

## **5.0 CONCLUDING THOUGHTS**

Considering a detainee’s fitness to be interviewed involves a judgement that must be made as to the likely impact of the symptoms of the disorder on the Police interview and reliability (the functional test) rather than assuming that a diagnosis alone renders a person unfit (the status test).

At the end of the assessment, the psychiatrist should record the main findings in the custody record including an opinion on fitness to be interviewed, along with any recommendations. These might include the provision of an appropriate adult, the use of simple language in interview, checking that the suspect understands the questions put to them, shorter interview sessions and longer breaks. An opinion should be given as to the likely duration or permanence of a detainee being unfit for interview and an appropriate time for re-examination should be suggested. The psychiatrist should also state whether any medical or psychiatric treatment is needed, how soon it might be effective and whether further assessment of fitness to be interviewed by another specialist, for example a learning disability consultant is indicated.

**END**