



Guidance note

Interviews under Caution

Interviews under caution (also known in England and Wales as PACE interviews) are used by authorities such as the Health and Safety Executive, Environment Agency, Local Authorities and the Office of Nuclear Regulation to obtain information during a regulatory investigation.

An invitation to attend an interview under caution is a serious matter. It means that you / the company are suspected of having committed a regulatory offence and the regulator is exploring what form of enforcement action it might take against you.

Key points

1. Purpose of interview

■ Obtaining evidence

The regulator has grounds to suspect that you / the company have committed a regulatory offence and believes you have information that will assist their investigation.

■ Determining appropriate enforcement response

The interview is the regulator's opportunity to put their case to you and to test their theory before reaching a decision on what enforcement action (if any) to take.

2. Formalities

■ Invitation

Unless you are under arrest, you will be invited to attend an interview, which is usually held at the local office of the regulator. It is not compulsory to attend the interview, so you should consider carefully whether to accept.

Note: There might be an opportunity, depending on the circumstances, to answer the regulator's questions in writing

■ Delivering the Caution

At the start of the interview, the inspector will read out a Caution. The Caution itself reminds the interviewee that any statements made at interview can be used as evidence. Furthermore, if you fail to mention something at interview which you later rely on, this could undermine the credibility of any defence. Although you do not have to answer any question, in any subsequent prosecution the prosecutor may seek to draw adverse inferences from "no comment" answers.

Note: If the interview is being conducted in written format, remember that the Caution also applies to your written answers.

■ Recordings

The interview will be recorded. It is important to bear in mind that the interview transcript can be read out in Court. A copy of the recording can also be obtained.

Why is it important to prepare for the interview?

- What you say at interview can influence the course of the investigation and potentially the outcome.
- The interview is recorded and your words can be used as evidence in any future Court proceedings.
- It is important to have clear and consistent answers and to put across your side of the story in a coherent and compelling manner.

What is "PACE"?

This is an acronym for the Police and Criminal Evidence Act 1984 (and its various Codes).

PACE was originally introduced to protect the rights of suspects being questioned at police stations. It also applies to the questioning of suspects by (non-police) regulators.

Therefore, if your interview is not conducted in accordance with the PACE requirements it might not be admissible as evidence.

3. Legal representation

■ Right to receive legal advice

A person invited to a PACE interview has the right to consult a solicitor. Your solicitor can also be present at the interview. You can ask for the interview to be stopped at any time if you want to speak to your solicitor in order to obtain legal advice.

■ Ensuring adherence with PACE

Your solicitor may stop the interview if there is a concern that the requirements of PACE (and its Codes) are not being met. For example, your solicitor will ensure that you have adequate breaks from questioning and will look out for oppressive interview techniques.

4. Post-interview

■ Supplementary Q&A

There may be follow-up questions after the interview, and the Caution may also apply to those.

■ Enforcement Decision

The regulator will take into account all of the information it has obtained during its investigation, including from any PACE interviews it has carried out, in order to reach a decision on what enforcement action it is minded to take.

Contact

If you require legal representation at a PACE interview, or wish to discuss your interview strategy please speak to:



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