

For the attention of Head of Custody

23rd October 2020

Dear Colleague,

Recording of informed consent for remote legal representation in interview

As you will be aware, in April this year updated guidance agreed between NPCC and CPS was issued to make provision for legal representation to be remote from the suspect and officer(s) in interview for certain crimes. This was agreed as an emergency measure in response to the COVID-19 virus in order to reduce the impact of the pandemic on police custody and suspect interviews. Whilst there is some academic research underway, it will take some months to produce any meaningful evaluation of the impact of this change. This means that this measure has been introduced, without any certainty regarding the impact on the suspect and justice, which of course means carries a degree of risk.

I remain convinced that it was the right thing to do in the circumstances we have been confronted with, but it is important to be able to demonstrate that the guidance has been complied with and we cannot do that without recording it. I am also aware of some difficulties in getting Legal Advisors (LA's) to attend in person, even when requested. This is not acceptable and once again, recording this fact is important if we are to evidence and challenge it. There is a strong argument that the remuneration for LA's does not encourage them to attend custody and in fact discourages it. I understand that there is work underway to review how they are remunerated and so recording the difficulties we face is likely to be helpful in building an evidence base to encourage change.

We have been conducting some dip-checking of detainee records across four forces and found that the recording of informed consent has often not been recorded. There is of course the well-worn saying in policing that 'if it wasn't recorded it didn't happen' and so if informed consent is not recorded then it is going to be difficult - perhaps impossible - to assert that it was indeed given at all and that the suspect had a fair interview with all of the implications for the case that can follow from that.

To that end, I am requesting that with immediate effect, all forces ensure that they have a process for recording the informed consent of the detainee/suspect before interview and also any appropriate adult that maybe representing them. Ideally, this should include the signatures of all parties, but I know that the limitations of some systems may mean this needs to be recorded separately from the custody record.

I would be grateful therefore, if you would reply to my Staff Officer and confirm that you have a process in place for ensuring routine recording of informed consent. Please reply to
by close on Friday 13th November.



I attach a copy of the NPCC and CPS agreed guidance for your information.

Thank you for your assistance.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'N. Kemp', with a stylized flourish at the end.

Nev Kemp QPM

National Police Chiefs' Council (NPCC) lead for Custody and the movement of prisoners

Deputy Chief Constable

Surrey Police