



**ASSOCIATION OF  
CHIEF POLICE OFFICERS**



**The Law Society**

# **Mobile Telephones and Laptops being taken into Custody Suites by Solicitors**

The Association of Chief Police Officers and the Law Society have agreed to this guidance being circulated to, and adopted by, Police Forces and Solicitors in England and Wales.

It is NOT PROTECTIVELY MARKED under the Government Protective Marking Scheme and it is disclosable under the Freedom of Information Act 2000.

ACPO © 2011

---

---

# Document information

---

Protective marking	<b>NOT PROTECTIVELY MARKED</b>
Author	<b>Custody &amp; Movement of Prisoners Portfolio</b>
Force/Organisation	<b>ACPO</b>
ACPO Business Area	<b>Criminal Justice</b>
Contact details	<b>020 7084 8959</b>
Review date	<b>As required</b>
Version	<b>1.0</b>

**This Guidance has been produced by the ACPO Criminal Justice Business Area. ACPO and the Law Society has agreed to this guidance being circulated to and adopted by Police Forces and Solicitors in England and Wales. It will be updated according to legislative and policy changes and re-published as required.**

**Any queries relating to this document should be directed to either the author detailed above or the ACPO Programme Support Office on 020 7084 8958/8959.**

---

# Contents

---

<b>Section</b>		<b>Page</b>
<b>1</b>	<b>Scope of the Guidance</b>	<b>4</b>
<b>2</b>	<b>Reasons for the Guidance</b>	<b>4</b>
<b>3</b>	<b>PACE requirements on communication with and by a detainee</b>	<b>4</b>
<b>4</b>	<b>Why not introduce a blanket ban on solicitors using mobile phones and electronic means of communication in the custody suite?</b>	<b>5</b>
<b>5</b>	<b>Criteria for Use</b>	<b>5</b>
<b>6</b>	<b>Responsibility of the solicitor</b>	<b>6</b>

<b>Appendix A</b>	<b>ACPO Workbook Section C</b>
-------------------	--------------------------------

## **1. SECTION 1 – SCOPE OF THE GUIDANCE**

- 1.1 This guidance concerns the prevention of unauthorised communications by or on behalf of detainees using mobiles phones, computers and other electronic communication and recording devices belonging to solicitors and other third parties.
- 1.2 References to 'solicitors' includes accredited and probationary representatives described by paragraph 6.12 of PACE Code C. It is in addition to, and does not detract from:
- The separate guidance in Home Office Circular 34/2007 "Safety of Solicitors ...at police stations" which concerns risks to physical safety and would apply for the purposes of assessing risks to physical safety which might arise from the presence of such devices; and
  - the provisions of Code C paragraphs 6.9 and 6.10 and Code E which should be considered when the use of any such device by a solicitor appears to interfere with the conduct and recording of the interview.

## **2. SECTION 2 – REASONS FOR THE GUIDANCE**

- 2.1 There are varying practices by police forces about whether mobile telephones, computers and other electronic communication and recording devices may be taken into and used in the custody area and in particular, whether a legal representative should be allowed to have any such device with them for use during a private consultation with their client.
- 2.2 PACE Code C sets out limitations on the right of detainees to communicate with others and for others to communicate with detainees but makes no mention of the use laptops and hand-held devices for instant communication and making records by third parties, notably solicitors, when they are in the custody area. These devices are widely used and accepted as an important, often essential, aid to effective working and it is important to recognise the benefits of allowing solicitors access to laptops and hand-held devices when they are in the custody area.
- 2.3 Unfortunately, there have been instances of detainees gaining access to communication devices brought in by solicitors and whilst these may be isolated cases, their unauthorised use can cause an unnecessary and high level of risk to the investigation and put victims and witnesses at risk of being intimidated.
- 2.4 With the above concerns in mind, the Association of Chief Police Officers and the Law Society have developed and agreed the following guidelines.

## **3. SECTION 3 – PACE REQUIREMENTS ON COMMUNICATION WITH AND BY A DETAINEE**

- 3.1 Section 5 of PACE Code C describes the right of a detainee not be held incommunicado. In doing so, it determines when and if and on what authority a detainee may communicate and have contact with others. Communication by or with the detainee is a matter for the custody officer and where specific authorisation is required, a senior officer.
- 3.2 A solicitor or any other third party has no right or authority to enable or assist a detainee to contact anyone by telephone, email or other electronic format or in writing and any such communication would require a specific direct authorisation from the custody officer. It is difficult to imagine any circumstances in which it would be appropriate or necessary for the custody officer to authorise external communication to take place via a solicitor or any other third party.

3.3 Solicitors are not bound by the PACE Codes and breach of Code C would be a breach by police officers and police staff. Therefore the custody officer is entitled to be satisfied that all contact with or by a detainee is made or authorised in accordance with the Code. In certain situations a Custody Officer may consider that it would not be appropriate for a solicitor to possess communication devices whilst in the custody area.

#### **4. SECTION 4 – WHY NOT INTRODUCE A BLANKET BAN ON SOLICITORS USING MOBILE PHONES AND ELECTRONIC MEANS OF COMMUNICATIONS IN THE CUSTODY SUITE?**

4.1 Solicitors, like many others, use mobile telephones, laptops and hand held devices as part of their day-to-day working life. Their use in the custody suite allows them to be more effective and efficient in carrying out their duties, for example:

- A laptop, will allow a record to be made of a client's instructions during a consultation and enable access to earlier documents. It can also be used to gather information in a format that can be emailed at the earliest opportunity to expedite the completion and submission of papers, reports and other information relevant to the case. This ability will assist solicitors to contribute to the efficient administration of justice.
- A mobile telephone allows a solicitor to keep in contact with the Defence Solicitor Call Centre (DSCC) and their colleagues to notify delays, be kept informed of changing commitments and to seek or provide advice.

#### **5. SECTION 5 – CRITERIA FOR USE**

5.1 The following provisions are recommended for use when determining force policy on the use of mobile telephones and electronic communication or recording devices by solicitors in the secure custody area and during private consultations with detainees:

- (A) Unless there is good reason to prevent a solicitor from retaining their mobile telephone and other electronic communication or recording devices such as laptop computers, the presumption should be to allow the solicitor to retain and use these devices.
- (B) The custody officer will determine on a case by case basis whether mobile telephones and other electronic communication or recording devices such as laptop computers will be surrendered either:
  - On entering custody area; or
  - before any private consultation with a detainee.
- (C) The custody officer will only seek surrender of any such device where there are reasonable grounds to believe that surrender is necessary to prevent unauthorised communications being made by or on behalf of *any* detainee and must inform the solicitor of the grounds for the decision.
- (D) The solicitor must disclose to the custody officer or custody staff what electronic communication or recording devices they have in their possession if so required by or behalf of the custody officer.
- (E) Where the custody officer has concerns about allowing any such device to be retained, the solicitor must if requested, explain to the custody officer why it is necessary for them to retain possession of it whilst they are in the custody area or during any contact with their client, whether in a private consultation or otherwise.

(F) If the custody officer decides to allow the solicitor to retain any such device, the solicitor must agree that they can retain it on condition that they will:

- Not allow *any* detainee to have access to the device; and
- Not use that device to communicate with anyone on behalf of *any* detainee.

(G) The solicitor must also:

- agree to report any breach of this condition whereby any detainee has access to, or makes use of, any such device including the circumstances whereby the breach took place; and
- report any such breach to the custody officer as soon as practicable after it occurs.

(H) A decision not to allow a solicitor to retain and use any relevant device should be recorded in the custody record of each detainee to whom that solicitor has been called to give advice or elsewhere in accordance with locally agreed arrangements.

(I) A solicitor who is not allowed to retain any communication device must be allowed to make appropriate contact arrangements, for example, with the DSCC or their office, to cover the period for which they will not have access to it.

(J) A solicitor who is told that they are not allowed to retain any communication or recording device must be asked to hand the device over:

- on or before entering the custody suite, or
- (as the case may be) before any consultation with a detainee, and the device must be placed in a tamper proof bag or locker and the custody officer will be responsible for its safe custody and prompt return in accordance with locally agreed arrangements.

## **6. SECTION 6 – RESPONSIBILITY OF THE SOLICITOR**

6.1 A breach by a solicitor of the agreement in 10(f) above not to allow any detainee to have access to the device and not use that device to communicate with anyone on behalf of the detainee, may lead to the matter being investigated as an attempt to pervert the course of justice. The breach may also be brought to the attention of the court if the case comes to trial. Any breaches of the requirements placed on solicitors which would include attempts not to disclose possession of a telephone or communication or recording device and any false declarations to the custody officer should be reported to the Solicitors Regulation Authority to consider disciplinary action and if the solicitor is attending the station under Duty Solicitor Scheme, also to the Regional Office of the Legal Services Commission.

6.2 A decision not to allow a solicitor to retain any communication or recording device should not prevent the solicitor from giving legal advice to their client and failure to comply with a request to hand over any such device would not be considered as justification for claiming that a detainee's access to legal advice has been denied or delayed. For this reason, when informing a solicitor that they may not retain any such device and of the grounds for this decision, the custody officer should point out that it is the device which is not allowed into the custody area but they are not being prevented from advising their client provided that they surrender the device. If the solicitor refuses to accept this condition of entry and decides not to visit their client, the custody officer must inform the DSCC of the circumstances so that alternative arrangements can be made to secure legal advice for the detainee.

**Appendix A - FOR USE ONLY WHERE AN EXISTING GUIDANCE OR PRACTICE ADVICE DOCUMENT IS BEING AMENDED AS THE RESULT OF A REVIEW**

**SECTION C - ACPO EQUALITY IMPACT ASSESSMENT TEMPLATE (DIVERSITY AUDIT) AS AGREED WITH THE CRE**

**C1. Identify all aims of the guidance/advice**

<b>C.1.1 Identify the aims and projected outcomes of the guidance/advice:</b>
To ensure guidelines exist between these parties
<b>C.1.2 Which individuals and organisations are likely to have an interest in or likely to be affected by the proposal?</b>
Police Forces, The Law Society, The Solicitor Regulation Authority, ACPO

**C2. Consider the evidence**

<b>C.2.1 What relevant quantitative data has been considered?</b>	
Age	
Disability	
Gender	
Race	
Religion / Belief	
Sexual Orientation	
<b>C.2.2 What relevant qualitative information has been considered?</b>	
Age	
Disability	
Gender	
Race	
Religion / Belief	
Sexual Orientation	
<b>C.2.3 What gaps in data/information were identified?</b>	
Age	
Disability	
Gender	
Race	
Religion / Belief	
Sexual Orientation	
<b>C.2.4 What consideration has been given to commissioning research?</b>	
Age	
Disability	
Gender	
Race	
Religion / Belief	
Sexual Orientation	

**C3. Assess likely impact**

<b>C.3.1 From the analysis of data and information has any potential for differential/adverse impact been identified?</b>	
Age	
Disability	
Gender	
Race	
Religion / Belief	
Sexual Orientation	
<b>C.3.2 If yes explain any intentional impact:</b>	
Age	
Disability	
Gender	
Race	
Religion / Belief	
Sexual Orientation	
<b>C.3.3 If yes explain what impact was discovered which you feel is justifiable in order to achieve the overall proposal aims. Please provide examples:</b>	
Age	
Disability	
Gender	
Race	
Religion / Belief	
Sexual Orientation	
<b>C.3.4 Are there any other factors that might help to explain differential /adverse impact?</b>	
Age	
Disability	
Gender	
Race	
Religion / Belief	
Sexual Orientation	

**C4. Consider alternatives**

<b>C.4.1 Summarise what changes have been made to the proposal to remove or reduce the potential for differential/adverse impact:</b>
This document has no effect upon these issues
<b>C.4.2 Summarise changes to the proposal to remove or reduce the potential for differential/adverse impact that were considered but not implemented and explain why this was the case:</b>
This document has no effect upon these issues
<b>C.4.3 If potential for differential/adverse impact remains explain why implementation is justifiable in order to meet the wider proposal aims:</b>
N/A

**C5. Consult formally**

<b>C.5.1 Has the proposal been subject to consultation? If no, please state why not. If yes, state which individuals and organisations were consulted and what form the consultation took:</b>	
N/A	
Age	

Disability	
Gender	
Race	
Religion / Belief	
Sexual Orientation	
<b>C.5.2 What was the outcome of the consultation?</b>	
Age	
Disability	
Gender	
Race	
Religion / Belief	
Sexual Orientation	
<b>C.5.3 Has the proposal been reviewed and/or amended in light of the outcomes of consultation?</b>	
N/A	
<b>C.5.4 Have the results of the consultation been fed back to the consultees?</b>	
N/A	

**C6. Decide whether to adopt the proposal**

<b>C.6.1 Provide a statement outlining the findings of the impact assessment process. If the proposal has been identified as having a possibility to adversely impact upon diverse communities, the statement should include justification for the implementation:</b>
This document has no effect upon these issues

**C7. Make Monitoring Arrangements**

<b>C.7.1 What consideration has been given to piloting the proposal?</b>
<b>C.7.2 What monitoring will be implemented at a national level by the proposal owning agency and/or other national agency?</b>
Monitored by ACPO and the Law Society
<b>C.7.3 Is this proposal intended to be implemented by local agencies that have a statutory duty to impact assess policies? If so, what monitoring requirements are you placing on that agency?</b>
The document will be distributed to all forces.

**C8. Publish Assessment Results**

<b>C.8.1 What form will the publication of the impact assessment take?</b>
<i>It is recommended that for publication on the ACPO website, the impact assessment be attached to the completed document as the first appendix. On the ACPO Intranet, the whole workbook will be attached to assist in the preparation of local audits.</i>