

Home Office consultation on the revision of PACE Code G The Police Foundation's response

Introduction

The Police Foundation is the only independent charity focused entirely on developing people's knowledge and understanding of policing and challenging the police service and the government to improve policing for the benefit of the public. The Police Foundation acts as a bridge between the public, the police and the government, while being owned by none of them. Founded in 1979 by the late Lord Harris of Greenwich, The Police Foundation has been highly successful in influencing policing policy and practice, through research, policy analysis, training and consultancy.

We are grateful for the opportunity to respond to this consultation and will focus our response on the proposed changes to Code G. While we welcome most aspects of the Code G revisions, we have some concerns in respect of the plans to increase police discretion to assess reasonable force and would like to see stronger safeguards put in place.

Volunteer Interviews

The Police Foundation supports the proposed changes to Code G with regard to the interviewing of volunteers.

Under PACE s24(4) a police officer has the power to arrest if s/he has reasonable grounds to believe the arrest is "necessary". In the case of suspects voluntarily presenting themselves at police stations for interviews, the police have often exercised this power to arrest the volunteer before the interview begins, in order to prevent the suspect from leaving. This common practice has resulted in successful civil actions against the police, for example in the case of *Richardson v Chief Constable of West Midlands Police*¹ where the trial judge Mrs Justice Slade held that the officer had not assessed whether the suspect was likely to leave, nor whether the arrest was necessary as required under s24 PACE. Mr Richardson was awarded damages for false imprisonment.

The proposed Code G provides a new standard for arrest: that the arrest should be *'the practical, sensible and proportionate option in all the circumstances at the time the decision is made'*

And states that, in the case of volunteer interviews, arrest does not become 'necessary' until the suspect decides to leave the interview:

"The possibility that the person might decide to leave during the interview is therefore not a valid reason for arresting them before the interview has commenced."

We welcome these amendments. A volunteer presenting him/herself for interview must have confidence that an arrest would be made only where necessary and that the interview provides the opportunity to clear his/her name if appropriate. This is important not only for trust and legitimacy in policing, but also for more practical reasons. In the current economic climate the police will increasingly depend on the public's help and it is crucial that people, including suspects, feel able to come to the police with evidence and concerns.

¹ [2011] EWHC 773 (QB)

Reasonable Force

Section 76 of the Criminal Justice and Immigration Act 2008 currently allows the use of reasonable force in self-defence.

The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Bill proposes to amend section 76 to say that there is no duty to retreat before using force, but retreating is to be one of the factors to be taken into account in assessing if the force used was reasonable. The current system already allows a court to consider retreat as a factor of reasonableness.² Thus, as the Ministry of Justice has recognised,³ the proposed changes to the law on self-defence are likely to have little or no impact on the justice system and aim simply to clarify the law in this area. We therefore have no objections to the proposed statutory changes to Section 76 in the LASPO Bill.

The revisions to PACE Code G propose that officers should consider facts and information which tend to indicate a suspect's innocence as well as their guilt. We fully support this amendment. Officers should always exercise their discretion to arrest carefully, weighing up all the appropriate factors.

However, we have some reservations about the intention to revise the Code such that it also directs a police officer to take account of the circumstances under which the law allows the use of reasonable force. We illustrate our concerns by means of a fictional case study:

A police officer is called to a home to find an intruder lying injured on the ground and the homeowner holding a baseball bat. The homeowner admits striking the intruder but claims that he used reasonable force in self defence.

Under the current system the police officer would arrest the homeowner on the basis of the prima facie evidence, gather further evidence and interview the homeowner and the intruder. If the homeowner was arrested and charged, the Crown Prosecution Service would then consider the question of whether reasonable force was used before deciding whether to prosecute. If the case proceeded to trial, the issue of reasonableness would then be considered either by a jury or by magistrates, following representations from both prosecution and defence lawyers as well as witness, defendant and victim evidence.

Under the revised Code G, the police officer on the scene has to consider whether the force used was reasonable before making a decision to arrest. In the majority of cases the question of reasonableness may be clear and we accept that an officer will save court time and resources by exercising his/her discretion at this point. However, our concerns arise in respect of those cases where the issue is less clear cut. In such instances, the extension of police discretion could impose a considerable burden on police officers on the ground and may result in injustice where a police officer exercises such discretion incorrectly.

Indeed, if, in our example above, an officer were to determine that reasonable force had been used (and therefore that no offence had been committed) s/he would not gather evidence nor prepare a case file. This could have serious repercussions for the case. Moreover, a different officer could possibly take a different view. Given this, we believe that it is important to spell out what forms of redress may be available to the victim, particularly

² R v Bird 81 Cr App R 110

³ Impact assessment 25 October 2011 available at <http://www.justice.gov.uk/downloads/publications/bills-acts/legal-aid-sentencing/ipp-review-impact-assessment.pdf>

where the use of force has resulted in serious injury. We do not consider that Judicial Review offers an effective oversight in such matters. It is an expensive and complicated remedy and judges are sometimes reluctant to interfere with the operational decisions taken by police officers on the ground.

The misuse of discretion can undermine public confidence and police legitimacy, so it is important to ensure that where there is a disagreement as to whether such discretion has been used fairly – and this applies as much to the homeowner as to the intruder in the above example – there are proper procedures for correcting potential injustices and that the right checks and balances are put in place.

In borderline cases, particularly where the use of force in self defence has resulted in serious injury, we believe the decision of whether to charge should be made at Chief Officer level, or should be at least subject to confirmation at that level, and that reasons for the decision should be noted in writing. These safeguards would serve to protect the police officer from claims of negligence or failure to exercise their legal duty, take better account of the interests of victims and ultimately reduce the potential risk of perpetrating an injustice. The government's own police reform programme is predicated on the need to improve police accountability and appropriate safeguards would help to minimise the risk of incorrect decisions being made in what are sometimes quite fraught situations.

On the whole we are supportive of the proposed Code G changes, however we believe safeguards are necessary to ensure that the assessment of reasonable force by a police officer is made fairly and appropriately in every case and to mitigate against possible injustices.

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