

## Understanding of the Current Police Caution (England and Wales)

ISABEL C. H. CLARE,<sup>1\*</sup> GISLI H. GUDJONSSON<sup>2</sup>  
and PHILIPPE M. HARARI<sup>3</sup>

<sup>1</sup>*Department of Psychiatry (Section of Developmental Psychiatry), University of Cambridge, Douglas House, 18b, Trumpington Road, Cambridge CB2 2AH, UK*

<sup>2</sup>*Department of Psychology, Institute of Psychiatry, De Crespigny Park, London SE5 8AF, UK*

<sup>3</sup>*Long Road VIth Form College, Long Road, Cambridge CB2 2PX, UK*

### ABSTRACT

The *Criminal Justice and Public Order Act 1994* (England and Wales) modified suspects' right to silence during police questioning and required a new police caution. The current 37-word caution was introduced after it was found that a proposed 60-word draft version was too complex. The results of the present study show that, although more succinct, the current caution is no easier to explain. Even under optimal conditions, when the participants could focus on each sentence in turn, only 1 in 10 of the general population ( $n = 15$ ), 6 in 10 of A-level students preparing for university ( $n = 72$ ) and 9 in 10 police officers ( $n = 21$ ) demonstrated their understanding by explaining all three sentences correctly. For all groups, the difficulties were more marked when the caution was presented in its entirety, as would happen in real life. The complexity of the caution has serious implications for suspects in police detention. © 1998 John Wiley & Sons, Ltd.

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### INTRODUCTION

In English law, people suspected of criminal offences may remain silent as a protection against self-incrimination. Following a prolonged debate (Zander, 1994), the right to silence was modified under Section 34 of the *Criminal Justice and Public Order Act 1994* (England and Wales) so that, in some circumstances, courts can now draw adverse inferences if suspects do not answer questions put to them by the police (see Morgan and Stephenson, 1994, for a detailed discussion of the issues). Gudjonsson (1994) has argued that this modification will increase the complexity of

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\* Correspondence to: I. C. H. Clare, Department of Psychiatry (Dev. Psych. Section), University of Cambridge, Douglas House, 18b Trumpington Road, Cambridge CB2 2AH.

the decision-making required of suspects during police interviews, and may be particularly difficult for suspects who are psychologically vulnerable. The relevance of these concerns depends, in part, on suspects' understanding of the caution—the standard information which the police must give on arrest and repeat each time the suspect is interviewed about the alleged offence.

When the modification of the right to silence was first proposed, it was recognized that the existing caution would need to be changed. A 60-word version was drafted which read:

You do not have to say anything. But if you do not mention now something which you later use in your defence, the court may decide that your failure to mention it now strengthens the case against you. A record will be made of anything you say and it may be given in evidence if you are brought to trial (Bennetto, 1994).

However, following submissions by the Law Society and research showing that it was too complicated even for A-level students preparing for university (Gudjonsson and Clare, 1994), it was not introduced. Subsequently, the Home Office produced a new version, which was much briefer. This was introduced with the revised *Police and Criminal Evidence Act 1984, Codes of Practice* (Home Office, 1995).

The current caution is given in the following words:

You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence (Home Office, 1995, C.10.4).

Minor variations in the wording are permitted (Home Office, 1995, C.10.4). In addition, if it appears that a suspect does not understand the caution, police officers are enjoined to explain it in their own words (*ibid.*, Note 10C). Detailed guidance is available (National Crime Faculty, 1996, pp.68–69) about the elements to be included in such an explanation.

Based on a study of the general public, Shepherd, Mortimer and Mobasher (1995) suggested that the current caution remains very complex. Even when the presentation was simplified, less than half (a maximum of 40%,  $n = 109$ ) of the participants explained all three sentences. Of particular concern is that many people believed, incorrectly, that they understood its meaning. However, the use of participants who were stopped on the street and may not have been concentrating on the task, together with the absence of clear criteria for scoring the responses, means that it is possible that the findings underestimate the level of understanding.

This paper (a) investigates in more detail understanding of the current caution, and (b) examines whether the current version is less complex than the 60-word draft.

## METHOD

### *Participants*

There were three groups:

1. A 'student' group of 72 young people, aged 16–19 years (mean age: 16 years, 6 months), studying for two or more A-levels at the same college as the participants in Gudjonsson and Clare (1994).
2. A 'general population' group, comprising 15 men and women aged 21–59 years (mean age: 40 years, 2 months), recruited by advertising locally, and paid for their

participation. Three sub-tests (Vocabulary, Comprehension and Picture Completion) of the Wechsler Adult Intelligence Scale–Revised (WAIS–R; Wechsler, 1981) were used to provide an *estimate* of overall intellectual ability (see Gudjonsson *et al.*, 1993). The mean Full Scale IQ of the group was 94 (average), with the range from 78 (Borderline) to 119 (High Average). None of the participants was attending services for people with learning disabilities or mental health problems. Two people volunteered that they had been arrested by the police since April 1995; in neither case, apparently, had they gone to court.

3. A ‘police officer’ group, comprising 21 men and women aged 21–50 years (mean age: 31 years, 6 months), attending courses at their county constabulary’s training college. The officers’ mean length of service was 7 years, 6 months (range: 1–20 years): six were probationer constables, one was the sergeant in charge of the group; the remainder were detectives. The caution had been introduced six months earlier and all the participants stated that it was familiar. However, it was not known whether any of them had received formal training in investigative interviewing (the PEACE course, National Crime Faculty, 1996) which should have provided detailed knowledge of its elements.

### *Procedure*

Understanding of the current police caution was assessed in two ways. First, in an experimental analogue of police procedure (see Gudjonsson and Clare, 1994), the entire caution was read aloud, slowly and clearly, to the participants (in their classes for the students and the police officers; individually for the ‘general population’ group). Each person was asked to explain the caution’s meaning (in writing for the students and police officers; orally for the ‘general population’ group) in his/her own words.

Secondly, each person was given a written copy of the current caution. Each sentence was read out in turn and participants were asked to explain its meaning. The ‘student’ and ‘police officer’ groups were asked to write down their explanations; the explanations of the ‘general population’ group were given orally and written down verbatim. This procedure had been used previously to assess understanding of the *Miranda* rights in the USA (Grisso, 1981; Fulero and Everington, 1995) and the caution and legal rights in England and Wales (Gudjonsson, 1991; Clare and Gudjonsson, 1992; Gudjonsson, Clare and Cross, 1992; Gudjonsson and Clare, 1994). It provides the maximum possible opportunity for people to demonstrate their understanding.

## **RESULTS**

### *Rating of the responses*

Based on guidance about the intended meaning of Section 34 of the Criminal Justice and Public Order Act 1994 (Wasik and Taylor, 1995), criteria for scoring each of the three elements were developed (these are available from the first author). These were discussed with a solicitor from the Metropolitan Police Service (the London police force). Using the guidance for investigative interviewing (National Crime Faculty, 1996, pp. 68–69) to assist in the interpretation of the criteria, each sentence of each

response was rated: as 'correct' if its sense was explained or implied strongly, or as 'incorrect'. A sample were rated independently by the solicitor and an experienced police officer. Whilst they agreed completely with each other, in a very few cases they disagreed with us: invariably, they were less generous. The discrepancies were discussed until the interpretation of the criteria was agreed. The complete set of responses was then rated again (by the first author). As a check, the independent raters reviewed a small sample; again, their interpretation of the criteria was stricter than ours. However, in order not to underestimate the participants' understanding of the material, they agreed that our more liberal interpretation was acceptable.

Three analyses were then carried out:

1. *Understanding of the current caution when presented in its entirety* (Table 1). Only a small proportion of the students and general population participants explained all three sentences of the caution correctly. The second sentence seemed particularly hard for these two groups. In contrast, a significantly greater proportion of the police officers explained the middle sentence correctly (Chi-square test ( $df = 1$ , throughout):  $\chi^2 = 22.11$ ,  $p < 0.001$ ). Nevertheless, only half the police officer group explained all three sentences correctly. Similar proportions of probationer constables and more experienced officers provided complete explanations of the caution (Fisher's exact test), suggesting that length of service, of itself, was not helpful.
2. *Understanding of the current caution presented sentence by sentence* (Table 2). Demonstrated understanding of the caution improved when each sentence was presented in turn. However, the second sentence remained very difficult. It was not explained correctly by any of the general population participants of below average intellectual ability (i.e. Full Scale IQ score  $< 90$ ). Whilst most of the police officers explained the middle sentence correctly, three officers (a probationer constable, and two more experienced officers) did not.

Table 1. Percentage of participants in each group who correctly explained each sentence, and all three sentences, of the caution presented in its entirety

	Sentence 1 (%)	Sentence 2 (%)	Sentence 3 (%)	All three sentences (%)
A-level students ( $n = 72$ )	63	18	67	8
General population ( $n = 15$ )	27	7	33	7
Police officers ( $n = 21$ )	91	67	62	48

Table 2. Percentage of participants in each group who correctly explained the caution when it was presented sentence by sentence

	Sentence 1 (%)	Sentence 2 (%)	Sentence 3 (%)	All three sentences (%)
A-level students ( $n = 72$ )	97	67	96	63
General population ( $n = 15$ )	93	13	67	13
Police officers ( $n = 21$ )	100	86	100	86

Table 3. Percentage of A-level students who explained the draft version and the current caution when they were presented sentence by sentence

	Proposed 60-word caution (%) ( <i>n</i> = 45)	Current caution (%) ( <i>n</i> = 72)
Sentence 1	96	97
Sentence 2	82	67
Sentence 3	73	96*
All three sentences	58	63

\* Statistically significant at  $p < 0.001$  level ( $\chi^2 = 12.54$ ). No other comparisons were significant.

3. *Comparison with the draft 60-word caution (1994)*. When presented in its entirety, the current caution was no easier to explain than the draft version (using the Chi-squared test): understanding of all three sentences of the draft version was demonstrated by 7% of A-level students (Gudjonsson and Clare, 1994) and understanding of the current version by 8%.

Table 3 shows that, with the exception of the third sentence, which has been changed considerably and is now much easier, the caution has not been simplified. Indeed, the second sentence has become more difficult to explain.

## DISCUSSION

Consistent with the findings of Shepherd, Mortimer and Mobasher (1995), the present results indicate that there are serious problems with the current caution. Whilst it is more succinct than the draft version proposed in 1994, it is no easier to explain: simply condensing the information has not been of any help.

The police officers' results highlight the difficulties. When the caution was presented in its entirety, only half (48%) explained all three sentences correctly. Even when they were able to focus on one sentence at a time, only 9 in 10 (86%) explained it fully. Demonstrated understanding among the other two groups was more limited. Under optimal conditions, the caution was explained fully by only 6 in 10 (63%) of students and 1 in 10 (13%) of the general population. Even fewer showed their understanding when it was presented in its entirety, as would happen in real life. It is likely that these difficulties would be further exacerbated in an actual police station, where many suspects are in an acute state of anxiety and may have additional problems, such as drug withdrawal (Gudjonsson *et al.*, 1993).

For all three groups, the middle sentence, which contains the information about the modification of the right to silence and its legal implications, presented most problems. Of particular concern, given that many suspects are intellectually disadvantaged (Gudjonsson *et al.*, 1993), none of the 'general population' participants who were of below average ability (Full Scale IQ < 90) explained it correctly. Across all the participants, the most common errors involved explaining the sentence as a *loss* of the right to silence (e.g. 'if you don't (answer questions), your case will look bad in court') or as a warning about the possible adverse effects of *any* inconsistency between explanations given at different times.

The complexity of the current caution means that it is essential for suspects to receive good quality legal advice prior to, and during, police questioning, and at court. Given Shepherd, Mortimer and Mobasheri's (1995) suggestion that people are unjustifiably confident about their comprehension of the information, both legal advisers and police officers should be wary of accepting suspects' reports that they understand the caution. Our findings suggest that, when police officers need to explain the caution to suspects, it is helpful for them to refer to a written version. It is recommended that, as is already the practice in some forces, a written caution is always used in these circumstances. Even so, it seems that not all police officers will be able to explain it accurately. It may be useful to make the guidance (National Crime Faculty, 1996) about the meaning of each element available in a 'pocket-sized' format with the caution.

There are other possibilities for ameliorating the present situation, but these do not address the problem that the current caution which provides information to suspects is too complicated. Unless it can be simplified markedly, Gudjonsson's (1994) concerns about the impact on miscarriages of justice of the modification of the right to silence are likely to be justified.

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