

# What Are My Rights During A Police Interview?

First of all, your rights will depend on whether or not you are under arrest.

Police cannot normally arrest you merely to question you, and if you are not under arrest, you don't have to stay or answer their questions.

## **The police caution:**

Police must caution you if you are arrested, they believe there is sufficient evidence against you to prove you did the offence or they give you grounds to believe that you would not be allowed to leave if you wanted to.

This caution that police must give according to the [Code of Practice for CRIME](#) is:

I am going to ask you some questions. You do not have to say or do anything if you do not want to. Do you understand that?

We will record what you say or do. We can use this recording in court. Do you understand that?

## **Interpreters:**

Interpreters are to be provided when necessary, even if the suspect can speak some English but feels more comfortable speaking their own language.

Any interview will be deferred until an interpreter arrives, or if this is not possible, until a telephone interview can be arranged. The interpreter cannot be someone known by the suspect.

## **Police interview:**

You can refuse to participate in an interview with police, and it is often advisable to do so for a range of reasons; eg you may be under extreme stress and say things you don't mean, you may not be in a position to recall all events, you may be unable to properly understand questions and give accurate answers etc.

It may also be advisable to refuse to participate in an interview so that you have an opportunity to obtain and assess the nature and strength of the police case against you.

If you agree to an interview, you have the right for a lawyer to be present; however, they can't answer the questions or suggest answers to you.

However, they may advise you not to answer questions on the basis that they are not appropriate, relevant or proper, or they may ask the police to clarify the questions.

A lawyer can only be removed during an interview in extreme circumstances, such as obstructing proper questions from being asked or answers being recorded.

When you are speaking with your lawyer, police officers must remove themselves from hearing distance in order to ensure your privacy.

While you don't have a right to state-funded legal representation in your case, you do have the right to a lawyer, and may be able to get Legal Aid.

Having an [experienced criminal lawyer](#) may make all the difference to your case as they will be able to privately advise you on your options and the best way for you to approach the interview.

Remember, even innocent people can unintentionally incriminate themselves in police interviews, especially if they are nervous or intimidated.

## **Right to silence:**

Rights to silence have changed recently – and now a refusal to answer police questions may have negative consequences for your case if it goes to trial.

In the past, this was not the case – judges or juries were not allowed to draw negative conclusions from the fact that you didn't answer police questions.

But now if you remain silent in a police interview and fail to mention something that you later want to rely on in court, the court may be allowed to draw adverse inferences.

There are three exceptions to this:

- If you are under 18 years of age;
- If you don't have a legal practitioner with you at the time or the chance to speak with one privately; or
- If you are charged with anything other than a serious indictable offence

During your interview, [police must caution you](#) that failure to mention a fact that you later seek to rely on may allow unfavourable inferences to be drawn against you in court.

## **Interview Recordings:**

An Electronically Recorded Interview of a Suspected Person or 'ERISP' is the recording of your interview and it may be audio, video or both.

Interviews must be recorded and police must inform you of this fact.

If you refuse to consent to being recorded, police may record your refusal to be recorded.

Police should avoid asking questions in a confusing way, for example, asking two questions at once. You can ask them to

clarify what they are asking you.

If police have violated your rights during an interview, the evidence may be improperly obtained and inadmissible in court.

If you are interviewed by police, particularly for a serious crime, keep mind your rights and perhaps even think about whether you need a lawyer.

If you are required to attend a police interview, you should give your name, address and birth date but hold off answering any other questions until you have a legal representative with you.

Don't sign any written statements or any other documents except for a bail form.