Police Powers Of Questioning

In many cases you will want to help the police when they ask you questions as they need public co-operation to do their job properly. But it is important that you know when you are not legally obligated to co-operate.

The Right To Silence

In general you do not have to answer police questions, whether they are informal or part of an official enquiry. But:

- failing to answer certain questions related to motoring offences is an offence;
- you must answer police questions about illegal drugs; and
- refusing to answer questions, particularly when the police have the power to stop and search you (See Section Number 25 on Police Powers of Search), may cause the police to become suspicious and to arrest you, even though the suspicion is unfounded.

Rather than remaining completely silent it might be better to say something like “I do not want to say anything until I have seen my lawyer”. Although you may feel that it would be quicker and easier to clear a matter up by answering police questions it is better not to do so until you have had legal advice. But if legal help is not readily available to you and you are in a position to make a statement that will prove your innocence, it may be better to do so or to otherwise co-operate with the police.
Rules Governing Police Questioning

When the police question you, their conduct is governed by a set of rules called the Judges’ Rules. These are not legally binding. Even where they are not obeyed a magistrate or judge can allow your statement to be used as evidence once she/he believes it was made voluntarily. This gives the police little incentive to follow the rules. The main provisions are as follows:

1. A police officer can question you, whether or not you are suspected of an offence, if she/he thinks she/he can get useful information from you. She/he can do this without arresting you, provided that you have not been charged with an offence or informed that you may be prosecuted for it.

2. First caution. As soon as the officer has reasonable grounds for suspecting that you have committed the offence she/he must caution you as follows: “You are not obliged to say anything unless you wish to do so but what you say may be put in writing and used as evidence”.

3. Second caution. Another caution should be given when you are charged or told that you may be prosecuted for an offence. You should be asked if you wish to say anything and told that you need say nothing, but whatever you do say may be taken down in writing and used as evidence. As a general rule, no questions should be put at this stage unless their purpose is to prevent harm being done to other people or to make clear the meaning of answers or statements already made. If such questions are to be asked you should be given a third caution.

4. Statements
   (a) If you are questioned or decide to make a statement after being cautioned, a record should be kept of the time and place of the questioning, who was present; and of what refreshments were given. Alcohol must never be given.
   (b) Questions and answers should be recorded in full. The record should be signed by you, or if you refuse, by the officer questioning you. Answers can be used as evidence whether or not you sign the record – there is no such thing as an off-the-record statement.
   (c) Any statement you make after being cautioned should be
written on the proper form. Police officers should only use their notebooks when there are no forms available.

(d) If you make a written statement you must do so without prompting and in your own words, or you can dictate it to a police officer and will then be asked to sign it. If you refuse the officer must do so.

(e) If an officer writes down your statement she/he should write down your words and not translate them into “police talk”.

(f) You must not be led to believe that any statement you make can only be used against you: if you are innocent this may prevent you from making a statement which might help clear you of the charge.

5. You should be told what rights and facilities are available to you. Notices saying what these are should be clearly displayed in the police station and drawn to your attention.

6. Reasonable arrangements should be made for your comfort and refreshment. Whenever possible you and the officer questioning you should be seated.

7. **Questioning of children.** As far as possible, children under 17, whether they are suspected of a crime or are merely being questioned as witnesses, should only be interviewed in the presence of a parent or guardian, or if these are not available, in the presence of someone who is not a police officer and who is of the same sex as the child. A child should not be arrested or questioned at school if this can be possible avoided: if it is essential to do so, it should be done only in the presence of the headteacher, or her/his nominee, with her/his consent.

**Voluntariness**

Any statements made by you should not be used in evidence unless the court is convinced that they were made voluntarily. The prosecution must prove that this is so.

**If inducements** (e.g. “We can make it easier for you if you confess”) or **threats** (e.g. “We won’t give you bail until you make a statement”) are made to you while you are being questioned, your statement will **not considered voluntary.**
But remember that even if the Judges’ Rules were not followed a magistrate or judge can still decide that your statement was made voluntarily.

Some Advice
1. Never rely on a police suggestion that a confession will make things easier for you.
2. Try to ignore all threats and inducements to make a statement if you don’t want to, to make a confession if you are innocent or to sign a statement that you have not given.
3. If the police question you at your workplace, you should get in touch with the local representative of your trade union or professional organisation at once. If the offence has nothing to do with your place of work, you should refuse to discuss it in the presence of your employer. Even if the offence is concerned with your place of work, remember that you do not have to say anything.