



The Content and Format of the Letter of Rights Response to Consultation

November 2019

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1 Do you consider the content of the ‘standard’ version of the Letter of Rights easy to understand?

No

If not, why not?:

JUSTICE Scotland conducted an expert working party "Legal Assistance in the Police Station" in 2018, chaired by Lord Eassie. The Working Party reviewed the Letter of Rights and took the view, which was shared and informed by the forensic linguistic experts with whom it consulted, that in many respects the Letter of Rights is composed in a way which is likely to be confusing to suspects in detention and to make it difficult for them properly to understand the document. Our answers to this consultation are taken from that report, which is available on our website at <https://justice.org.uk/wp-content/uploads/2018/06/JUSTICE-Scotland-Legal-Assistance-in-the-Police-Station.pdf> and should be consulted for further details and references.

As such, while the current version of the Letter of Rights may contain a technically accurate statement of the rights enjoyed by a detained suspect, it is drafted in a way which is unclear and confusing; and it fails in what ought to be its primary objective of giving clear and easily understandable information to a suspect.

2 Is the content of the ‘easy read’ version of the Letter of Rights easy to understand?

No

If not, why not?:

A supposedly “easy read” version of the Letter of Rights is available; but our clear impression is that this version is rarely offered or used. More importantly, however, the only real difference between the supposedly “easy read” version and the standard version of the Letter of Rights is that the “easy read” version has the addition of some drawings; the text is the same as the standard version. Moreover, the images depicted are only loosely connected to the matching text, are repetitive and ambiguous and the structure of the “easy read” version is unclear.

3 Do you consider that the versions of the Letter of Rights cover the key information individuals need to know when being held in custody?

No

If not, please indicate where in the letter the content requires clarification or is missing information and suggest alternative content.:

The Letter does cover most of the information necessary, but it does not explain sufficiently what the role of a lawyer is or why this might be helpful to a suspect in custody - telling detainees that they may consult a solicitor is of little value if the detainee has little, or no, understanding of the help which a solicitor may provide.

4 Does the way the information is organised in the ‘standard’ version of the Letter of Rights, i. e. with a text box at the beginning, help to convey key information in a way that is easily understood?

No

If not, please indicate where there are problems with the layout of the Letter and suggest an alternative layout.:

What appears in the box on the first page is presumably intended as an overview or summary of the succeeding four pages, but that is far from clear and it does not achieve that purpose. There is no linking between the information in the box and the contents of those pages. As a design feature, the box may in fact make the text more difficult to read.

The layout and sequence followed in stating the suspect's rights – not only in the first page box, but also particularly in the ensuing pages - has no evident logical order. Importantly, the right to legal advice and assistance is buried among other text.

Further, rights which apply only to a limited category of person are placed next to rights which apply to all; this can lead to confusion on the part of the reader as to their relevance and importance.

Finally, bold text is applied without clear purpose.

5 Does the way the information is organised in the 'easy read' version of the Letter of Rights, i.e. with a text box at the beginning, help to convey key information in away that is easily understood?

No

If not, please indicate where there are problems with the layout of the Letter and suggest an alternative layout.:

The easy read version does not in fact have a text box at the beginning but otherwise follows the same order as the standard version, with commensurate problems as we have listed to question (4).

6 What alternative format(s) do you think the Letter of Rights should be provided in, e.g. print, Braille, audio?:

We agree that print, Braille and audio formats should be available to suspects.

As linguistic experts have confirmed to us, relying on written information in the context of police detention assumes both literacy ability and an attention span which in the case of many suspects may not exist to the necessary extent. Research on effective learning demonstrates that information should be presented on different occasions and in different ways. Information should be communicated aurally as well as in written form, and, ideally, involve an opportunity to experience or engage, to be fully understood. Increasingly people are becoming accustomed to receiving information not from the printed page but on-screen through video footage or animated, or illustrated, text. To give a couple of examples, nowadays anyone travelling by air will commonly be advised about security search procedures and on-board safety measures by screen presentation or video; or those seeking DIY advice will get it by video instruction on YouTube.

Given all the technical possibilities available in the current digital age, and following discussion with linguistic experts, we recommend that urgent consideration be given by the Scottish Government to the production of a video which can be viewed by the suspect during or after the booking in process or at any event before the suspect is asked whether legal assistance is wished. We are pleased to see that this is being considered.

The video would necessarily have to be short and clear. It would need to be viewed in conjunction with the rights information leaflet, which suspects are entitled to keep with them throughout their detention. We are unable to see any real difficulty in providing such a means of communication, so long as operational practicalities are taken into consideration. It could be played on a screen in the custody area or on a robust hand-held device.

Care, thought and attention would of course need to be given to such a video explaining the rights of a suspect. (It would be different to the public information video we suggest above at paragraph 73.) In our view it should be easily relatable to the situation in which suspects are placed. Our provisional view favours using actors in real spaces rather than animation. The video would feature professionals explaining their different institutional roles (a police officer; a solicitor) and show what would happen in practice if the person requested legal assistance (a private consultation on the telephone and in person; a solicitor present in the police interview). But obviously expert advice on the production of such a video should be sought.

7 Do you have any other questions or comments on the content or format of the Letters?

N/A

The Accessibility and Language of the Letter of Rights

8 Is the wording used in the 'standard' version of the Letter of Rights appropriate and accessible?

No

If not, please indicate areas where it is not appropriate or accessible and suggest alternatives.:

While the current version of the Letter of Rights may contain a technically accurate statement of the rights enjoyed by a detained suspect, it is drafted in a way which is unclear and confusing; and it fails in what ought to be its primary objective of giving clear and easily understandable information to a suspect.

- The opening definition of what is contained in the Letter – “By rights we mean important freedoms and supports” – is unhelpful and confusing. It is significant to note that only 6% of people in Cooke’s study on the caution understood what “rights” meant (D. Cooke and L. Philip, ‘Comprehending the Scottish caution: Do offenders understand their right to remain silent?’ (1998) 3 Legal and Criminological Psychology 13 (carried out with offenders)). However, defining rights as “freedoms and supports” is unlikely to help the relevant readership of this document.
- Little is attempted by way of explaining to the suspect the role of the lawyer or that a lawyer may help and support the suspect - The Letter simply states that “A lawyer’s job is to protect your rights and give you advice about the law.”
- The rights are expressed in the abstract with no information on how to invoke them in practice. The interchange between modal verbs, such as “the police might” and the “police will” also creates confusion about the nature of actioning these rights.
- The document makes lexical choices, such as selecting the phrase “on-call lawyer”, which are likely to be unfamiliar to suspects; and the interchange of “questioning” with “interview” is not explained.

These are just some of the problems which may be mentioned. More generally, the document – which is relatively lengthy – assumes an above-average reading ability, which many suspects will not have. And for many suspects being detained in a police station places them in a stressful situation in which it is difficult to read and understand with ease.

Drawing on the comments from the experts whom we consulted, we have prepared an alternative version of the Letter of Rights. For it we have chosen the title “Your Rights in the Police Station”, which we consider to be more informative and understandable than the current “Letter of Rights”. While this is the term adopted in the EU Directive on the right to information in criminal proceedings, it has not been rigidly adhered to by other countries, including England and Wales where there is a Notice of Rights and Entitlements, France: “Une déclaration de droits écrite”; and Germany: “Eine schriftliche Erklärung der Rechte.” This alternative version is set out in Annex 2 to the Legal Assistance in the Police Station report.

Our document aims to tell suspects, in simple language, what they need to know about their rights at this point in the criminal process by listing and answering, in such accessible language, the questions which are likely to be in the mind of anyone detained in a police station. It also aims to give better information about what a solicitor can do to help someone detained in the police station (telling detainees that they may consult a solicitor is of little value if the detainee has little, or no, understanding of the help which a solicitor may provide.) Our document covers all the matters which need to be covered by the requirements of the Directive. It also takes into account the provisions of the 2016 Act.

We do not, of course, suggest that our attempt at drafting an alternative version to the existing Letter of Rights is incapable of further improvement or refinement. For example, our version requires easy read images, layout and colours to help illustrate the rights that are notified. But we believe that it demonstrates that something noticeably better than the current offering can be provided. We would commend our draft to the Scottish Government for consideration, in the hope and belief that it will be of assistance.

9 Is the wording used in the ‘easy read’ version of the Letter of Rights appropriate and accessible?

No

If not, please indicate areas where it is not appropriate or accessible and suggest alternatives.:

The wording in the easy read version is the same as in the standard version.

We consider that in principle the document which *all* suspects receive should be composed as a communication tool which has as its primary purpose the imparting of important information to a readership which includes many who may require a text with simple, short sentences and a layout which makes it an “easy read.”

We would observe, in support of that recommendation, that the current approach of only offering an “easy read” version within the body of the Letter of Rights (“Please ask if you want an easy-read copy”) requires an ability to read that far into the text. Moreover, while those with evident visual impairment will be used to the provision of large text versions many people may be embarrassed to reveal the much less evident fact that their reading ability is poor by asking for an “easy read” version.

Therefore, one print version should be produced, in easy read format, and given to all suspects.

10 Does the ‘easy read’ version meet the aims of making the information provided easier to understand and more accessible to those with differing levels of literacy or with learning difficulties/disabilities?

No

If not, why not?:

The text is exactly the same as in the standard letter of rights.

11 Do the illustrations included in the 'easy read' version of the letter of Rights help support understanding of the content of the Letter?

Yes

If not, please clarify whether you feel that removing the illustrations or using alternative illustrations would better help support the understanding of the Letter.:

"Easy read" has been developed to help people with language difficulties understand information more easily, using short, simple sentences and pictures, lowering the 'readability level'. Little research has been carried out to understand whether it is an effective strategy, with that research giving mixed results.

However, Keyring has been working to improve the use of easy read documents in the criminal justice system, see <https://www.keyring.org/cjs/easy-read>. It records that the use of an easy read application form to the Criminal Cases Review Commission has resulted in a significant surge in applications from vulnerable groups, and helped prisoners access services. Likewise, the organisation Change develops easy read documentation for people with learning disabilities, provides guidance and makes available appropriate images for use in easy read documents, see <https://www.changepeople.org/>

As such, the criminal justice system in England and Wales is in the process of replacing forms and leaflets with easy read versions as standard, to assist all users of the system.

Therefore, appropriate images, text size and placement are key to a document being suitably easy read.

12 Aside from providing the 'easy read' version, how would you suggest the Letter of Rights is made accessible to those with differing levels of literacy or with learning difficulties/disabilities?:

As discussed above, the Letter should be provided through aural and visual channels.

13 Are there any further languages, in everyday use in Scotland, which you think the Letter of Rights should be made available in?:

Police Scotland should be consulted to ensure the 45 languages in which the Letter is made available are the most prevalent.

14 Do you have any other questions or comments on the accessibility of the Letter of Rights or the language used in the Letter?:

The preparation of a revised version of the Letter should be done with the assistance of forensic linguists who have expertise in simple and clear communication.

Easy read specialists and people with learning disabilities and difficulties should also be consulted on the revised version to verify understanding.