



THE CARLOWAY REVIEW

1. I was asked to attend a meeting with Lord Carloway on behalf of the CBA. This meeting took place on 18 May at the Charing Cross Hotel.
2. The purpose of the meeting was for Lord Carloway and his research team to discuss informally how certain criminal legal principles (such as the right to silence/adverse inferences) work in practise.
3. Following the Supreme Court decision in *Cadder v HMK Advocate* (which threw into question Scottish jurisprudence on police powers of detention and questioning) the Scottish Parliament commissioned Lord Carloway to undertake a review of the law and practise in this area. The SC decision of *Cadder* made it clear that the long standing Scottish practise whereby a suspect could be detained and questioned for up to six hours without the right to legal advice could not continue.
4. The terms of Lord Carloways' review are not just to amend those aspects of the Scottish system said to be incompatible with the ECHR but to "re-examine the core principles underlying the procedures of detention, police questioning, charge and arrest, and the implications for concepts such as corroboration and the right to silence". Part of the work of the review involves data collection and comparison work with other jurisdictions.



5. The review team was interested in how “no comment interviews” play out during the trial process; when a judge is likely to give a section 34 adverse inference direction; what factors affect the same and whether juries appear to be influenced by silence at this stage etc.
6. Interestingly whilst silence can be commented on in the Scottish system at both “judicial examination” and trial, no adverse inference can currently be drawn from a suspect’s silence when questioned or charged by police.
7. Two key questions of this part of the review were: (a) should the court be allowed to draw an adverse inference from a suspects’ silence when questioned by the police? (b) What practical difference would such a provision make, especially where silence is maintained upon the advice of a solicitor?
8. Following the meeting I received the below reply from Lord Carloway’s assistant:

“Hi Monica,

Thank you very much for meeting with Lord Carloway. Lord Carloway, Paul and I found the meeting very informative and helpful and we got a much better understanding of how things work than we could through reading books and articles.”

Rachel Rayner
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9. The team was also due to speak to a member of the LCCSA (London Criminal Courts Solicitors’ Association) regarding advice given at the police station.



MONICA STEVENSON

30 May 2011