

**Independent Custody Visiting Association**  
**Briefing for Independent Custody Visitors**  
**Appropriate Adults**  
**July 2020**



**Background**

Appropriate Adults (AAs) are a role that independent custody visitors will encounter in custody. It may be that independent custody visitors, (ICVs), see AAs in custody, identify a vulnerable detainee who may benefit from an AA, see in a custody record that there have been waits for an AA or disagree with a decision that a detainee did not require an AA.

This briefing is to give an outline of what an AA does, who can be an AA for detainees and the frameworks that govern AA arrangements. ICVA has also produced a checklist for ICVs to use when considering AA arrangements on a custody visit.

**What is an Appropriate Adult (AA)?**

The AA is a statutory role established by the Police and Criminal Evidence Act 1984, (PACE), and its Codes of Practice, the legislation in England, Wales and Northern Ireland for the detention, treatment and questioning of people by the police. You can read the full PACE Code C [here](#) and PACE Code H concerning those detained under Terrorism laws [here](#).

The origins of the AA role lie in a miscarriage of justice in 1972 in which two children and a young adult with a learning disability were convicted of serious offences based on false confessions. PACE and the Codes which came thereafter contain details of protections that arose from this case.

**Who gets an AA?**

The police are **required** to contact an AA whenever they detain in custody or interview voluntarily under caution:

- a child or young person under the age of 18
- a vulnerable adult

**Children**

PACE Code C and H define children as follows:

1.5 Anyone who appears to be under 18, shall, in the absence of clear evidence that they are older, be treated as a juvenile for the purposes of this Code and any other Code

### Vulnerable Adults

PACE Code C contains information as to **who** may be considered vulnerable by stating at point 1.13d:

*‘vulnerable’ applies to any person who, because of a mental health condition or mental disorder (see Notes 1G and 1GB):*

- (i) may have difficulty understanding or communicating effectively about the full implications for them of any procedures and processes connected with:
  - their arrest and detention; or (as the case may be)
  - their voluntary attendance at a police station or their presence elsewhere (see paragraph 3.21), for the purpose of a voluntary interview; and
  - the exercise of their rights and entitlements.*
- (ii) does not appear to understand the significance of what they are told, of questions they are asked or of their replies:*
- (iii) appears to be particularly prone to:
  - becoming confused and unclear about their position;
  - providing unreliable, misleading, or incriminating information without knowing or wishing to do so;
  - accepting or acting on suggestions from others without consciously knowing or wishing to do so; or
  - readily agreeing to suggestions or proposals without any protest or question*

However, a mental health condition or mental disorder is not an **absolute requirement** for the suspect to be considered vulnerable and note 1G contains more information:

*A person may be vulnerable as a result of a having a mental health condition or mental disorder. Similarly, simply because an individual does not have, or is not known to have, any such condition or disorder, does not mean that they are not vulnerable for the purposes of this Code.*

*It is therefore important that the custody officer in the case of a detained person or the officer investigating the offence in the case of a person who has not been arrested or detained, as appropriate, considers on a case-by-case basis, whether any of the factors described in paragraph 1.13(d) might apply to the person in question. In doing so, the officer must take into account the particular circumstances of the individual and how the nature of the investigation might affect them and bear in mind that juveniles, by virtue of their age will always require an appropriate adult.*

PACE also contains the overarching comment that:

*1.4 If at any time an officer has any reason to suspect that a person of any age may be vulnerable (see paragraph 1.13(d)), in the absence of clear evidence to dispel that suspicion, that person shall be treated as such for the purposes of this Code.*

**Therefore, any person in custody who appears under 18, or is of any age and appears vulnerable, must have an AA called in either case if there isn't clear evidence to suggest that they are either over 18 or are not 'a vulnerable person' (under 1.13d).**

### **Who can be an AA?**

A wide variety of people undertake the AA role including:

- Parents and family members
- Social and youth offending team workers
- Paid sessional staff
- Volunteers

ICVs should not also perform the role of AA. The Home Office, the National Appropriate Adult Network, (NAAN), and ICVA all support that people should not hold both roles. The only notable exception to this is if someone who performs the role of an ICV is acting in the role of AA for a relative, guardian or is responsible for the care of the detainee.

### **When should an AA be called?**

The PACE Codes state that:

*1.1A A custody officer must perform the functions in this Code as soon as practicable. A custody officer will not be in breach of this Code if delay is justifiable and reasonable steps are taken to prevent unnecessary delay. The custody record shall show when a delay has occurred and the reason.*

Therefore, once an AA has been established as being required by deed of age or vulnerability they should be called for as soon as is practicable.

AAs will have different arrangements in terms of how soon they will attend custody. For example, there is of course no set time for a parent or guardian to attend custody when they are acting as an AA. Some professional AA services, (paid or voluntary), will have service level agreements that they will attend custody within a specified timeframe.

## **What does an AA do?**

The role spans the detention episode, from rights and entitlements through to charge and bail, though they are not required to be constantly present. PACE provides AAs with specific rights including:

- access to the full custody record;
- requiring a legal representative to attend the station even if the vulnerable person has declined legal advice;
- private consultations with the suspect.

The activities of an AA include, but are not limited to:

- Helping people to understand their rights and ensure rights are protected;
- Supporting, advising, and assisting them whenever they are given, or asked to provide, information or participate in any PACE procedure;
- Assisting with communication between the child/young person or vulnerable adult and the police;
- Observing whether the police are acting properly and fairly and are respecting the rights of the child/young person or vulnerable adult and to inform the police if they are not.

Research (Dehaghani 2019) has indicated the following possible reasons for AA's not being called. These are:

- Vulnerability has not been identified by custody staff.
- Police custody officers may employ a restrictive definition of vulnerability.
- Police custody officers do not think the circumstances warrant the use of an AA.

## **What should ICVs consider?**

ICVs are not expected to be experts in the PACE Codes and AAs but can perform an incredibly valuable function in terms of oversight.

It is useful for AAs to know who provides the local AA service for both children and vulnerable adults, (these are not always the same people/organisation), and if there is a service level requirement for timeframes for attendance at the suite having received a request from the force.

ICVs may be able to identify that a suspect is vulnerable where the custody officer or other custody staff have not. If an ICV thinks that a detainee is vulnerable, they should mention this to the custody officer.

Custody officers may hold the view that the case is not serious or complex enough to warrant the use of the AA (Dehaghani 2019). An AA should be called regardless of offence severity or complexity.

Custody officers may also hold the view that a suspect does not need an AA because a legal representative has been requested. Legal representatives perform a very different function to the AA (although there may be some overlaps) (Dehaghani and Newman 2019). It is therefore important that a vulnerable suspect is provided with an AA regardless of whether they have asked for – and been provided with – a legal representative (Dehaghani 2019).

Custody officers may also defer to healthcare professionals when making their decisions (Dehaghani 2019). However, the ultimate responsibility for deciding whether an AA is required rests with the custody officer.

Custody officers may be reluctant to call an AA because it may be financially costly or because it may delay custody processes (Dehaghani 2019). This should not matter; an appropriate adult should be called regardless of cost or possible delay, and officers must adhere to the PACE time limits for detention.

**In each of these circumstances, if the ICV believe the suspect to be vulnerable, the ICV can raise this matter with the custody officer and suggest that an AA be called for a vulnerable suspect.**

### **What is the legal framework for AA support for detainees?**

The AA does not have legal privilege but is under a duty of confidentiality. Therefore, whilst discussions between a detainee and their AA are confidential, there are some circumstances under which the AA would have a duty to inform the police.

Unlike legal representation, the presence of an AA is *mandatory* for many police procedures. Failure to ensure an AA is present can result in evidence being ruled inadmissible in court.

## ICV Checklist

We have produced a checklist for use on a visit, but ICVs might want to consider the questions below when composing their report.

- Have all children in custody had an AA called for them?
- Have all detainees that ICVs considered as vulnerable had an AA?
- Where an ICV thinks a detainee is vulnerable, but custody staff have not requested an AA, were the staff amenable to doing so?
- Was there a delay in calling for an AA?
- Was there a delay in the AA attending custody? If so, was the reason for this recorded?

ICVs should ensure that all of those in custody suite who need an AA have one, that the AA has been present for statutory needs and that where the force do not agree that an AA is necessary, the reason for this decision is fully recorded in the custody record.

## References

Dehaghani, R. (2019) *Vulnerability in police custody: police decision-making and the appropriate adult safeguard*. Abingdon: Routledge.

Dehaghani, R. and Newman, D.C. (2019), 'Can – and Should – Lawyers be Considered 'Appropriate' Appropriate Adults?' 58(1) *Howard Journal of Crime and Justice* 3-24.