

# THE ROLE OF APPROPRIATE ADULTS IN THE YOUTH JUSTICE SYSTEM

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**T**he *Police and Criminal Evidence Act 1984 (PACE)* introduced the role of the 'appropriate adult' in the criminal justice system. This was one of a number of provisions in the Act aimed at protecting vulnerable suspects in police custody. In the sixties and seventies there had been several high profile miscarriages of justice where what later turned out to be patently false confessions were obtained from vulnerable suspects.

The *PACE Codes of Practice* state that all juveniles<sup>1</sup> and vulnerable adults must have an appropriate adult with them when being questioned by the police in custody. The role, in the case of children and young people, can be filled by:

- i. the parent, guardian or, if the juvenile is in local authority or voluntary organisation care, or is otherwise being 'looked after' under the *Children Act 1989*, a person representing that authority or organisation;
- ii. a social worker of a local authority social services department; or
- iii. failing these, some other responsible adult aged 18 or over who is not a police officer or employed by the police<sup>2</sup>.

In the latest version of the *PACE Codes of Practice*, which was published in July 2006 there are no less than 164 references to appropriate adults in Codes C and H, which deal with the detention, treatment and questioning of persons by police officers.

## THE RIGHT TO AN APPROPRIATE ADULT

As indicated above it was envisaged that the appropriate adult role would usually be undertaken by parents or other relatives or by social workers if a child was in care. However, in many cases relatives or indeed social work professionals were not easily available. Increasingly the police had to rely on the third category. This could involve an informal arrangement with the local vicar or with workers in a local homelessness hostel, but could also mean that a visitor to the police station such as a local minicab driver could be persuaded to take on the role on an ad hoc basis. Given the importance of the appropriate adult role – 'to advise, observe and facilitate communication'<sup>3</sup>, this was and is clearly not a satisfactory situation either for the detainee or the police.

Although PACE introduced the right of an individual to have an appropriate adult present, it gave

no statutory body the responsibility for ensuring that this service was provided. Thus when parents or other carers were not available or were unwilling to attend there were often long delays before an interview took place. Ironically then, young people and other vulnerable detainees often spent longer in custody than other detainees who did not require an appropriate adult. In some cases the police ran out of time and the case could not be continued.

In response to concerns about this situation, in some areas volunteer schemes began to develop, sometimes run by local authority Emergency Duty Teams and sometimes based in the voluntary sector.

The situation with regard to children and young people changed significantly with the *Crime and Disorder Act 1998*. This required local authorities in partnership with other relevant statutory authorities such as the police and probation service to establish Youth Offending Teams (YOTs). The Act gave the YOTs explicit responsibility for *'the provision of persons to act as appropriate adults to safeguard the interests of children and young persons detained or questioned by police officers'*<sup>4</sup>. In 2004 the Youth Justice Board set National Standards for all aspects of youth justice work and set a maximum response time of two hours for appropriate adult services<sup>5</sup>.

In many areas initially YOT workers acted as appropriate adults when parents or other carers were not available. However, some YOT managers soon realised the many benefits of trained volunteers providing a dedicated service and began either to set up their own teams of volunteers, or increasingly to contract out that service to a voluntary sector agency, or occasionally, to a private company.

The situation for vulnerable adults is more complex as there is still no statutory authority with responsibility for ensuring that a service is provided. Some local authorities manage in-house volunteer schemes. Others contract out the service to the voluntary sector. Others provide no specific service and rely on the police contacting the Emergency Duty Team (or using other informal arrangements).

### THE DEVELOPMENT OF NAAN

Over the last few years an informal network of people running volunteer appropriate adult services developed to share good practice and discuss common issues and concerns. This network has now become an independent charity – The National Appropriate Adult Network (NAAN). NAAN receives funding from the Home Office and charitable trusts.

The role of NAAN is to help its members provide high quality services through the development and implementation of NAAN's National Standards, and the provision of training, networking opportunities and support. It is committed to increasing the coverage of effective appropriate adult services in England and Wales and works with the Home Office, Department of Health, Youth Justice Board and others to influence policy and legislation that has an impact on young people and vulnerable adults in custody. NAAN is, for example, currently lobbying for the responsibility for providing (or funding) appropriate adult services for vulnerable adults to be clearly located within a statutory body, ideally the local authority.

It is crucial for appropriate adults to be clear about both the extent and the limitations of the role. As stated in the PACE Codes *'they are not expected to act simply as an observer'*<sup>6</sup>. They must ensure that the person being questioned understands their rights and that the police treat them according to the rules. The appropriate adult has the right to inspect the custody record. However the appropriate adult cannot give legal advice and should not discuss the details of any alleged offence. In NAAN's view, one of their key responsibilities is to ensure that the suspect exercises his or her right to free legal advice. As the PACE Codes make clear<sup>7</sup> the appropriate adult has the right to request legal advice even when a child or young person has not requested this. NAAN has recently developed a detailed Training Course and accompanying DVD aimed at helping appropriate adults understand their remit and carry out their role effectively.

### ISSUES OF CONCERN

One of NAAN's major policy concerns is the anomalous position of 17-year-olds under PACE. Young people aged 17 are not classed as juveniles under PACE and are therefore not entitled to have an appropriate adult, nor more generally to be treated as a juvenile when in police custody. However under much other legislation they are classed as juveniles, they appear in the Youth Court and are eligible for other support and services from the YOT.

At the beginning of 2006 NAAN undertook a survey of its members, Youth Offending Teams and Police Authorities and produced a report for the Home Office on the current position of appropriate adult services in England and Wales<sup>8</sup>. Considerable concern was expressed by many respondents about the exclusion of 17-year-olds from appropriate adult services. While a few YOTs have extended their appropriate adult services to include 17-year-olds most have not. At the same

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time most appropriate adult services for vulnerable adults are reluctant to provide a service for 17-year-olds because they see them as children and therefore not eligible for adult services. Thus in many cases 17-year-olds fall through a gap between adult and children's services.

There were particular concerns about 17-year-olds who were also seen as mentally vulnerable, with workers in both adult and children's services feeling ill-equipped to support them, in terms of skills as well as in terms of lack of specific responsibility and funding.

This issue had already been raised in an earlier Home Office report<sup>9</sup>. The Home Office has made a commitment to consult on the position of 17-year-olds, but to date the promised consultation has been postponed several times and there is currently (December 2006) no firm timetable set for this consultation. NAAN continues to lobby the Government about this matter and believes that legislation should be introduced or amended to extend the definition of juveniles under PACE to include 17-year-olds.

A number of other issues were highlighted in the NAAN survey. Many police authorities expressed concern about the inadequacy of appropriate adult services for children and young people out of office hours, in particular the long delays that some local police forces experienced. While the Youth Justice Board has set standards for response times, it is unclear what the expectations are in terms of the hours the service should be provided.

As a result this is subject to different interpretations. The police usually expect a response 24 hours a day. NAAN, after much consideration, has taken the view that a service should be provided from around 8am to midnight with some flexibility at either end in exceptional circumstances. Children and young people and other vulnerable detainees should generally not be interviewed in the middle of the night and are entitled under PACE to normal rest and sleep periods. If a 24-hour service is provided year round to cater for the very rare occasions that an appropriate adult might be needed in the middle of the night, there are major cost and management implications. These would need to be taken into account by any organisation considering commissioning or running such a service.

Youth Offending Teams currently take different positions on the question of hours of operation, and provide, or contract others to provide, services for a range of different hours. In some cases social services Emergency Duty Teams pick up the responsibility for children out of hours. In such cases

requests for appropriate adults have to compete with other demands and are, perhaps understandably, not always prioritised. However, whichever organisation provides the service, they are doing so on behalf of the YOT and should be meeting the Youth Justice Board response time standards. The YOTs have the overall responsibility for the provision of the service. Problems with response times should therefore be addressed to the relevant YOT.

Some of the difficulties with response time and with the service in general appear to be due to a chronic under-funding of the service in many areas. A significant number of appropriate adult service managers report that they do not have an adequate budget for the work, and in some cases do not have a separate dedicated budget at all. There is a statutory requirement for appropriate adults to support children and young people in police custody and a statutory obligation on Youth Offending Teams to ensure the provision of an adequate service. With that responsibility must come adequate statutory funding.

NAAN has raised all these policy, practice and funding issues with the Home Office and the Youth Justice Board and made a number of recommendations in its report<sup>10</sup>. It will continue to work with its members, the Government, the police and other stakeholders to improve the effectiveness of appropriate adult services for juveniles and vulnerable adults across England and Wales.

## CONCLUSION

Finally, it is worth noting that there may be changes to the role of the appropriate adult in the future. While historically parents or carers were and still are the first port of call for children and young people, there are some who believe that detainees get more consistent and effective support in what is a complex role from trained professionals (whether paid workers or volunteers). It may be therefore that at some point consideration will be given to removing the right of parents to act as appropriate adults for their children. This would have major practical and financial implications, as well as having a significant impact on the rights – and responsibilities – of parents.

DR

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### FOOTNOTES:

- 1 Under PACE, children and young people under the age of 17 are defined as juveniles.
- 2 *Police and Criminal Evidence Act 1984 (PACE) Codes of Practice A- G*. 2005. As amended to include Code H (on terrorism issues). July 2006. Code C 1.7.
- 3 PACE Code C 11.17.
- 4 s.38 (4a) *Crime and Disorder Act 1998*.
- 5 Section 2.6 *National Standards for Youth Justice*. 2004. Youth Justice Board.
- 6 PACE Code C 11.17.
- 7 PACE Code C 6.5a.
- 8 *Appropriate Adult Provision in England and Wales*. www.appropriateadult.org.uk
- 9 *Youth Justice – the next steps: summary of responses and the Government's proposals*. Juvenile Offenders Unit. 2004. Home Office.
- 10 *Appropriate Adult Provision in England and Wales*.