

The provision of appropriate adult services in England and Wales

Information for solicitors and legal representatives

This leaflet has been produced in consultation with the Law Society

The appropriate adult role was created in the Police and Criminal Evidence Act 1984 (PACE). The role of the appropriate adult is to act as a safeguard for the vulnerable person. The appropriate adult will help to ensure that the detainee's rights are respected, and that they are able to understand what is going on and to be understood. It is not the role of the appropriate adult to give legal advice. The rights and responsibilities of appropriate adults are detailed in the PACE Codes of Practice (primarily in Code C).

An appropriate adult must be called for any juvenile (up to and including those aged 16) or vulnerable adult in police custody. There is no precise definition of mental vulnerability but the Codes state that:

If an officer has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or otherwise mentally vulnerable, in the absence of clear evidence to dispel that suspicion, the person shall be treated as such for the purposes of this Code (Code C 1.4)

Thus a detainee does not have to have a recognised mental illness or learning disability to be classed as mentally vulnerable. If a solicitor is in any doubt about a detainee's mental state they can ask the custody officer to request an appropriate adult. It is the custody officer, and not the forensic medical examiner (FME) or other health professional, who should make the decision.

For both juveniles and vulnerable adults the appropriate adult can be a parent, relative, carer, social worker or other professional or:

Failing these, some other responsible adult aged 18 or over who is not a police officer or employed by the police (Code C 1.7)

Appropriate adults for Juveniles

The Crime and Disorder Act 1998 gave the local authority, through the newly created youth offending teams (YOTs), the statutory responsibility for ensuring the provision of an appropriate adult service for juveniles when parents or carers were not available. Thus there should be in every area an appropriate adult service run directly by the YOT or by a private or voluntary sector agency on their behalf. This should be operated on a rota basis providing cover from around 8 am to 11 or 12 midnight. The appropriate adults may be paid staff, sessional workers or volunteers. There is currently no formal requirement for appropriate adults to be trained.

However, 'professional' appropriate adult services¹ should meet the requirements set out in the Youth Justice Board's Case Management Guidance², and NAAN's National Standards³. These state, for example, that appropriate adults should respond within two hours of call out, that they are CRB checked and should have received at least 18 hours training. Whichever agency provides appropriate adults for juveniles, the YOT retains ultimate responsibility for this service.

Appropriate adults for Vulnerable Adults

Currently no statutory authority has the responsibility for the provision of an appropriate adult service for vulnerable adults. The services therefore vary across the country. In nearly half of the country, there is some sort of organised scheme run on similar lines to services for juveniles, with appropriate adults (either paid or volunteers) being CRB checked, trained and supported. In other areas the service is at best ad hoc, with perhaps the local social services emergency duty team (EDT) responding to requests if they have no higher priority.

Issues

- Appropriate adults have the right to request a solicitor even if the detainee has not done so. The detainee can refuse to see the solicitor when he or she arrives but in almost all cases, an effective appropriate adult will be able to persuade the detainee to see the solicitor.
- Appropriate adults are not covered by legal privilege. For this reason the appropriate adult should not be present at any consultation that is covered by privilege, such as taking instructions or giving legal advice. If it is felt that the appropriate adult's presence is needed in order to ensure effective communication, the lawyer and detainee need to be aware that although the appropriate adult is bound by a duty of confidentiality, they could be called as a witness.
- Appropriate adults should be present during all identification procedures for juveniles and vulnerable adults. They can and should witness requests for consent to any procedure but cannot give consent on behalf of the detainee. (Code D 2.12, 2.15).
- Appropriate adults are occasionally called as witnesses by either the prosecution or the defence. NAAN has produced information for its members about such situations and has advised them on the procedures to follow in such (rare) cases. Appropriate Adult services will generally follow these procedures if they receive any requests to access an appropriate adult's notes or any request for a witness statement.

NAAN, a registered charity, is the national membership body supporting and representing organisations providing appropriate adult services in England and Wales. NAAN receives funding from the Home Office. For further information, visit www.appropriateadult.org.uk .

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¹Services using trained and CRB checked appropriate adults, whether paid or volunteer, provided directly by YOTS or local authorities, or by voluntary or private sector organisations who attend when parents, family members or carers are unavailable.

² <http://www.yjb.gov.uk/NR/rdonlyres/E1F9813F-B8DC-4A5F-BB11-1A65BF876FC2/0/CaseManagementGuidanceSection3Bailandremandmanagement.pdf>

³ <http://www.appropriateadult.org.uk/national-standards>