

There to Help 3

The identification of vulnerable adult suspects and application of the appropriate adult safeguard in police investigations in 2018/19

Executive Summary

Chris Bath and Dr Roxanna Dehaghani

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About NAAN

The National Appropriate Adult Network (NAAN) was established in 1995 by appropriate adult (AA) practitioners, Mind, Mencap, and Revolving Doors Agency to develop and share best practice. It became a registered charity in 2004. Our vision is that every child and vulnerable person detained or interviewed as a suspect is treated fairly with respect for their physical and mental welfare, can exercise their rights and entitlements, and can participate effectively. We ensure that children and vulnerable people are supported by effective appropriate adults by: strengthening local provision, informing the public, and contributing to a fairer system. We support effective appropriate adult (AA) policy, commissioning, provision and accountability. Working with our members, we provide an independent national centre of specialist expertise and innovation, committed to improving the effectiveness of the AA safeguard for children and vulnerable adults.

About the authors

Chris Bath is the Chief Executive of NAAN. He led the Home Secretary's commission on appropriate adults for vulnerable adults and produced the There to Help (2015) report with the Institute for Crime & Justice Policy Research. He later authored There to Help 2 (2019). Chris is a member of the PACE Strategy Board, Bradley Report Group and Care not Custody Advisory Group and has advised HMICFRS on suspect vulnerability in both PACE and TACT custody. He works closely with NAAN's member organisations, as well as the Home Office, Youth Justice Board, ADASS, APCCS, NPCC and PFEW.

Dr Roxanna Dehaghani is a Senior Lecturer at Cardiff University's School of Law and Politics. She has been a Visiting Scholar at Queen's University Belfast (2016), Emory University, Atlanta, USA (2018), and KU-Leuven, Belgium (2019). Roxanna is interested practitioner and suspect experiences of the criminal process, particularly in relation to access to justice for those considered vulnerable. Her first book examined the implementation of the AA safeguard in police custody and she is writing a second book on criminal justice in Wales. She was a member of the Home Office Working Group on Vulnerable Adults and conducted research for the NAAN National Standards. Her research was cited in JUSTICE's report on 'Mental Health and Fair Trial' and Revolving Doors' Report 10 Years Post-Bradley, and has been used to inform ICVA's 'Appropriate Adult' Briefing. Roxanna has also been awarded ESRC Impact Accelerator funding to train Independent Custody Visitors to monitor application of the AA procedural safeguard more effectively in custody.

This is an Executive Summary of There to Help 3.

To download the full report, visit www.appropriateadult.org.uk.

Introduction

Adults with mental illnesses, learning difficulties and disabilities, autism spectrum conditions and other needs, face significant barriers to effective participation in police investigations. Clinical interviews of adults in police custody have shown 39% to have a mental disorder and 25.6% to have psychosis, major depression, intellectual disabilities or lack capacity¹ (McKinnon and Grubin 2013, 2014). Disabling barriers can lead to miscarriages of justice and failed prosecutions. The appropriate adult (AA) is a key procedural safeguard for suspects who may be mentally vulnerable.

In 2014, the Home Secretary commissioned NAAN to explore the issues surrounding AAs for vulnerable adults and propose solutions. [There to Help](#) (NAAN 2015) found inadequacies in the identification and recording of the need for AAs. Police recorded need in only 2.7% of detentions of adults in 2012/13 and 3.1% in 2013/14. This was due to: a lack of effective and systematic screening, lack of police training, resource restraints, no visual or behaviour clues, substance use complicating assessments, reluctance to disclose, disregard of self-reporting, failure to use historical information, and lack of access to AAs. The recommendations included improvements to the Police and Criminal Evidence Act (PACE) Code C, police practice, AA funding, and commissioning. The Home Office established a working group. [There to Help 2](#) (NAAN 2019) found that recorded need for AAs increased to 6% in the year to 31st March 2018. In July 2018, the Home Office published a [voluntary partnership agreement](#) to encourage local AA provision and amended [Code C](#) in relation to the identification and definition of vulnerability.² [There to Help 3](#) provides an update on recorded vulnerability and use of AAs for the year to 31st March 2019, before and after these initiatives.

Method

On the 10th December 2019, Freedom of Information Act requests were made to all 43 territorial police forces in England and Wales, British Transport Police (BTP) and the Police Service of Northern Ireland (PSNI).

- Request 1: The monthly total number of authorised detentions of adults; and the monthly total number of authorised detentions of adults in which the need for an AA was recorded;
- Request 2: The monthly total number of voluntary interviews of adults; and the monthly total number of voluntary interviews of adults in which the need for an AA was recorded.

Data requested was for the year to 31st March 2019. Unlike previous [There to Help](#) reports (NAAN 2015, 2019) monthly data were requested, enabling analysis of the PACE Code changes. In this report, data prior to 1st August 2018 relates to the Code C 2017 definition in, and from 1st August 2018 relates to the definition in the current Code C (currently 2019). The National Police Chiefs' Council (NPCC) also circulated Request 1 amongst local custody leads. By the end of April 2020, all forces had responded to Request 1 via their FOI team or custody. All but one force had responded to Request 2.

NHS England shared [Liaison and Diversion](#) (L&D) case data for the year to 31st March 2019, collected by all 43 L&D area services active at that time. L&D services identify vulnerability in police custody.

The Department for Work and Pensions was sent Request 2 only³.

¹ Capacity is specific to a context. In this case it related to capacity to consent to the research questionnaire.

² For an analysis of these changes, see Dehaghani and Bath (2019) referenced in the full report.

³ The DWP conducts fraud investigations under PACE, including interviews under caution. It does not detain.

Results

1. Recorded AA need in England and Wales remains low compared to benchmark rates, is no longer increasing significantly, has reduced in voluntary interviews, and remains variable between forces.

- The national average (mean) recorded rate of need for AAs for adult suspects across custody and voluntary interviews in England and Wales in 2018/19 was **6.09%** (2017/18: 5.97%).
- 1. In custody:
 - The mean recorded rate was **6.2%**, close to double the rate in voluntary interviews but less than the **10.6%** rate reported by PSNI custody
 - Between forces, the recorded rate varied widely, from **0.1% to 25.2%**
 - Average change from 2017/18 was **+0.3%**, (from **-10% to +15%** between forces).
- In voluntary interviews:
 - The recorded rate was **3.5%**, close to half of the rate in custody⁴
 - Between forces the recorded rate varied widely, from **0.1% to 13.5%**
 - Average change from 2017/18 was **-3.4%** (from **-18.7% to +3.4%** between forces).
- In **one force**, the monthly recorded rate of AA need in custody reduced from 39% to 13% over the year, due to court decisions, access to AAs and local interpretation of PACE Code changes.
- Estimated total detentions and voluntary interviews recording AA need reduced by 6.7% to **56,904**, due to voluntary interviews being fewer and having a lower rate of recorded need.
- There was **no correlation** between forces' recorded rates in custody and voluntary interviews.
- Some police **custody IT** systems were associated with lower recorded rates of need for AAs.

2. Evidence indicates that most detentions and interviews meeting the PACE Code C 'vulnerable persons' criteria are not being recorded as requiring an AA, but research on prevalence is required.

- Estimates for the level of unrecorded need range from **159,718** to **384,012** detentions and voluntary interviews per year (based on actual prevalence rates of 22% and 39% respectively).
- If all forces had recorded need at the level of forces with the highest rates (24%), **198,471** more detentions and voluntary interviews would have been recorded as requiring an AA.

3. Changes to the vulnerability and voluntary interview provisions in PACE Code C in July 2018 did not appear to make a significant difference to proportion of adults recorded as needing an AA.

- In custody, police were very slightly less likely (**-0.4%**) to record the need for an AA after the PACE Code changes.
- In voluntary interviews, police were very slightly more likely (**+0.6%**) to record the need for an AA after the PACE Code changes.
- There is evidence that the recorded rate of need is influenced by: **local interpretation** and tools (e.g. flow charts) of PACE, actions of local **defence lawyers** in court and corresponding local **court decisions**, local **funding** levels and ease of **access to AA** services.⁵

⁴ For risks/benefits of voluntary interviews and data on use, see Pierpoint (2020) referenced in the full report.

⁵ For further discussion of these factors see Dehaghani (2019) referenced in the full report.

4. Data on suspect vulnerability in voluntary interviews is poorer than in custody.

- **30 forces (68%)** were unable to provide any data on recorded AA need in voluntary interviews of adults, compared to only **8 forces (18%)** in relation to police custody.
- **8 forces (18%)** were able to provide *monthly* data on recorded AA need in voluntary interviews of adults, compared to **29 forces (66%)** in relation to police custody.
- Some **IT systems** were associated with poorer AA data for voluntary interviews. However, for each system at least one force provided data, suggesting reporting functions are available.

5. The trend away from custody towards voluntary interviews did not appear to continue in 2018/19.

- Compared to 2017/18, estimated detentions increased to **831,176** (+5,750, +0.7%) while estimated voluntary interviews reduced to **153,470** (-24,388, -13.7%).
- Voluntary interviews' estimated share of total volume returned to **16%**, (2017/18: 18%; 2013/14: 16%) but varied from **0.1% to 37%** locally (2017/18: 0.07% to 50%); however, due to the continued low rate and wide variability in the recording and reporting of voluntary interviews, it remains uncertain as to what extent this reflects actual changes in practice.

6. Overall police application of AAs amongst L&D clients has not increased since 2016/17

- An AA was involved in **19%** (13,280) of L&D cases in 2018/19 (2016/17: 19%, 2014/15: 16%).
- This ranged from **0% to 55%** between areas; only 6 of the 43 L&D recorded a rate above 27%.
- Local rates of change between 2016/17 and 2018/19 varied from **-22% to +20%**.
- Amongst the **13,280** adults who engaged with L&D *who had an AA*: 84% had one or more mental health issues; 13% had a learning disability; 7% were autistic / had had an autism spectrum condition; 6% had another social or communication difficulty; around a quarter were diagnosed with both mental ill health and alcohol misuse; around a quarter were diagnosed with both mental ill health and substance misuse; 9% were diagnosed with mental ill health, alcohol misuse and substance misuse.
- Amongst the **55,301** adults who engaged with L&D *who did not have an AA*: **68% had one or more mental health issues**, 15% were at current risk of suicide or self-harm, 2% had a learning disability, 1% were autistic / had an autism spectrum condition, 1% had another social or communication difficulty.

7. L&D schemes can have a positive effect on the police's identification of the need for AAs

- The presence of L&D had a statistically significant effect on police recorded need for an AA; the mean in forces with L&D being **6.7% compared to 2.7%** for forces without L&D;
- However, there was weak correlation between the percentage of detentions resulting in L&D engagement and both **recorded AA need** and the **application of AAs** to L&D clients.
- Rates of engagement with L&D were **higher** amongst adults who had an AA
- Adult L&D clients appeared more likely to have had an AA if they were: arrested for a **serious offence type**, aged **under 25**, or **'Black or Black British'** or **'Asian or Asian British'**; however further research is required to explore this further.

8. The Department for Work and Pensions was unable to retrieve data on AA use in PACE interviews

- The DWP reported that it conducted around **32,000** investigations in 2018/19
- The department was unable to say how many investigations involved the use of an AA.

Recommendations

1. [Develop a national policing strategy on disabling barriers in investigations](#). Co-produce with people with lived experience, specialist organisations, academics, and practitioners. Aims: (a) to reduce the inflow of people with additional needs who are most at risk (e.g. mental illness, intellectual disability, brain injury, autism); (b) equitable treatment in custody or voluntary interview. Consider current and potential responses, including MHA 1983 assessments, fitness to detain and interview, authorisation of detention, interview techniques, appropriate adults, and intermediaries. Consider measures beyond policing (e.g. health and social care).
2. [Conduct research on PACE vulnerability](#) to inform definition, responses and strategy. Consider alternatives to 'vulnerability' (e.g. risks to justice, mental diversity, additional needs, equity adjustments, effective participation,) and 'appropriate adult' (e.g. independent rights supporter, rights, and welfare assistant).
3. [Review and update information systems](#) for custody and voluntary interviews, including their human elements. Focus on Niche, Athena and Connect. Enable officers and staff to quickly access, record and retrieve reliable vulnerability information, e.g. through mandatory 'drop down' fields for (i) PACE vulnerability and (ii) the securing of an AA. Enable cross-referencing with protected characteristics under the Equality Act 2010 including age, gender, and race.
4. [Share police and L&D vulnerability data](#) for custody and voluntary interviews, cross-referenced with Equality Act 2010 protected characteristics. Share with L&D, Heads of Custody and Criminal Justice, PCCs and ICVs, AA commissioners and providers, NAAN and NPCC. Publish an annual national summary.
5. [Develop an evidence-based screening tool](#) to assist police officers and staff in meeting their responsibility to identify people who meet the PACE threshold and definition of a 'vulnerable person' as part of risk assessment. Include prompts where the AA safeguard may apply.
6. [Refresh police training and Authorised Professional Practice \(APP\)](#) in relation to the justice risks and PACE provisions relating to vulnerable suspects and AAs, for both custody and voluntary interviews, collaborating with academics and specialist organisations. Provide dedicated time within work hours for officers and staff to refresh their knowledge.
7. [Enhance links between police and health](#). Ensure custody healthcare professionals (HCPs) and liaison and diversion (L&D) staff: understand PACE vulnerability requirements; advise police of any reason to suspect vulnerability; and do not advise *against* an AA unless suitably qualified. Gather Welsh criminal justice L&D data centrally and share with policymakers and public. Resource L&D in England to: maximise their own case identification; maximise the use of mental health, learning disability and speech and language experts; ensure early assessments that contribute to key police decisions; operate prior to voluntary interviews.
8. [Appoint an NPCC strategic lead on voluntary interviews](#), mirrored at force level to create a national network to develop and share best practice. Consider options for effective internal and external oversight of voluntary interviews, including mirroring the relevant functions of the custody officer / inspector (independent of the investigation), ICVs and inspections.
9. [Conduct a review of non-police PACE investigations](#) (e.g. DWP, RSPCA), regarding the identification of vulnerable suspects and the application of procedural safeguards.
10. [Ensure provision of AAs for vulnerable adults in all areas](#). Develop a cross-government solution to the lack of statutory provision of appropriate adults for vulnerable adults.