NAAN | Policy

National Appropriate Adult Network

Consultation Response

DRAFT - Revised PACE Code C (Detention) 2016

Interpreters

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General Comments

Opening comments

When considering the proposed use of a live link for interpretation in the light of vulnerability, it is important to recognise that individuals who meet the threshold for an appropriate adult are at the greatest risk of being disadvantaged. Recognising and reflecting the needs of the most vulnerable will not only help to ensure the Codes are robust enough to respond to the needs of these individuals but of all who pass through custody.

As has been recognised in the draft, it important that safeguards in relation to vulnerability are not limited to those who require an appropriate adult.

Amendments to the Codes must both set out principles and define the necessary practical actions. All new or revised elements in the Codes must be clearly aligned with the stated objective that, "the suspect *is not*, and *does not feel,* disadvantaged, by not having the interpreter physically present".

Practical examples

Practical examples of how vulnerable people might be disadvantaged include: -

- a child or an adult with learning difficulties may have some trouble understanding that the image of an interpreter on the screen is part of the process
- a person prone to paranoid ideation may have their suspicions roused by the fact that they do not know where the person on the screen actually is, nor what else may be happening there
- someone who believes themselves to be subject to thought insertion or withdrawal may believe the remote participants to be part of the same phenomenon, auditory hallucinations are often focussed around electronic devices (TVs/monitors are common foci)
- someone who is profoundly depressed or dissociating may find the person on the screen too lacking in salience to engage with
- someone who knows or believes themselves to be regarded as dangerous, or who suffers from a disease such as HIV, may believe that a remote participant is displaying fear or distaste by not being present.

Any of these things could significantly interfere with effective participation. They may be hidden entirely to observers; often the full depth and impact will be known only to the suspect.

The value of physical presence

The physical presence of an interpreter fosters a relationship of trust. This significantly reduces the risk of vulnerability significantly affecting a vulnerable suspect's effective participation.

Some mentally vulnerable people will hold suspicions about the legitimacy and neutrality of a live link interpreter/procedure. These may or may not be expressed by them but in either case will impact negatively on a vulnerable suspect's ability to participate effectively in police processes, with a consequent effect on the quality of evidence gathered.

Terrorism cases perhaps provide the clearest illustration of the increased risks generated by live link. In Terrorism Act suites, due to the nature of the allegations, procedures, culture and practices (e.g remote monitoring of interviews, police personnel who cannot be identified by name), suspicions will only be enhanced.

As well as issues of trust and credibility, it should be remembered that a great deal of human communication is non-verbal. The relatively subtle elements of body language, facial expression, and vocal nuance are likely to be lost or distorted in transmission over the live link producing communication problems and additional stresses for the vulnerable person. The effect may be enhanced in certain languages which reply more heavily on non-verbal elements top determine meaning.

The value of the rapport between suspect and interpreter, both to suspect and police, should not be underestimated. Where the interpreter is physically present and available throughout the various police processes, this rapport is much more likely to develop.

Practical considerations

Without greater detail, the implementation of this scheme would seem to present significant practical challenges.

If it is assumed that only one room in any station would be given over to this initiative, how would this be managed by small police stations where interview rooms are at a premium?

One interview room would presumably have to be dedicated solely to live link. All vulnerable suspects have the right to a private consultation with their solicitor or appropriate adult at any time. Those who require an interpreter could require access to that room at any time. This would mean it could not be used for interviews where no live link is necessary.

In addition, if the vulnerable suspect needs to see a health care professional (and they usually do), they are likely to need an interpreter to facilitate what may be a sensitive and highly technical consultation. It is unlikely that an interview room would be suitable for this purpose.

Insofar as is possible, the requirements of Code C apply to voluntary interviews. These currently take place in a variety of places. It may be worth further consideration, and explicit mention, of how these changes would be applied to voluntary interviews.

Comments on paragraphs

Note: [Red bracketed text] means a suggested typographical amendments to the proposed wording

Paragraph 1. e)

The changes are constrained by [the] approach in Article 2(6) and aim to ensure, as far as practicable, that the suspect is not, and does not feel, disadvantaged, by not having the interpreter physically present. This needs to be assessed before an interview commences and the solicitor (in any case where legal advice is requested) and the appropriate adult (for any under 18 or mentally vulnerable suspect) must be asked for their views. If there is doubt about the suspect's ability to adequately cope with the live link arrangements, the physical presence of the interpreter will be required. For completeness and consistency, a similar approach is applied to the other more routine occasions when an interpreter is required, but unlike interviews, these do not directly involve evidence gathering and so the potential impact is significantly less.

Comments

We strongly agree with the overall aim being to ensure, as far as practicable, that the suspect *is not, and does not feel*, disadvantaged, by not having the interpreter physically present.

We feel strongly that the proposed approach does not deliver on the objective as worded in paragraph 1(e) which states that a physical interpreter is required wherever there is 'any doubt' about the person's ability.

Based on the risks inherent in the combination of mental vulnerability plus the need for interpretation, we believe a sensible approach would be to mirror the existing rules for legal advice. Code C states that people who require an appropriate adult have a right to face to face legal advice, even where other suspects would receive advice over the phone. In doing so, the Code recognises the specific risks arising from communication challenges arising from mental ill health, learning disabilities, autistic spectrum disorders and other mental vulnerabilities. We suggest Code C could be amended to state something to the effect of: -

> *Detained persons who require an appropriate adult have the right to face to face interpretation wherever interpretation is required.*

While securing the physical presence can, in some circumstances, undoubtedly be time consuming, we believe this can be mitigated and do not consider it to outweigh the seriousness of the risks to justice. The number of cases that involve both a rare language and the need for an appropriate adult will is relatively small.

We propose a presumption of face to face interpretation, a person who is mentally vulnerable would be able to waive this right of they felt that a time delay outweighed the benefit. Their ability to waive would be subject to the agreement of the AA, legal advisor and custody officer, considering their best interests and the potential effect on the admissibility of the evidence to court.

At the very least, the final decision on whether an interpreter is required to physically attend should not rest unilaterally with the custody officer. An alternative to our suggestion above is that the assumption is the use of live link unless the individual, their AA, legal advisor or custody officer decide an interpreter should be physically present.

Finally, in relation to the final sentence of the paragraph, we suggest drawing a distinction between interviews and 'more routine occasions' that 'do not directly involve evidence gathering' does not achieve the objective of 'completeness and consistency' set out at the start of the sentence. Interviews themselves may be considered by police as 'routine'. Non-interview elements of the

process may be considered as direct evidence gathering and may indeed have significant impact. For example, a full assessment by a Health Care Profession concerning fitness for interview is a critical part of the process, as are consultations with the solicitor and appropriate adult. They are likely to be far more important to the suspect (and due process) and this needs to be recognised. This broader spectrum of need is recognised in paragraph 13.1A. We would therefore amend the final sentence of paragraph 1.e) to read:

> *For completeness and consistency, the same approach is applied to all other occasions when an interpreter is required.*

Paragraph 13.1A

The arrangements must comply with the minimum requirements set out in Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (see Note 13A). The provisions of this Code implement the requirements for those to whom this Code applies. These requirements include the following:

- *That the arrangements made and the quality of interpretation and translation provided shall be sufficient to 'safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the cases against them and are able to exercise their right of defence'. This term which is used by the Directive means that the suspect must be able to understand their position and be able to communicate effectively with police officers, interviewers, solicitors and appropriate adults as provided for by this and any other Code in the same way as a suspect who can speak and understand English and who does not have a hearing or speech impediment and who would therefore not require an interpreter.*

Comments

We suggest that this means that the vulnerable detainee must have free and immediate access to an interpreter at all times when in custody to uphold their rights. For example, they have the right to consult privately with the AA at any time Code C 3.18. As with appropriate adults, interpreters should be available whenever the individual is providing or being given information. We suggest that this is best and most easily achieved by having an interpreter physically present in the station. Any other approach must achieve the outcome that the suspect can communicate effectively, in the same way as any other suspect, to the variety of individuals with which they are required or allowed to communicate.

Paragraph 13.2

Unless paragraphs 11.1 or 11.18(c) apply, a suspect who for the purposes of this Code requires an interpreter because they do not appear to speak or understand English (see paragraphs 3.5(c)(ii) and 3.12) must not be interviewed unless arrangements are made for [a] person capable of interpreting to assist the suspect.

Comments

It would be helpful, for the sake of clarity, to state explicitly that the interpreter must be available to assist the suspect during the interview, not simply that arrangements are made.

Paragraph 13.2A

An interpreter should also be called if a juvenile is interviewed and their parent or guardian, present as the appropriate adult, does not appear to speak or understand English, arrangements should be made for an interpreter to assist communication between with the juvenile and their parent or guardian adult unless the interview is urgent and paragraphs 11.1 or 11.18(c) apply.

Comments

This needs to be extended to include an adult who is mentally disordered or otherwise mentally vulnerable.

Paragraph 13.5

Unless paragraphs 11.1 or 11.18(c) (urgent interviews) apply, a suspect who for the purposes of this Code requires an interpreter or other appropriate assistance to enable effective communication with them because they appear to have a hearing or speech impediment (see paragraphs 3.5(c)(ii) and 3.12) must not be interviewed without arrangements being made to provide an independent person capable of interpreting or to provide that assistance.

Comments

As for 13.2, the requirement that the interpreter must be available to assist the suspect during the interview should be made explicit.

Paragraph 13.6

An interpreter should also be arranged [whenever] a juvenile is interviewed and their parent or guardian who is~~,~~ present as the appropriate adult, appears to have a hearing or speech impediment, unless the interview is urgent and paragraphs 11.1 or 11.18(c) apply.

Comments

This needs to be extended to include an adult who is mentally disordered or otherwise mentally vulnerable.

Paragraph 13.9

If paragraph 6.1 applies and the detainee cannot communicate with the solicitor because of language, hearing or speech difficulties, arrangements must be made for an interpreter. A police officer or any other police staff may not be used for this purpose.

Comments

Again we suggest the words 'to be available/accessible' to be inserted after 'interpreter.'

Paragraph 13.10

After the custody officer has determined that a detainee requires an interpreter (see paragraph 3.5(c)(ii)) and following the initial action in paragraphs 3.1 to 3.5, arrangements must also be made for an interpreter to:

- *be present at the magistrates' court for the hearing of an application for a warrant of further detention or any extension or further extension of such warrant to explain any grounds and reasons for the application and any information about the authorisation of their further detention given to them by the court (see PACE, sections 43 and 44 and paragraphs 15.2 and 15.16(c));*

Comments

Based on our direct experience of a video link being used in a court hearing, when an extension was being sought in a terrorism investigation, we are unsure about the practicalities of having another video link in operation. It has a negative effect on the speed of the process which becomes far more cumbersome. In our experience there have had to be around 15 people present at such a hearing. Having an interpreter in situ, sitting next to the detainee and translating quietly into their ear, provides a 'real-time' interpretation which generates minimal disturbance to others and enables more effective, naturalistic, participation by the suspect.

Paragraph 13.11

The following must be recorded in the custody record or, as applicable, the interview record:

(a) Action taken to arrange for an interpreter;

(b) Action taken when a detainee is not satisfied about the standard of interpretation or translation provided, see paragraphs 13.10A and 13.10C;

(c) When an urgent interview is carried out in accordance with paragraph 13.2 or 13.5 in the absence of an interpreter;

(d) When a detainee has been assisted by an interpreter for the purpose of providing or being given information or being interviewed;

Comments

We suggest the addition of any representations made by the detainee, legal advisor or appropriate adult as to the suitability of an interpreter being physically present.

Paragraph 13B

A procedure for determining whether a person needs an interpreter might involve a telephone interpreter service or using cue cards or similar visual aids which enable the detainee to indicate their ability to speak and understand English and their preferred language. This could be confirmed through an interpreter who could also assess the extent to which the person can speak and understand English.

Comments

This should be the minimum and so 'might' be replaced by 'should at least' in the absence of a more clearly specified assessment procedure.

ANNEX N: LIVE LINK INTERPRETATION

Paragraph 2

Decisions in accordance with this Annex that the physical presence of the interpreter is not required and to permit live link interpretation, must be made on a case by case basis. Each decision must take account of the age, gender and vulnerability of the suspect, the nature and circumstances of the offence and the investigation and the impact on the suspect in question according to the particular purpose(s) for which the suspect requires the assistance of an interpreter and the time(s) when that assistance is required (see Note N1). For this reason, the custody officer in the case of a detained suspect, or an officer of the rank of sergeant or above in the case of a suspect who has not been arrested, must consider whether the ability of the particular suspect, to communicate confidently and effectively for the purposes specified in paragraph 4, is likely to be adversely affected or otherwise undermined or limited if the interpreter is not physically present and live link interpretation is used. Although a suspect for whom an appropriate adult is required may be more likely to be affected as described, it is important not to assume that just because a particular suspect does not require an appropriate adult, their ability to communicate confidently and effectively, for any particular purpose could never be affected as described if live link interpretation is used.

Comments

Please see our comments on paragraph 1. e) and paragraph 13.1A.

Paragraph 3

Examples of purposes referred to in paragraph 2 include:

(c) consulting privately with their solicitor and (if applicable) the appropriate adult:

(i) to help decide whether to answer questions put to them during interview; and

(ii) about any other matter concerning their detention and treatment whilst in custody

Comments

While we appreciate that these are simply examples, there is a real risk that this will be read as an exhaustive list – or least that these very specific purposes are more important than others. There are any number of other practitioners, or interested persons, that the detainee may need to meet privately with i.e. Liaison and Diversion, Independent Custody Visitor, Drugs worker etc. As this list would vary over time, we suggest: -

- Sub paragraph (c) edited to: “consulting privately with their solicitor, the appropriate adult (if applicable), healthcare professionals and any other relevant individual”
- Sub-paragraphs to (c) are not required and should be removed

Paragraph 6

Authority may be given if the officer is satisfied that for the purpose(s) in question at the time an interpreter is required, live link interpretation is necessary and justified. In making this decision, the officer must have regard to:

(a) the circumstances of the suspect;

(b) the nature and seriousness of the offence;

(c) the requirements of the investigation, including its likely impact on both the suspect and any victim(s);

(d) the availability of suitable interpreter to be physically present compared with the availability of a suitable interpreter for live link interpretation (see Note N3); and

(e) the risk if the interpreter is not physically present, evidence obtained using link interpretation might be excluded in subsequent criminal proceedings.

(f) the likely impact on the suspect and the investigation of any consequential delay to arrange for the interpreter to be physically present with the suspect

Comments

In the context of the current proposals, this should include any representations made by the detainee, legal advisor or appropriate adult about the suitability of a physical interpreter as against live link.

However, this paragraph is acceptable if the proposals are amended as per our comments on paragraph 1. e) and paragraph 13.1A (i.e. that if the legal advisor, AA or individual have doubts about live-link then an interpreter will be required to physically attend).