Response to the Independent Review of Deaths and Serious Incidents in Police Custody call for submissions

Responding Organisation/Individual: National Appropriate Adult Network

Which of the following best describes you, your organisation or professional interest? Please select one option:

a. Bereaved family/affected individual
b. Police force
c. Police and Crime Commissioner (PCC)
d. Voluntary sector / community organisation
e. Government department or agency
f. Academic institution or think tank
g. Representative body
h. None – I am responding as a member of the public
i. Prefer not to say
j. Other (please specify) ……

In which of the following areas are you based? Please select one option:

a. East Midlands
b. East of England
c. Greater London
d. North East England
e. North West England
f. South East England
g. South West England
h. Wales
i. West Midlands
j. Yorkshire and the Humber
k. Prefer not to say
l. Other (please specify) National infrastructure organisation for England and Wales

Consultation Questions: (Please note the boxes will expand as you type in them)

You do <u>not</u> have to answer every question.

1. In what ways could the risk of death/serious incidents in police custody be avoided?
Please see answer to question 4
2. What actions could be taken by the police to avoid or reduce the risk of death/serious incidents following or as a result of police use of force, with particular reference to the use of restraint?
Not answered
3. What actions could be taken by the Police and other organisations to reduce the risk of self-inflicted deaths within 48 hours of police custody?
Please see answer to question 4
4. To what extent is mental health a factor and how do you think this should be addressed?

Mental vulnerability and deaths in custody are linked

1. **There is a significant body of data to show the high prevalence of mental ill health and other mental vulnerabilities in police custody**[1]. For example, Gudjonsson et al. (1993) found 35% of people in police custody had "problems which might interfere with their functioning or coping ability during police interviewing"[2]. McKinnon & Grubin (2013) found that 38.7% of adults in police custody having mental disorders including intellectual disability[3]. These figures are complemented with the recent evidence submitted to the Home Affairs Committee, in which the police estimated that 20%[4]-40%[5] of people passing through police custody have a mental health issue.
2. **There is a high prevalence of mental ill health amongst those who have died** in, or following, police custody or died by apparent suicide following police custody. In the IPCC statistics for 2014/15, of the seventeen people died in or following police custody, eight were identified as having mental health concerns. This included; schizophrenia, bipolar disorder, depression and paranoia. Of the 69 apparent suicides following police custody, 35 were reported to have mental health concerns. This included; depression, bi-polar disorder, personality disorders or previous thoughts or incidents of suicide attempts or self-harm[6].
3. **There is a clear link between mental disorder and deaths in custody, but the relationship is complex.** The Government's Independent Advisory Panel on Deaths in Custody commissioned the University of Greenwich to conduct a literature review on how mental disorder amongst detainees relates to self-inflicted and natural cause deaths in all custodial settings. It found that[7]: -
    a. There is a clear link between mental disorder and (self-inflicted) deaths in custody, but the relationship is complex
    b. Those with mental disorders are more likely to come into contact with the criminal justice system and be detained in custody. These individuals are at a significantly elevated risk of death in custody
    c. An individual's mental disorder may put them at an increased risk of confrontation with police and this resulted in actions such as self-harm or suicide or restraint by the police which may have result in death
    d. The experience of being detained in custody can elicit mental disorders and also exacerbate the symptoms of pre-existing mental disorders.
    e. Individuals may neglect their physical health or avoid disclosing physical ailments due to the symptoms of mental disorder.

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[1] Bath et al. (2015) There to Help: Supporting paper A (Literature review) p.2-3. London: National Appropriate Adult Network and Institute of Criminal Policy Research

[2] Gudjonsson, G., Clare, ICH., Rutter, S. and Pearse, J. (1993) Persons at Risk during Interviews in Police Custody: The Identification of Vulnerabilities. *Royal Commission on Criminal Justice Research Study No.12* London: HMSO

[3] McKinnon I. and Grubin, D. (2013) Health screening of people in police custody – Evaluation of current police screening procedures in London, UK. *European Journal of Public Health*. 23(3):399-405

[4] Home Affairs Committee, Oral evidence: Policing and mental health, *HC 202*, Tuesday 2 Sept 2014

[5] Home Affairs Committee, Oral evidence: Policing and mental health, *HC 202* Tuesday 28 Oct 2014

[6] IPCC (2015) Deaths during or following police contact: Statistics for England and Wales 2014/15

[7] University of Greenwich & The Runnymede Trust (2013) Mental Disorders and Deaths in Custody: Making the Case for Mental Health Literacy

4. Once in the justice system, adults with mental ill health and other mental vulnerabilities often report **not understanding what was happening to them or why; being uncertain about what to say or do; feeling alone and not knowing to whom to turn for support**. In addition to increasing the risk of miscarriages of justice, this undermines their welfare and threatens to exacerbate their vulnerabilities[8].
5. **Appropriate and considered care for those detained in custody and experiencing mental disorders can reduce the risk of deaths in custody**, but this requires knowledge of mental disorders and their symptoms. The proportion of time that prison and police officers spend addressing the needs of those with mental disorders is high, but the training is currently limited[9].

Appropriate adults can help to reduce the risk

6. The role of appropriate adults (AA) is to **safeguard the welfare and rights of children and mentally vulnerable suspects who are detained by police** or interviewed voluntarily. Home Office Guidance for Appropriate Adults (2003), defines the main responsibilities of an AA as:
    a. To support, advise and assist the detained person, particularly when questioned;
    b. To observe whether the police are acting properly, fairly and with respect for the rights of the detained person. And to tell them if you think they are not;
    c. To assist with communication between the detained person and the police;
    d. To ensure that the detained person understands their rights and that you have a role in protecting their rights
7. The Codes of Practice of the Police and Criminal Evidence Act 1984 (PACE) set out the purpose and powers of AAs, and the responsibilities of the police in this regard. **Police must secure an AA for all children and for an adul**t if they have any suspicion that they may be, or are told in good faith that they are, **mentally disordered** (as defined in the Mental Health Act 1983 s.1(2)) or **otherwise mentally vulnerable**, unless there is clear evidence to dispel that suspicion. Mentally vulnerable means anyone who, because of their mental state or capacity, may not understand the significance of what is said, of questions or of their replies. (This includes, but is not limited to, people with mental health problems, learning disabilities and autistic spectrum disorders.)

[8] Bath et al. (2015) There to Help: Supporting paper A (Literature review) p.2-3. National Appropriate Adult Network and Institute of Criminal Policy Research

[9] University of Greenwich & The Runnymede Trust (2013) Mental Disorders and Deaths in Custody: Making the Case for Mental Health Literacy

8. In relation to vulnerable adults, PACE Code C suggests that the AA should be **someone experienced in dealing with mentally disordered or mentally vulnerable people** but who is not a police officer or employed by the police but if the person prefers a family member their wishes should be respected if possible. However, subject to a small number of exceptions, the police may legally ask any person over the age of 18 to be an AA, including a member of the general public. A wide variety of individuals and agencies currently fulfil the role, including: family members, carers, social workers, youth offending team (YOT) staff and statutory, private or voluntary sector providers. In some areas, AAs are volunteers from the local community, organised and supported by a local charity or agency.

9. Training for those appropriate adults trained to national standards) includes but is not limited to: -
    a. **Mental health and learning disability** issues (for both children and adults)
    b. Child and adult **safeguarding**
    c. **Communication skills** with particular reference to supporting detainees with learning difficulties or other communication problems

10. In the wake of the tragic suicides of seventeen year olds Edward Thornber and Joe Lawton following police custody, the children's parents, Just for Kids Law, INQUEST and others, campaigned for seventeen year olds to receive an appropriate adult. In a statement, Joe's parents, Nick and Jane said, "We believe **if the law had been different Joe would still be alive**."[10] The importance of the appropriate adult role in safeguarding was also highlighted in the inquiry into the death of Kesia Leatherbarrow, who also committed suicide, aged seventeen, after police custody.

11. The Home Secretary, Theresa May, has said, "***Appropriate Adults provide vital support*** *and help to de-mystify what can be an intimidating and threatening experience. It is right that all vulnerable people can access this invaluable service*".[11]

12. As demonstrated by the case studies below, given by an experienced appropriate adult, police may see vulnerable people in custody as a nuisance and often as offenders. They may not always have the time or the inclination to talk to people, but rather may let it escalate and then restrain them. **AAs are in an excellent position to de-escalate situations because they have the time, skills and are not in a uniform.**

[10] https://www.change.org/p/home-office-ukhomeoffice-change-the-law-so-17-year-olds-are-treated-as-children-in-custody-4joe [accessed 18/04/2016]
[11] Home Secretary at the Policing and Mental Health Summit. Delivered 23 October 2014 https://www.gov.uk/government/speeches/home-secretary-at-the-policing-and-mental-health-summit

13. Case study 1: *"Recently I went in for a guy who was ultimately charged with two counts of GBH. He was a handful in custody and was diagnosed with ADHD and all over the place in terms of emotional state. He had no impulse control. When he was eventually charged he just wanted to get out and go to court. They put him back in the cells and he got very agitated and stressed and was getting very worked up about when he would leave the station. I heard lots of noise coming from the cells and asked the custody sergeant if I could go in. They let me in. He was talking about self-harm, starting to hyperventilate laying on his back and starting to bang his head on the bench he was laying one. One of the Custody Officers, in trying to help I think, was telling him that there was no way that they could send him to court in this state and that if he didn't calm down he would have to be held over night. This was just making his levels of agitation increase and he was going to put restraints on him. I asked if they'd just let me speak to him more. I ended up talking to him for 2 hours. He ended up teaching me how to do Sudoku! We got him out for some fresh air – anything to keep him on a level. He calmed down a lot and* ***never had to be restrained****."*

14. Case study 2: *"I was called out for a lady who has been arrested on suspicion of attempting to kill her child. She's said something to her neighbour who had called the police. When I got to the station there was already an interpreter there. She was Polish. She spoke no English but I think she was illiterate in her own language. As we talked, it turned out her husband had brought her over from Poland and managed their whole life, money, bills everything and very sadly had died two months earlier. She had no friends, no means of reaching out for support and was horribly isolated. It turned out she had a mild learning disability. She had put a pillow over her baby's face and tried to suffocate him and then told her neighbour what she did. It seemed to me like a cry for help. As things progressed I suggested to the police that there was a real risk she might kill herself when she was released. She has lost everything (the child was taken away) and she had no family here. She lived in the top of a tower block and it seemed obvious how this could play out. I asked for the FME (forensic physician) to come back and spoke with him at length about what the woman had told me, of my concerns for her and I thought that she needed an assessment under The Mental Health Act. He agreed with me.* ***On release from custody she went into psychiatric care voluntarily.****"*

Mentally vulnerable suspects are not receiving support

15. The Government has supported a number of initiatives relating to mental vulnerability and police custody. The Crisis Care Concordat and Street Triage have evidenced a welcome reduction in the reduce the use of police cells for people suffering a mental health crisis. However, in the IPCC statistics, **the vast majority of deaths are of people who were detained as suspects** under the Police and Criminal Evidence Act 1984, rather than the Mental Health Act 1983 (s)136. In this regard, the Government has made a significant investment in Liaison & Diversion services, and this is also welcome. However, its stated function is to screen, asses and refer; it does not itself provide a support service.

16. NAAN has consistently highlighted that **arrangements for appropriate adults for vulnerable adults are unsatisfactory**. In 2014 the Home Secretary commissioned NAAN to "*examine this situation and help us determine where the problems lie, and what can be done to ensure that that all vulnerable adults in police custody are able to receive the support they need from Appropriate Adults*".[12]

17. The report of the commission found: -
    a. Significant **shortcomings in current AA provision for mentally vulnerable adult suspects**, particularly in terms of: inadequate police practices with respect to identification of suspects' vulnerabilities and the need for AAs, and the recording of relevant data; limited availability of AAs; variable quality of AAs
    b. **Many vulnerable adults do not receive an AA** or receive one only for part of custody, undermining welfare, inhibiting the exercise of their legal rights, risking miscarriages of justice and lengthening custody times potentially increasing the risk of self-harm
    c. The underlying causes of these findings include: the **absence of statutory duties** either to secure or to provide AAs for vulnerable adults (both of which exist for AAs for children); **lack of appropriate training and screening tools** for police; **time pressures** in the custody suite; diminishing public sector **funding** and a lack of clarity over responsibility for **commissioning**
    d. Legislative changes aimed at promoting equality (such as the **Equality Act 2010**) and national initiatives focused on vulnerable people in the criminal justice system (such as liaison and diversion services) provide **a favourable policy context** for the enhancement of AA provision
    e. On the basis of a conservative estimate of need, the annual cost of ensuring full provision of trained AAs from organised schemes, throughout the custody process and across England and Wales, is estimated at an average of **£113,000 per local authority area**. The report identified current spending of around £3 million per year.

[12] Home Secretary at the Policing and Mental Health Summit. Delivered 23 October 2014 https://www.gov.uk/government/speeches/home-secretary-at-the-policing-and-mental-health-summit

18. Specific findings included: -
    a. According to police custody records, **only 3% of adults in police custody have an AA** – a fraction of the prevalence rates for relevant conditions. This suggests that, each year, some **235,000 mentally vulnerable adults do not have an AA** when detained/interviewed as a suspect
    b. Of those who were screened by and engaged with Liaison & Diversion services, only one in five had an appropriate adult
    c. Police forces with access to AA schemes across its entire operational area are **five times more likely to identify an adult in custody as mentally vulnerable** and secure an AA, than forces with no organised schemes
    d. Around two-thirds of identifiable existing funding for dedicated AA schemes for adults comes from local authorities. This does not include local authority spending on social workers who may carry out the role as part of their core job as this figure could not be identified

Recommendations from There to Help

19. There to Help provided a range of recommendations, focusing on: -
    a. The development of a **national vision** shared by relevant departmental bodies, agencies and organisations; and the placing of AA provision within the strategic framework of liaison and diversion
    b. A national framework for **local co-commissioning,** with enhanced national standards
    c. Improved **training and screening** tools for police, along with **consistent police record keeping** on vulnerable suspects, identification of and securing of AAs
    d. Creating parity with AA services for children by replicating the explicit statutory duty on police to secure an AA (in PACE 1984) and the **explicit statutory duty** to provide an AA (in the Crime and Disorder Act 1998). Currently the duty to secure for adults is only in the Codes and the duty of Youth Offending Teams to ensure provision only applies to children.
    e. In the absence of a new, funded, statutory duty, to provide programme **funding** to support the inclusion of AA provision within mainstream budgets.
20. The Home Office, with the support of NAAN, has established a working group to consider the recommendations. This group includes representatives from the: National Police Chiefs Council; College of Policing; Local Government Association; Association of Directors of Adult Social Services; NHS England (Health & Justice), Police & Crime Commissioners; Prison Reform Trust; and Lord Bradley. The group has met twice since the publication of There to Help in August 2015.
21. A central issue remains the lack of any resources with which to increase AA provision for adults who are mentally vulnerable. Without this expansion, the police will inevitably continue to breach both the PACE Act 1984 Codes of Practice and the Home Secretary's determination that all mentally vulnerable adults will have an AA.

22. Noting the impossible situation faced by police, a small number of Police & Crime Commissioners have funded and commissioned AA services for mentally vulnerable adults. This has prevented the loss of many experienced AAs which would have resulted from the retrenchment of local authority funding. All have done this on a short-term basis, explicitly noting that it is a 'stop-gap' until a national solution arises from the Home Office working group.

23. While NAAN supports the PCC's who have taken this short-term decision, we do not advocate for PCCs taking long-term unilateral responsibility for commissioning AA services for the following reasons: -

    a. **It would result in the loss of existing local funding**. There to Help found that existing funding is 66% local authority and only 24% PCCs. This does not even include the 'invisible spending' whereby social workers are attending as AAs. Local authorities are still investing in AA services (though this is reducing as we know). If it goes to PCCs, all local authority money will go – that's pretty much guaranteed. Some LAs want to pull out from funding but are still concerned about the impact. If the Home Office says it is the responsibility of PCCs, they will pull all their money out. PCCs will expect to be fully remunerated by central government for an additional duty. So the full costs will be borne by the Home Office. The same is not true the other way around. Effective AA services contribute to police effectiveness, efficiency and legitimacy. PCCs have a role to play in funding AA schemes but not in totality.

    b. **Experiences of existing integrated commissioning are positive.** There to Help's survey of AA providers found that: *"Most respondents thought AA commissioning, provision and oversight should be a shared responsibility between local government (78%), health authorities (31%), Police and Crime Commissioners (36%) and local partnerships such as safeguarding adults board (22%), with a partner agency commissioned to deliver the service. Respondents noted positive experiences of integrated health and social care commissioning teams and drew a link with liaison and diversion teams. Several concerns were raised about the responsibility sitting with Police and Crime Commissioners because AA provision is unlikely to be a community priority and it would be a conflict of interest with their role of inspecting custody. A quarter of respondents said that the responsibility should sit with national government, thus ensuring a clear national mandate unable to be diluted by local interpretation."* We also conducted 13 in depth interviews with 13 senior stakeholders from criminal justice, health and AA services. One of the things we asked them about was "Responsibility for commissioning and overseeing AA services for vulnerable adults". You can see from the attached summary of responses they were also broadly supportive of the shared approach. For example, one senior stakeholder interviewed for the project said: *"There must be joined-up thinking between liaison and diversion, street triage, victim services (most offenders with mental health problems are also victims) and AA services. These four services need to be under the same umbrella and funded in the same way. Mental health agencies and the police do not link up and work well together; there is a huge tension. There is a real need for community advocates to help bridge that gap. There is a data disconnect and a professional disconnect".*

c. **Integration and co-commissioning provides a good fit with overall government policy**. The Home Office has supported cross departmental efforts in health and justice. Liaison and Diversion and Street Triage have demonstrated a positive direction of travel. Issues of mental health / vulnerability are being tackled by partnerships of health and justice. They have broken down silos to very positive effect (notably reducing the use of police cells for detention under s.136). They have also brought 'health money' to bear on reducing pressures on policing.

d. **Independence and public perception are critical to legitimacy**. For obvious reasons, under PACE, appropriate adults may not be police employees. It is absolutely critical for AAs to be able to instil immediate trust with the people they support. Vulnerable suspects are often wary of 'support' offered in police custody, frequently referring to duty legal advisors as 'police solicitors'. PCCs are 'responsible for the totality of policing' and 'aim to cut crime and deliver an effective and efficient police service'. Service users are highly unlikely to differentiate between the PCC and police. Health and social care commissioners are explicitly and clearly not part of policing. Indeed, they are not part of the justice system. That is clear to service users and it is clear to the public.

e. **Increased access to non-criminal justice pathways.** People with health and social care needs make up a large proportion of those arrested by police. Placing AA commissioning solely within policing cuts it off from health and social care. In a partnership model the 'centre of gravity' shifts away from a solely criminal justice approach. AA services are most effective where they have close links back to health and social care and can draw in other professionals and services. Integrated commissioning supports this approach.

f. **Policing priorities are not the only important measurement of effectiveness.** What the police value most about AAs may not align perfectly with what the vulnerable detainee values – or indeed what the wider justice system values. To judge the effectiveness, and therefore commissioning, of an AA service, purely from a policing perspective generates risks. Including health and social care commissioners brings a healthy diversity to the way in which the effectiveness of AA schemes is assessed.

g. **Services for mentally vulnerable suspects would be exposed to local political considerations.** Respondents to *There to Help* expressed the view that AAs are a fundamental safeguard for a fair and safe justice system. They may be perceived as services for offenders as the distinction between a suspect (assumed innocent) and an offender (found guilty). Under a non-ring-fenced PCC model, AA scheme would be in competition with other services, such as those for victims, which may be more popular.

h. **The health and social care workforce has appropriate professional knowledge**, skills and approaches including an understanding of mental vulnerability and experience in person-centred support. Volunteers require back up for serious cases and high support needs.

i. **PCCs have rejected the idea** of taking control of AA services for adults. Martyn Underhill, PCC for Dorset and national mental health lead, raised the issue formally at a meeting of the Association of PCCs.

5. To what extent is ethnicity a factor, why, and how do you think this should be addressed?

Not answered

6. To what extent are drugs/alcohol a factor and how do you think this should be addressed?

Not answered

7. What specific considerations should be given to children and young people in custody to reduce risk of death/serious harm?

Positive developments

1. The trend of **reducing child arrest numbers** is welcome. According to Home Office statistics the number of 10 to 17 year olds arrested in 2013/14 in England and Wales was 112,709, compared to 210,660 in 2009/10.
2. In recent years, there have been significant improvements in policy in relation to the treatment of children and young people in police custody. Changes to PACE Code C have given 17 years olds the support of appropriate adults and required police to ensure parents are notified of their detention. Changes to legislation made via the Criminal Justice and Courts Act 2015 (and due in the Policing and Crime Bill 2015-16) have (will) finally bring the **legal rights of 17 year olds fully in line with 16 year olds**.
3. There is undoubtedly increased awareness, at least at policy level, that cases involving children should be expedited and that detention should be as short as is absolutely necessary. The NPCC National Strategy for the Policing of Children and Young People states that custody is a priority area.

Ongoing challenges

4. While it may be outside the terms of reference of this Inquiry, it is notable that, for all its negatives, **custody is where safeguards have developed** over many years. This includes the planning of AA services around custody suites, the provision of Liaison and Diversion services, medical services and legal advice. While the reduction in the use of custody is welcome, it is unclear exactly how the circa 100,000 children per year who no longer appear in the custody statistics are being treated. It seems likely that there is a significant substitution effect with the increased use of voluntary interviews. HM Inspectorate of Constabulary has encouraged this but has also noted the lack of records in relation to police use of voluntary interviews. For example, there is little data on how many are taking place, where they are taking place, who is

acting as AA and whether the take-up of legal advice is negatively affected. Voluntary interviews are taking place in private homes, in rooms in police stations outside custody, and elsewhere. They are also taking place in the custody suite (often because that is where the equipment is) but without being technically 'in custody'. With no custody records, the information is not currently available to demonstrate how and whether the rights and welfare of these children are being appropriately safeguarded. However, discussions with AA scheme leaders suggest that many are not being used for voluntary interviews. NAAN does not propose a return to the use of custody for children. However, those advocating and delivering policies which result in the diversion of children from custody have a duty to ensure that the alternatives are at least equally safe and fair.

5. For AAs to ensure the rights and welfare of detained children, their intervention must be *timely* and *effective*. The statutory duty on YOTs to ensure provision of AAs for children (Crime and Disorder Act 1998) is an extremely important foundation. This contrasts with schemes for adults which are identifiable in only around 50% of local authority areas[13]. We believe AA schemes for children exist in every local authority area, though not all YOTs are members of NAAN and the mode and quality of delivery will differ. However, **the existence of the statutory duty to ensure provision does not guarantee quality outcomes**. A number of issues remain and these are outlined below.
6. **Failure of police to contact AAs as soon as is practicable.** Custody officers do not always follow the PACE Codes. They do not always contact an appropriate adult as soon as practicable. In one case NAAN witnessed, by way of explaining why an AA had not been called for 12 hours, a custody officer openly admitted to forgetting that a child was in custody for half a day and then not being able to find an officer to conduct an interview for several further hours.
7. **Failure of police to contact an AA for all processes mandated by PACE.** The PACE Codes require that an AA is present for many specified parts of the process including: rights and entitlements; identification procedures; seeking of consent; strip searches; intimate searches; and interviews. Based on a review of custody records, HM Inspectorate of Constabulary found that, "almost all children in our custody record analysis sample had an appropriate adult present while being read their rights and if they were interviewed subsequently"[14]. However, *There to Help* provided strong evidence that (in relation to vulnerable adults) the likelihood of the presence of an AA varies dramatically between parts of the process. For examples, AAs were almost always required by police for interviews but often not for ID procedures or strip searches. Based informal discussions with AA schemes, we are concerned that the same may be true for detained children. Further evidence is required.

[13] Bath et al. (2015) There to Help. London: National Appropriate Adult Network and Institute of Criminal Policy Research

[14] HMIC (2015) The welfare of vulnerable people in police custody. London: HMIC

8. **Technical compliance versus compliance with the 'spirit' of PACE.** While the PACE Codes are clear that an AA must be present for interview, they are much more permissive around the early stages (rights and entitlements) and later stages (charge and bail). This permissiveness exists for practical reasons. It is hard to know in advance that a child is going to custody so rights and entitlements can be delivered without an AA and then repeated on the arrival of the AA. The police have no power to detain post-charge purely to await an AA, so the AA must only be present if they are present in the station. However, this permissiveness can result in an abuse of the spirit of PACE. On some occasions AA schemes are simply not called by police immediately. On others, the arrival of AAs, solicitors and interviewing officers is scheduled just before an interview. Such an approach implies that the interview is the only part of the process for which an AA is necessary and suggests a prioritisation of what works for the professionals involved. If a child spends many hours locked in a cell before their AA arrives, that AA's role is undermined their role before they have started. If a vulnerable suspect is not supported at the end of the process, this may increase the use of inappropriate cautions and misunderstandings over bail conditions.
9. **Untrained appropriate adults**. The majority of appropriate adults for children are untrained parents. Appropriate adults have regularly been criticised in research and inspections for their ineffectiveness, whether as a result of passivity or over-involvement. The ability of parents to function as effective appropriate adults without support should be carefully considered. The PACE Codes are hugely complex and it is unrealistic to expect them to be able to ensure police comply with them, especially during what may be an emotional, even traumatic, time. For example, the cohort of people most likely to waive their right to free legal advice are 10 to 13-year-old children[15]. Younger children are more likely to have a parent as an AA and parents are less likely to understand the power of an AA to insist on the presence of a legal advisor. However, the recognition that trained AAs can be more effective in terms of outcomes for children should not result in the exclusion of parents from the process. Families are of critical importance and self-evidently know the child better than a trained member of staff or volunteer. They also have an on-going support role which is critical in relation to deaths following custody. The challenge then, is to define roles for trained AAs and parents which deliver the best outcomes.

[15] Kemp, V. (2013) Bridewell Legal Advice Study: Adopting a 'whole-systems' approach to police station legal advice BLAST II FINAL REPORT. London: Legal Services Research Centre

10. **Inequalities amongst trained appropriate adults**. NAAN member schemes commit to best practice and aiming to meet the NAAN National Standards. The standards include minimum training requirements (20 hours plus shadowing visits to custody). This is supported by access to NAAN's National Training Pack - a seven-module training resource, including videos, developed by experienced practitioners. NAAN would like to see all appropriate adults provided under the YOT's statutory duty trained to the National Standards level. We are also involved in the development of an OFQUAL accredited level 2 national qualification for appropriate adults.
11. **AA provision out of hours**. It is often a complaint of police that AAs are not available out of hours. This has been cited as a contributory factor in the overnight detention of children in police cells. It has been made clear by the Youth Justice Board, HMIC/HMIP thematic reports and joint inspections, and the review of youth justice currently being undertaken by Charlie Taylor[16], that the statutory duty of YOTs is not only applicable in office hours. It is in the best interests of children that AA schemes retain the ability to refuse to enable a police interview. It is already the case that police sometimes fail to expedite cases involving children, leading to unnecessarily late interviews or even 'bedding down' to sleep the night in a cell. The control that AA schemes have over provision enables them to influence police to expedite cases. The unintended consequence of forcing non-caveated 24/7 provision of AAs is that it would remove pressure on police to deal with matters quickly, thereby actually increasing unnecessary overnight detentions. We are aware that many AA schemes operate limited hours. These vary widely but typically may take on new cases between 8am to 11pm. Reasons for this include: lack of evidence of demand from police; operating hours are determined by their contract; lack of necessary resources; difficulties recruiting volunteers to work through the night; the view that children should not be interviewed through the night as a matter of principle. NAAN concurs with the YJB guidance on this subject which states, "Each YOT has a legal duty to provide appropriate adults for all those who need them within the geographical area they cover. This is irrespective of the specific location or the home area of the child. This duty applies at any time of day or night. You should consider requests for attendance out-of-hours in line with the best interests of the individual child"[17]. YOTs have a duty to ensure that they have appropriate provision in place to respond to when it is in the best interest of a specific child in a specific circumstance, and indeed in the interests of fair justice. This may be delivered directly, though variations in contracts with providers or by collaborating with Out of Hours / Emergency Duty Teams.

[16] Ministry of Justice (2016) Review of the Youth Justice System: An interim report of emerging findings
[17] Appropriate adults: guide for youth justice professionals. https://www.gov.uk/guidance/appropriate-adults-guide-for-youth-justice-professionals [Accessed May 2016]

12. **Scope of AA provision**. Just as police must demonstrate demand by requesting an AA through the identification procedures, strip searches, interview and on to charge and related actions (including bail), schemes must be able to respond. This is not currently the case in all areas. In some areas, provision is effectively limited to starting shortly before interview and ending shortly after it. HMIC has provided evidence of some children being in custody for long periods of time before seeing their AA and having their rights and entitlements repeated[18]. In the case of parents not being available, willing or appropriate, a fast initial response YOTs / commissioned providers is critical. Under Youth Justice Board guidance this must be within two hours of the request. Many NAAN members would supply an AA much more quickly than this. Some AA schemes are considering technological solutions for charge and bail and this may be suitable for some children and circumstances, dependent on what has gone before. However, technology can never replace the value of a supportive adult human presence for a child in crisis.
13. **Integrating AAs in wider YOT work**. However they are delivered, appropriate adult services should be an integral part of the YOT's bail and remand strategy, as detailed in YJB guidance[19] [20].
14. **Information flows.** Consideration should be given to how the rich information which can be gained by AAs could be used. Currently some information gained by AAs is passed back to YOTs and entered in to its database. However, there is usually a delay associated with this transfer – one which runs parallel to the high-risk period immediately after release from custody. Pathways for real-time flows of information back to the YOT need to be developed, including where services are commissioned externally. Information on children who are not already engaged with the YOT may not be recorded systematically in the same way. It may be effectively lost to the system. Issues of confidentiality must be central to these considerations to ensure the integrity of the AA role.
15. **Accountability of AA schemes**. Inspection regimes require further development in relation to AA schemes. HMI Probation is responsible for inspections of YOTs. However, its Full Joint Inspection reports rarely mention AA services. HMI Constabulary's Expectations for Police Custody have recently been strengthened and make greater mention of AAs. However, these are inspections of the police, not of the schemes themselves. An effective inspection regime is a necessary component in providing accountability and driving positive change. It is of critical importance that Inspectors have sufficient knowledge of AA good practice to enable them to report on both good and practice, and to differentiate between issues generated by schemes and those caused by police.

[18] HMIC (2015) The welfare of vulnerable people in police custody. London: HMIC
[19] YJB (2014) Manage bail and remands: section 3 case management guidance
[20] YJB (2014) Use out-of-court disposals: section 1 case management guidance

16. **Resourcing AA schemes.** Just as it is difficult to criticise the police for failing to access a service that does not exist, it is difficult to criticise services for not providing something that they are not resourced to provide. Budget cuts to YOTs have inevitably affected AA schemes. This has been compounded by the fact that AA services were extended to 17 year olds (who are by far the largest age group of arrested children) without any additional funding. Schemes will simply not be able to deliver on 24/7 provision and coverage of the whole process without appropriate resourcing. Dedicated AA schemes are not expensive. Data compiled for *There to Help* suggests a per call out rate of around £80 per call out, compared to around £375 if delivered by a social worker (for full coverage of the detention process an average two call outs per detention episode should be assumed). Many AA schemes in England and Wales rely on the support of community volunteer AAs. People who will spend their Christmas day in police custody with a child they do not know for no financial reward. Unfortunately, the belief that volunteer-based services are 'free' is persistent. Even volunteer schemes require staff to recruit, train, support, back up and fill in for volunteers. Although, for these schemes, the average unit cost of call out is lower at around £70 per call out. Under-resourced, unreliable schemes are an encouragement to police find alternative sources – which may well not involve trained AAs. In order to deliver on the areas listed above, YOTs will require the necessary resources to cover the extension to 17 year olds and to give appropriate prioritisation to AA schemes in funding allocations.

Local authority accommodation transfers

17. **Systemic breaches of the legislative framework**. Once a child aged 10-17 is charged, they must be bailed or detained. If they are detained they must be transferred to local authority accommodation except in a small number of circumstances. NAAN has produced a guide to the legislative framework (available at http://appropriateadult.org.uk/images/pdf/2015_NAAN_Information_LAA.pdf). This legal framework is systemically breached in many areas across England and Wales.
18. **Appropriate adult's role in relation to transfers**. The duty to transfer lies with police and local authorities. It is not part of the role of the AA to effect transfers. However, it is part of the AA's role to ensure that children understand their rights and that their rights are respected.
19. **Local authority issues.** The reasons contributing to the lack of compliance are many and varied. Examples include when local authorities: -
    a. Do not have suitable accommodation in place, particularly secure accommodation. This may be due to lack of consideration, a consideration of low demand and high cost, or pure financial limitations). In 1984 a large number of LA's had secure units often attached to a non-secure home but now there are 15 secure children's homes for the whole of England and Wales. Vacancies are limited and the time taken to make a referral plus effecting a transfer leads professionals to judge that it is not in the young person's interest (though this justification is not recognised in law). Local

authorities may feel unable to fund dedicated secure PACE accommodation constantly, just for occasional use

b. Don't differentiate between refusal of bail and transfer (i.e. believe that if a child is refused bail they must be kept locked up by police / are dangerous.
c. Faced with a request from police for a non-secure PACE bed undertake a risk assessment and conclude a secure bed. Local authorities may use secure if (a) likely to abscond or (b) likely to injure self or others in other accommodation (a double test beyond the police test to use secure if 12+ and risk to public of serious harm). Local authorities have an absolute duty to provide accommodation but not secure accommodation (see legal framework).
d. Are not aware that they can legally detain a child transferred under PACE.

20. **YOT issues**. According to YJB guidance, YOTs should be involved from the start in identifying possible concerns about bail and liaising with police to offer bail information / support to avoid need for PACE transfer. Where AAs are not YOT staff, there need to be effective, real-time lines of communication back to the YOT.
21. **Policing issues**. In addition, there are contributory factors from the policing side. These may include the fact that custody officers: -
    a. Fail to bail children when it is a possible option
    b. Ask for secure when it is not justified in the legislation (local authorities do not an absolute duty to provide secure accommodation).
    c. Interpret "impracticable" in the legislation as impractical rather than impossible. Parliament had been very clear that this word was included "simply to provide against rare occurrences" and "is not a device to slide out of the commitment"[21].
    d. Are expected to interpret unclear primary legislation (the 'risk of serious harm to the public is only defined in PACE 1984 in relation to certain violent and sexual offences, though they could argue the gravity of a different offence met this threshold)
    e. Believe it will take a long time or be impossible to arrange (have lost faith in local authority provision and, by extension, the law)
    f. Are aware that accommodation is far away and will not allow a proper rest period and therefore not be in the child's best interests
    g. Are sometime frustrated with repeat offenders not being detained by courts
    h. Don't trust the local authority to ensure the child turns up at court (transfer of responsibility and risk from police to social workers)
    i. Don't approach other local authorities which may respond more positively (and then arrange for the home local authority to be billed)
    j. Don't always produce the Certificate of Impracticability / Juvenile Detention and deliver to court, so courts are not informed of individual or systemic failures.
    k. Lack clarity and trust around who is responsible for the child arriving at court. The law, YJB, and Police Approved Professional Practice say the responsibility for the child or young person passes from the police to the local authority.

[21] http://hansard.millbanksystems.com/lords/1991/apr/23/criminal-justice-bill-1

This transfer of responsibility includes transfer of the power to detain them, and responsibility for ensuring that they appear at court. However, under the IPCC the police's duty of care extends to the period after release from police custody and we have seen local police draft protocols which say the child or young person remains technically in Police custody and as such will not be allowed the leave the placement until their court appearance (except on health grounds).

l. Interpret the exceptions to transfer requirement (e.g. warrants) as suggesting that Parliament did not think police cells were that bad for a child.

22. **Lack of accountability**. Where either police or LA has failed, the lack of transfer is unlawful and open to compensation. However, there is no mechanism by which courts call police to account in relation to transfers under.38(6) and certificates under s.38(7) or call Directors of Social Services to account under s.21(2)(b) Childrens Act. There is a general lack of monitoring and accountability via police, local authorities and Local Safeguarding Children's Boards.
23. **Progress on transfers.** NAAN welcomes work between the Home Office and the Department for Education to establish a Concordat to address this problem in England, and work between the Welsh Government, police forces and local authorities to develop guidance in Wales. The lack of provision of appropriate accommodation and secure accommodation, and the resources with which to develop it, is a significant challenge and will require commitment from all partners.

8. Are there any other issues that affect other vulnerable groups?

Not answered

9. Do you have any suggestions on how the police and other agencies could improve the ways in which they work together so as to prevent or reduce the risk of deaths and serious incidents? For example, medical services within the police station, the ambulance service, mental health detention services, mental health community services, drug and alcohol support services.

10. Official investigations into deaths, from immediate aftermath to final conclusions, sometimes fall short of families' needs and expectations. If so why do you think this is, with particular reference to:

a. Family liaison
b. Police statements in the media

c. **IPCC investigations** d. **Role of the Crown Prosecution Service and the criminal justice process** e. **Coroners' inquests** f. **Police misconduct and disciplinary process** g. **Investigations by NHS Trusts or other medical healthcare providers** h. **Role of the Health and Safety Executive**
11. In what ways could family experience, involvement and support be improved at all stages after a death has occurred?
12. If someone you know has died in such circumstances or if you have had an experience in police custody that resulted in, or could have resulted in, serious illness, injury or self-harm please set out what happened at each stage of the incident. What went wrong and what could have been done differently?
13. What could be done to improve accountability on the part of the police in relation to deaths and serious incident in police custody?
14. What could be done to improve sustained learning from deaths and serious incident in police custody?
15. How can there be more effective implementation of learning and recommendations arising from investigations and inquests into deaths?

16. We need to learn where things have gone wrong, but we can also learn from things that have worked well. Do you have any examples of good practice which has lead to positive outcomes? This could be in preventing a death or serious incident, the family involvement in the investigation and/or its outcome?
17. Are there any other comments you would like to make?

Please submit your response using the online survey.

Alternatively you can answer the questions using this form, and send your response to the following e-mail address:
DeathsInCustody.IndependentReview@homeoffice.gsi.gov.uk

Or you can send it by post to:

Independent Review
c/o 6th Floor NW, Fry Building
Home Office
2 Marsham Street
LONDON
SW1P 4DF

Responses must be received by 6 May 2016; we cannot undertake to consider any responses received after that date.