Ensuring the mutual independence of AAs and ICVs





Purpose

This paper recommends steps to ensure the mutual independence of ICV and AA schemes which:

- maintain the independence of independent custody visitors (ICVs) from custody processes;
- increase the accountability of appropriate adults (AAs).

Independent Custody Visitors

ICVs carry out monitoring in PACE/TACT detention facilities. They provide reassurance to the local community at large by independently inspecting the treatment, conditions, rights and entitlements of all detained suspects. They are not part of the evidential chain and do not attend interviews. They are always volunteers. They are appointed by, trained by and report to the local Police and Crime Commissioner. TACT case reports are also sent to the Independent Reviewer of Terrorism Legislation. ICVs are ineligible to become Magistrates.

Appropriate Adults

AAs provide a service both in police detention facilities and wherever voluntary interviews take place. They ensure that a child or vulnerable adult suspect is able to participate effectively and is treated in a fair and just manner. They are expected to pro-actively advise, support, assist, inform and intervene during a PACE/TACT investigation. AAs are often family members but those acting within formal schemes typically report to local authorities[1] and may be employees, contractors or volunteers. AAs may become Magistrates in a different local justice area.

Current rules on people holding both roles

PACE 1984 and Code C prohibit certain people from acting as an AA, including where they are closely involved with the police force[2]. Code C guidance note 1F states that, "A solicitor or independent custody visitor who is present at the police station and acting in that capacity, may not be the appropriate adult".

Reflecting this, the Custody Visiting Code of Practice currently states:

- *"25. ICVs may also act as appropriate adults. However, individuals must not switch between those roles during the course of a visit to the same police station and must declare if they have previously carried out either role with the same detainee. An individual cannot perform both roles (i.e. acting as an appropriate adult and an ICV) simultaneously for the same detainee."*

[1] Under the Crime and Disorder Act 1998 s.38(4)(a) a local authority must ensure provision of AAs for children. While there is no statutory duty in relation to adults, local authorities are the main providers/funders.

[2] PACE Code C 1.7 (a)(iii) prohibits: "a police officer or employee; a person under the direction or control of the chief officer of a police force; or a person who provides services under contractual arrangements (but without being employed by the chief officer of a police force), to assist that force in relation to the discharge of its chief officer's functions, whether or not they are on duty at the time"

This means that although they cannot act in them simultaneously, a person can hold both roles simultaneously. Therefore, under the current rules:

- an ICV at a station can simply cease acting in that capacity and begin acting as an AA (simply by walking out and then back in again);
- a Police and Crime Commissioner can operate a single team of volunteers carrying out both the ICV and AA role in the same area.

Issues with people holding both roles

"Once you start becoming part of the process then you cannot credibly independently inspect something that which you have helped to create or been part of."[3]

- Dame Anne Owers (in evidence to the Justice Select Committee)

There is a paucity of accountability in relation to appropriate adults. Reporting and governance is typically restricted to remote contract management focusing on activity and output measures (such as the number of call outs and response times). There is insufficient consideration of outcomes for vulnerable suspects or their views on the quality of provision.

ICVs are uniquely positioned to contribute to this lacuna, subject to them remaining independent of provision of services within the custody environment.

It is not possible to *independentl*y inspect something which one is involved in providing. This applies even where the ICV is not acting as an AA simultaneously as they will necessarily be inspecting the work of colleagues, who in turn will inspect them on another occasion. It should be noted that ICVs operate in custody only and further consideration is required as to how such accountability might be extended to voluntary interviews.

Recommendations

1. The *NAAN National Standards* (for formal appropriate adult schemes) be amended, such that:

- A person who is an AA may not act as an ICV in the same police force area.

2. The *Code of Practice on Independent Custody Visiting* be amended, such that:

- An ICV may not act as an AA within the same police force area, except under PACE Code C paragraphs 1.7(a)(i) or 1.7(b)(i).

3. PACE Code C 1.7 (a)(iii), which prohibits people from acting as the AA, be amended to include:

- - a person who is an independent custody visitor within the police force responsible for the detention or investigation, except under paragraphs 1.7(a)(i) or 1.7(b)(i).

4. The reference to ICVs in PACE Code C 1F be removed, to read:

- A solicitor who is present at the police station and acting in that capacity, may not be the appropriate adult.

5. A reasonable period of time is allowed before implementation of the above recommendations, in order to allow affected areas to recruit where necessary.

[3] https://publications.parliament.uk/pa/cm200910/cmselect/cmjust/354/354.pdf

Impact assessment

ICVA carried out a survey of its members to establish the current scale of people holding both roles. It found that impact of the recommendations would be reasonably low as there is currently a relatively small number of schemes in which there are people holding both roles in practice.

The Association received 13 responses from schemes with 10 out of 13 members expressing a clear preference for the roles being distinct and separate, broadly agreeing that there could be a conflict of interest in this regard. A further 3 schemes were supportive of the move in principle but noted concerns as to the reactions of those who held a dual role and the recruitment issues that would likely result from volunteers having to choose one role or the other. Interestingly, those schemes who reported concerns were still broadly supportive of the move. Two schemes which took part in the consultation indicated that they had already taken a local decision not to allow their custody visitors to dual role as AA's, precisely for reasons regarding conflict of interest (Norfolk and Suffolk).

A further recommendation received from schemes is that, assuming recommendations 1-4 are adopted, there should be a lead-in time to lessen the impact for affected areas. This recommendation is supported both by schemes most affected (e.g. around one third of ICVs in Avon and Somerset are also AAs) and schemes with smaller numbers of dual role individuals.

The one exception is the Office of the Police and Crime Commissioner for the West Midlands. Although the OPCC did not respond to the consultation, the change will affect current provision in the area. In frustration at the lack of provision for adults, West Midlands Police established their own (short-lived) AA scheme paying expenses to Coventry University students. Due to the breakdown of that scheme, a recognition that police should not run AA provision and lack of budget, the OPCC felt that it had no other option than to dual-task ICVs to act as AAs. Its application for membership was declined by NAAN's Board of Trustees on the grounds of conflict of interest. It is hoped that the Home Office's forthcoming Partnership Agreement will provide a framework to solve the issue of AAs for adults.

In making the above recommendations, it is important to consider the impact on the rights of parents or suspects, as well as the current issues with provision of appropriate adults for adults. For this reason, recommendations 2 and 3 include exceptions which allow an ICV to act as an AA if:

- in relation to a child, they are the parent or guardian; or
- in relation to a vulnerable adult, they are a relative, guardian or other person responsible for their care or custody.

END.