National Appropriate Adult Network

NAAN | Policy

A proportionate approach to vetting appropriate adults from organised schemes

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Purpose

This paper has been produced by the National Appropriate Adult Network (NAAN) for the National Police Chief's Council (NPCC) lead on vetting. The purpose is to support an agreed position regarding responsibility for vetting of appropriate adults (AAs) acting on behalf of official organised AA schemes, and appropriate and proportionate methods for so doing. The key drivers are the imminent publication of revised national standards for AA schemes and a recent increase in concerns raised by NAAN members regarding the application of police vetting.

Background

Appropriate adults

The Police and Criminal Evidence Act 1984 (PACE 1984) and its Codes of Practice (PACE Codes) require police to secure an AA when a suspect is detained or questioned and:

- the person appears to be aged under 18 (Code C 1.5); or
- an officer has any reason to suspect that the person may be vulnerable (Code C 1.4, 1.13(d), 1G, 1GB).

The role of the AA is to safeguard the rights, entitlements and welfare of juveniles and vulnerable persons. A described in PACE Code C (1.7A), the AA is expected, amongst other things, to:

- support, advise and assist the suspect when they are given or asked to provide information or participate in any procedure;
- observe whether police act properly and fairly to respect their rights and entitlements, and inform an officer of the rank of inspector or above if they consider that they are not;
- assist the suspect to communicate with the police whilst respecting their right to say nothing unless they want to as set out in the terms of the caution;
- help the suspect to understand their rights and ensure they are protected and respected.

The rights of an AA are also specified in PACE. These include:

- to be present for specified procedures e.g. rights and entitlements, strip searches, ID procedures, interviews, charging and related actions;
- access to the custody record (only for the suspect they are supporting);
- access to the contents of a risk assessment (only if not to do so would put them at risk);
- the suspect has a right to consult privately with their AA during their detention.

It is also a requirement of PACE that the AA is *independent* of the police. To this end, they may not be: a police officer, a person employed by the police; under the direction or control of the chief officer; or provide services under contractual arrangements to assist the force in relation to the discharge of its chief officer's functions (Code C 1.7, 1F).

In most cases, the AA is someone known personally to the suspect, is not part of an organisation and has no training. PACE 1984 requires police to prioritise parents and guardians in the role of AA for juveniles. In the case of vulnerable adults, the AA is also often a person known to the suspect such as a partner or carer (Code C 1.7). However, if no such person is available, police will contact an organised scheme of trained AAs.

Organised appropriate adult schemes

It is a statutory duty of youth offending teams to ensure such provision for juveniles. While there is no statutory duty for adults, local authorities provide or commission such services in most areas. However, in some areas, a lack of local authority resources have recently forced police and crime commissioners to commission schemes – often explicitly on a short term basis. However, even where this is the case, AAs are appointed by the provider, not the PCC.

AAs for official organised schemes are often volunteers who are recruited from the local community. However, they may also be sessional staff operating under contract with a provider or paid employees (e.g. youth offending team officers).

Almost all organised schemes are registered members of the National Appropriate Adult Network (NAAN). NAAN is funded by the Home Office's Police Powers Unit to provide infrastructure support for AA provision. This includes the publication of agreed *national standards* and a *national training pack*.

NAAN national standards

The NAAN national standards (2013) are approved by the Home Office, Department of Health and the Youth Justice Board. They require AAs schemes to carry out Disclosure and Barring Service (DBS) checks, two references and "other robust recruitment measures, such as interview and taking up references". They also require that DBS checks are renewed regularly.

Following consultation, a revised version of the standards has been signed off by the NAAN board Home Office. It is currently awaiting publication. The revised standards expand the requirements on schemes in terms of DBS checks, including a requirement to use the DBS update service annually (or manually renew checks a minimum of every 3 years). They state that police vetting should not be applied but that schemes should share their vetting policies and procedures with police forces to provide assurance.

The NPCC was consulted on the new standards and no concerns were raised in its response. However, in recent months NAAN has received an increasing number of queries regarding the use of police vetting in addition to their own checks. Having reviewed the Vetting APP and Code of Practice, NAAN is therefore raising the issue with the NPCC lead for vetting with the intention of minimising the risk of confusion between police forces and AA providers.

Police vetting and risks to be managed

In October 2017, the College of Police published both a Code of Practice on Vetting (COPV) and Authorised Professional Practice on Vetting (APPV).

As set out in the APPV, the purpose of vetting is that "everyone in the police service must maintain high ethical and professional standards and act with the utmost integrity. They must be seen to maintain and promote such standards. A thorough and effective vetting regime is a key component in assessing an individual's integrity. It helps to reassure the public that appropriate checks are conducted on individuals in positions of trust. Vetting also identifies areas of vulnerability which could damage public confidence in a force or the wider police service" (APPV 1.1).

Two forms of police vetting are discussed in this paper:

- Non-police personnel vetting (NPPV);
- Counter-terrorist check (CTC).

Current practice

Common practice

Historically, AA schemes have taken the full burden of responsibly for vetting (as is expected by the current national standards). This is achieved primarily through Disclosure and Barring Service (DBS) criminal records checks in addition to application forms, references and interviews. In 2018, this approach remains the case in the vast majority of areas.

Areas of divergence

NAAN is now aware of a small number of variations in practice. This ranges from a very small number of areas where police vetting has been insisted on (not always by police forces), to those where either police forces or providers have actively refused it as inappropriate or unnecessary.

The following represents current intelligence and not a comprehensive survey:

- A London borough: In one borough, police had been conducting live PNC checks on prospective volunteer AAs at the request of a third party and giving or withholding 'permission' as a result. The same borough has recently switched to requiring that volunteers make a subject access request under the Data Protection Act for their PNC data
- Cambridgeshire: Recently commissioned a new service and required police vetting in contract (where this was not the case previously)
- Greater Manchester: The DBS approach is used across GM, with the exception of AAs for the TACT suite for whom police vetting is being undertaken. This is connected to the fact that AA provision for TACT was retained by the Office of the PCC (now part of the GMCA) when PACE provision moved to an independent charity, however this may change shortly.
- Humberside: PCC recently commissioned a new service to cover vulnerable adults. They requested police vetting but the force's vetting lead said it was not needed and it did not go ahead
- Kent: In addition to the provider's DBS checks at the enhanced level, police are carrying out NPPV Level 2.
- Leicester: AAs with existing DBS checks were required to undergo police vetting in order to be allowed to park at the police station.
- Merseyside: PCC recently commissioned a service to cover vulnerable adults (temporarily) and required police vetting.
- Wales: Unlike in England, direct commissioning of AAs for vulnerable adults by police forces is common. While Dyfed Powys does not use police vetting other forces do. In relation to children's services (which are not commissioned by police) police vetting does not appear to be in use.

Issues

Until very recently police vetting had not appeared as a national issue. The current drivers are unclear but may be related to the publication of the Vetting APP and Code of Practice in late 2017, combined with increasing police/PCC involvement due to issues with local authority funding.

Organised AA schemes have now raised a number of concerns with NAAN, related to the issues generated by police vetting of AAs from organised schemes. Broadly these include matters of principle, legality and operational practicality.

In summary, concerns include that police vetting of *official organised* AA schemes:

1. is not required by the Vetting APP or Code of Practice;
2. does not relate to significant relevant risks
3. represents an unnecessary administrative and financial burden;
4. discourages AAs, particularly volunteers
5. undermines the independence of AA schemes;

These issues are dealt with in more detail in the following sections.

1. Police vetting of organised schemes is not required under the APP

Force vetting levels are applied to all individuals who require *unsupervised* access to police assets including information, systems or premises (APP 5.1.2).

The APP does not only apply to police officers and employees and the non-police personnel vetting (NPPV) process allows for this. However, the scope of NPPV is not unlimited. NPPV assesses the suitability for clearance of anyone other than police officers, police staff and members of the special constabulary, who have unsupervised physical or remote access to any of the following (APP 6.18.1):

- police premises;
- information;
- intelligence;
- financial or operational assets;
- corporate databases;
- data networks or hard copy material.

AAs are visitors not 'non-police personnel' and do not require unsupervised access to any of the above. In terms of premises, like legal representatives, they attend custody suites only when requested by police and for the duration of a detention or interview. Both lawyers and AAs are treated as escorted visitors.

In terms of information and intelligence, the AA only have access to information that police would provide to the suspect. Under PACE, police must share the relevant custody record with the AA on request. This is achieved either through providing a printed copy or by allowing the AA to view it in a screen controlled by a custody officer – not by providing unsupervised access.

As prescribed by PACE, the detainee does have a right to a private consultation with their AA. This usually takes place in the same room as used for legal consultations. This may be the source of some confusion, since a private consultation could be considered to not be remaining under supervision. The APP (6.21.1) states that non-police personnel do not need to be vetted when they are admitted to police premises, if they are accompanied; *remain under constant supervision*; and are not permitted access to police information systems or classified material. However, this paragraph of the APP does not set out to specify the only circumstances whereby NPPV is not required.

The APP helpfully sets out the consequences of non-police personnel declining or refusing to be vetted. In such cases their access to police assets will be restricted and they will only be given access to police premises as an escorted visitor (APP 6.18.6) and the existing procedures for the reception of visitors should apply (APP 6.21.2*)*. This provides clarity as, for an AA, nothing would change in the absence of police vetting. This lack of impact on the AA if they decline to be vetted neatly illustrates how police vetting was not intended to apply to AAs.

Another areas of confusion may be between the role of the AA and the Independent Custody Visitors (ICV). Unlike AAs, ICVs are appointed by, and report to, the PCC and the Vetting APP explicitly states that NPPV can be applied to such personnel. Furthermore, ICVs can attend custody at any time without police permission, go anywhere within it, speak to any detained person and access any and all custody records. This is quite different from the AA, who effectively simply stands in for a parent.

2. AA schemes do not generate significant relevant risks

Risk management is central to effective policing. Custody officers have a duty of care to detained persons, particularly those who are vulnerable. Failures could have life changing consequences both for a suspect and for an officer. Investigating officers need to ensure the security of their information. If certain sensitive information were to be passed to criminals or even the media, there could be serious consequences – including risks to witnesses or a failed prosecution. There are particular risks in relation to detentions under terrorism legislation.

It is therefore prudent to consider the relevancy of such risks and what response is proportional, despite the fact that AAs do not meet the definition of relevant 'non police personnel' (see point 1).

The Vetting APP states that consideration should be given to the level applied to each role, and to the information, intelligence and other assets to which the individual will have access. This ensures that non-police personnel are not subjected to a disproportionate level of vetting (6.18.5). It states that a counter-terrorist check (CTC) is required for individuals who are to be appointed to posts which have access to information or material assessed to be of value to terrorists (5.4.1).

Crucially, in relation to all AAs (including parents and other non-scheme AAs):

- AAs only have a right to access information that is available to the particular suspect/detainee (e.g. the custody record, interview questions). Like the lawyer, the AA is not being trusted with any additional information about the detention or investigation;
- police are careful to ensure they do not provide inappropriate information to AAs (that which they would not wish to share with a suspect) in order to protect their investigation. This is especially the case in TACT cases where AA access to information is very limited.

Furthermore, in relation to *organised* AA schemes:

- The DBS check system acts to prevent persons being recruited as AA who would pose a risk to the safeguarding of a juvenile or vulnerable adult.
- Scheme AAs are subject to training on their common law legal duty of confidentiality (included in national training pack) and are very aware of the potential consequences for the investigation, their organisation and themselves of any breach.
- Scheme AAs have do not control which suspects they attend for. Any 'infiltrator', whether criminal or terrorist, would have to attend many AA call outs in the extremely unlikely hope that one would be for a relevant suspect.

The area where there may in fact be some risk is in relation to *non*-scheme AAs. Parents, spouses and other people connected personally to the suspect make up the majority of AAs and are:

- more likely to present a target for external pressure (e.g. media incentives, blackmail) because they are linked to the suspect and their involvement as AA is predictable;
- have not received training on their role, their inclusion in the evidential chain, and their common law duty of confidentiality;
- not disqualified under PACE by virtue of a criminal record;
- not subjected to either DBS checks or police vetting.

Notably, NAAN has been informed by one youth offending service of attempts by 'county lines' gangs to ensure they (posing as a friend, carer or family member) act as the AA in order to control a specific vulnerable suspect during interview. In this way, organised AA schemes using the DBS check system present a method of mitigating risks, not a source of risk.

3. Administrative and financial burden

For many AA schemes, the most pressing issue is very practical. Police demand for AAs is currently greater than supply in many areas. Furthermore, demand is likely to continue to rise for a number of reasons, including:

- recent changes to PACE Code C in relation to identifying vulnerability;
- increasing awareness of mental vulnerability amongst police officers;
- the expansion of liaison and diversion teams in police custody;
- increasing application of the AA safeguard to voluntary interviews due to changes PACE Code C and forthcoming guidance on voluntary interviews.

Many investigatory and custody procedures may not proceed until the AA is present. In order to ensure availability of competent AAs when required by police, AA schemes must continually recruit and train AAs. This requires significant investments of money and time. As there is a natural turnover of AAs, this is a constant and ongoing process.

As part of recruitment, all organised schemes operating under the NAAN national standard will carry out criminal records checks via the Disclosure and Barring Service. This is in addition to application forms, references and interviews.

DBS checks are the official route to criminal records checks for volunteer organisations and employers. The ultimate source of information for DBS checks is the Police National Computer (PNC). For example, in addition to cautions and convictions, an enhanced DBS check includes police intelligence if the police deem it relevant to the role (for example in relation to working with children or in TACT detention. The process is designed to be compliant with all relevant legislation (i.e. Rehabilitation of Offenders Act 1974, Police Act 1996, Safeguarding of Vulnerable Groups Act 2006). NAAN has recently worked closely and in great detail with the Disclosure and Barring Service to set out and agree sound legal bases for the conducting of DBS checks on AAs in both the children and vulnerable adult workforce.

AAs are not made available to the police until the DBS check is completed. The police vetting process therefore represents an additional, unnecessary administrative and financial burden (on the AA, the scheme and the police force). This can generate further delays before a person is available. Long delays before becoming operational can result in people dropping out of the service after significant investment in recruitment and training.

4. Negative impact on AAs

Given the low level of risk, the intrusion involved in police vetting is disproportionate. On a very practical level, prospective volunteers are not expecting to give detailed information about their personal finances and members of their family (including children). Volunteers have expressed surprise as the depth and breadth of information required and some have been discouraged from volunteering. There are many other volunteering opportunities available to them.

From a legal perspective, the GDPR and the new Data Protection Act 2018 must also be considered. Proportionality is a legal requirement and given the use of the DBS, AA schemes feel unclear how the additional police vetting could be justified as proportionate, as well what their legal basis would be.

The legal basis for a live PNC check on a third party, or an enforced subject access request under the Data Protection Act is even more doubtful and may well be illegal. NAAN believes these approaches are isolated to a single area and do not reflect a national issue.

5. Lack of independence

It is a requirement of PACE that AAs are independent of police. The extent to which police have control over who is allowed to act in the role is relevant to the independence of AAs, as well as the perception of their independence by suspects and the wider community. This has an impact on their effectiveness.

The most similar role is that of the legal representative – which is not subject to police vetting.

Two major AA providers in England and Wales have raised concerns about the practical impact of the application of police vetting. Both were concerned that it reduces the availability of willing AAs, especially volunteers, when there is already an under-supply. One stated, "I have lost so many good AAs to police vetting, through police refusing people with old and irrelevant criminal records." In their view, misunderstanding of the role and context led to extreme risk aversion. Another stated that, "Racial disproportionality is relevant. In the areas we work in, we would lose a significant number of AAs under police vetting. And where is the limit? What about administrative staff who take a referral from police – would they need to be vetted?"

It is unsurprising that police may be more risk averse than providers and, having less understanding of the role, may be quicker to apply a blanket refusal. However, this should not be interpreted as meaning that AA providing organisations are unconcerned with risk management – quite the opposite is true. For numerous reasons (including moral, reputational and financial) it is of critical importance to those organisations, whether they be in the public, private or charitable sector, that they properly vet prospective AAs. The important element is the principle that responsibility for ensuring the honesty, integrity and reliability of AAs lies with the providing organisation.

NAAN's position

Police vetting is not the most appropriate approach in relation to AAs from organised schemes. It creates an unnecessary and unhelpful administration burden and impacts on independence. AAs are escorted visitors in custody and should not be considered as 'non police personnel'. Police vetting is not used in relation to AAs known personally to suspects and organised AA schemes present an even lower risk to police forces. Organisations providing AAs are highly motivated to protect suspects, the own reputations and their contracts. DBS checks, alongside interviews, references, assessment during training and ongoing supervision, represent an effective and proportionate approach to mitigating any risks. The new DBS update system enables regular updates, providing effective 'aftercare' that is not required under NPPV.

Any organisation using DBS checks is required to have a written policy in relation to criminal records. AA schemes should share their approach to vetting and criminal records with the relevant police force(s) in order to provide assurance. As part of the wider liaison between the force and the provider, the force should raise any genuine risk issues with the provider for consideration and inclusion in there policy. Ultimately, custody sergeants retain the right to refuse access to custody to any person on a case by case basis and there is provision in PACE Code C to remove an AA where appropriate (Code C 11.17A).

NAAN is aware that some AA providers have embedded AAs in custody or requested 'pass cards' to enter custody in order to prevent long waiting times for AAs. Where schemes request unescorted access, police vetting is a reasonable expectation. However, this is not required for the role, is not considered normal practice and does not fall within the NAAN national standards.